



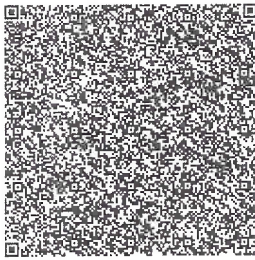
सत्यमेव जयते

## INDIA NON JUDICIAL

### Government of National Capital Territory of Delhi

#### e-Stamp

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Certificate Issued Date : 25-Oct-2018 02:33 PM  
Account Reference : IMPACC (SH)/ dlshimp17/ SUPREME COURT/ DL-DLH  
Unique Doc. Reference : SUBIN-DLDSLHIMP1795856033750429Q  
Purchased by : DIVYA BALASUNDARAM  
Description of Document : Article 12 Award  
Property Description : Not Applicable  
Consideration Price (Rs.) : 0  
(Zero)  
First Party : DIVYA BALASUNDARAM  
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Stamp Duty Amount(Rs.) : 100  
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BEFORE THE SOLE ARBITRATOR: DIVYA BALASUNDARAM  
C/O National Internet Exchange of India

In the matter of :

AGFA-GEVAERT N.V. Versus Diwakar Vaish

*Divya*

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BEFORE THE SOLE ARBITRATOR, DIVYA BALASUNDARAM  
.IN REGISTRY

C/o NATIONAL INTERNET EXCHANGE OF INDIA

ARBITRATION AWARD

AGFA-GEVAERT N.V.,  
GSS/Intellectuele Eigendom 3802  
Septestraat 27  
2640 MORTSEL  
Belgium

Complainant

Versus

Diwakar Vaish  
A-SET  
7/56 D.B. Gupta Road Karol Bagh  
New Delhi  
Delhi 110005, India

Respondent

1. The Parties

1.1 The Complainant is AGFA-GEVAERT N.V., of the address GSS/Intellectuele Eigendom 3802, Septestraat 27, 2640 MORTSEL, Belgium, represented by Novagraaf Belgium NV/SA, Mrs Stephanie Wuyts of the address Chaussée de la Hulpe 187, B-1170 Brussels, Belgium.

1.2 The Respondent is Diwakar Vaish of A-SET of the address 7/56, D.B. Gupta Road Karol Bagh, New Delhi, Delhi 110005.

2. The Domain Name and Registrar

2.1 The disputed domain name is <agva.co.in> registered with GoDaddy.com LLC.

3. Procedural History

3.1 Arbitrator received an email on October 24, 2018 inquiring if NIXI can avail its services as an Arbitrator for the dispute pertaining to the domain name agva.co.in. Arbitrator confirmed availability by email of October 25, 2018 and also sent the signed Statement of Acceptance and Declaration of Impartiality and Independence as required by the Rules.



- 3.2 The .IN Registry appointed Divya Balasundaram as the Sole Arbitrator on November 16, 2018 and Arbitrator received soft copy of the Complaint along with Annexures as well as hard copy.
- 3.3 Arbitral proceedings were commenced by Arbitrator on November 17, 2018 by issuance of a notice by email to the Respondent directing him to file his reply within 21 days.
- 3.4 Since no reply was received by the Arbitrator after lapse of 21 days time period, on December 14, 2018, Arbitrator sent email to Respondent stating that ex parte award would be passed in the matter.
- 3.5 The language of these proceedings is English.

4. Background of the Complainant and its trademark rights

- 4.1 The Complainant is active in the medical sector, as a developer of medical software, medical imaging devices and medical equipment etc. The Complainant is divided into 3 business groups: Agfa Graphics, Agfa Healthcare and Agfa Specialty Products. The company is active worldwide. In India, AGFA HEALTHCARE has offices in New Delhi, Mumbai, Chennai and Kolkata.
- 4.2 The Complainant owns many trademarks containing the word AGFA, the most relevant being:
  - (a). European trademark registration No. 8820979 for the word AGFA, relating to goods in class 5
  - (b). European trademark registration No. 3353463 for the word AGFA, relating to goods and services in classes 1, 2, 7, 9, 10, 40, 42
  - (c). European trademark registration No. 15598113 for the logo AGFA, relating to goods and services in classes 1, 2, 3, 7, 9, 10, 17, 24, 42
  - (d). European trademark registration No. 16044059 for the logo AGFA HEALTHCARE, relating to goods and services in classes 1, 5, 9, 10 and 42
  - (e). Indian trademark registration No. 3568809 for the logo AGFA HEALTHCARE, relating to goods in classes 1 and 10
  - (f). Indian trademark registration No. 1256849 for the word AGFA, relating to goods in class 9



(g). Indian trademark registration No. 468766 for the word AGFA, relating to goods in class 10

4.3 The trademark has a reputation due to the longstanding and intensive use that has been made of it.

5. Contentions/grounds raised by the Complainant

5.1 The Respondent's domain name is confusingly similar to the Complainant's trademarks.

5.2 From a visual point of view, the words AGFA and AGVA are nearly identical, as there is only a one letter difference and both the beginning and ending are the same. From an aural point of view, there is no difference whatsoever between the words AGFA and AGVA, since the letter V sounds like the letter F when put right after a G. A conceptual comparison is impossible, since neither AGFA nor AGVA have a meaning.

5.3 Moreover, on any computer keyboard, the letter V is right below the letter F and errors when typing the words are thus likely.

5.4 Finally, the Respondent presents itself as "AGVA HEALTHCARE" on the website which is linked to the Disputed Domain Name. This is a name which is nearly identical to the Complainant's registered trademarks AGFA HEALTHCARE and the name of one of its Business Groups AGFA HEALTHCARE NV.

5.5 Due to (1) the similarities of the words AGFA and AGVA, (2) the reputation of the AGFA trademarks and (3) the use by the Respondent of the added word HEALTHCARE, there exists a risk of confusion and consumers may be led to believe that the domain name agva.co.in refers to the Complainant.

5.6 The Respondent has no legitimate rights or interests in the domain name.

5.7 To the best of the Complainant's knowledge, the Respondent has not been commonly known by the name AGFA or AGVA, nor has acquired any rights in the name AGVA.

5.8 The Complainant has not licensed or otherwise authorized the Respondent to use its trademark or any domain name including the trademark AGFA or a confusingly similar sign.



- 5.9 Consequently, the Respondent must be presumed not to have rights or legitimate interests to use and register the domain name agva.co.in as the Complainant has prior and exclusive rights on the name AGFA.
- 5.10 The domain name was registered and is being used in bad faith.
- 5.11 The AGFA trademarks are famous and far predate the registration of the domain name. The trademark AGFA is in fact so famous that Respondent could not ignore the pre-existence of the Complainant's trademark rights and the Respondent must have been fully aware of it when selecting the domain name agva.co.in, which consists of the Complainant's famous mark comprising a typo.
- 5.12 It must be concluded that the Respondent, by registering this particular domain name, has intentionally attempted to attract, for commercial gain, internet users to its website by creating a likelihood of confusion with the Complainant's trademark.
- 5.13 The Respondent only added to such likelihood of confusion by presenting itself as "AGVA Healthcare" on the website linked to this domain name. This is the name under which one of the Complainant's Business Groups operates worldwide, including in India.

6. Discussions

- 6.1 The Arbitrator has reviewed the Complaint and all the Annexures filed by the Complainant.
- 6.2 The Arbitrator finds that the Arbitral Tribunal has been properly constituted.
- 6.3 The Arbitrator finds that the Complainant has been able to establish its prior rights and interests in the trademark AGFA.
- 6.4 To reach this finding, the Arbitrator has noted that Complainant is in the healthcare business as a developer of medical software, medical imaging devices and medical equipment etc.
- 6.5 The Complainant is active worldwide including in India. AGFA HEALTHCARE has offices in New Delhi, Mumbai, Chennai and Kolkata.
- 6.6 The Complainant owns many trademarks containing the word AGFA including in India pre-dating the registration of the domain name agva.co.in by Respondent. The mark AGFA has no dictionary meaning.



- 6.7 The Arbitrator also finds that the Complainant has established all the 3 elements essential to maintain its complaint, being that the disputed domain name is identical or confusingly similar to Complainant's trademark; the Respondent has no rights claims, or legitimate interests in respect of the disputed domain name; and the disputed domain name was registered and is being used in bad faith. The factors that support this conclusion are:
- 6.8 The Respondent's domain name is confusingly similar to the Complainant's trademarks. AGFA and AGVA look nearly identical, there is only one alphabet differentiating the two. The marks sound similar.
- 6.9 On a computer keyboard, the letter V is right below the letter F and thus mistakes whilst typing the words are likely.
- 6.10 Significantly, the Respondent is in the same business as that of Complainant (healthcare), and its website linked with domain name agva.co.in shows Respondent as "AGVA HEALTHCARE". This name is also nearly identical to the Complainant's registered trademarks and the name of one of its business groups.
- 6.11 Respondent has not been commonly known by the name AGFA or AGVA, nor has acquired any rights in the name AGVA.
- 6.12 The Complainant has not licensed or otherwise authorized the Respondent to use its trademark AGFA or any domain name including AGFA or a confusingly similar mark.
- 6.13 The word AGFA has no dictionary meaning; it is known in the relevant sector and predates the registration of the impugned domain name. It is rather clear in these circumstances that the Respondent has chosen the impugned domain name with reference to Complainant's AGFA mark, with a typo.
- 6.14 Respondent has deliberately chosen this domain name to attract internet users to its own website by creating a likelihood of confusion with the Complainant's trademark, for commercial gain.
- 6.15 The Respondent was given sufficient time to reply to the Complaint, however, Respondent has chosen not to submit any response.

7. Decision

- 7.1 For all the foregoing reasons, the Complaint is allowed.



7.2 It is hereby ordered in accordance with paragraph 10 of the INDRP that the disputed domain name <agva.co.in> be transferred to the Complainant.

7.3 The Parties shall bear their own costs.

*Divya Balasundaram*

DIVYA BALASUNDARAM  
ARBITRATOR

Date: December 18, 2018  
Place: New Delhi, India