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DEEPALI GUPTA
SOLE ARBITRATOR
.IN Registry - National Internet Exchange of India
INDRP Case No: 1598

In the matter of Arbitration Between:

BioNTech SE.Complainant
Versus
Xu Xiantao.Respondent

Disputed Domain Name : <BIONTECH.CO.IN>

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**DEEPALI GUPTA
SOLE ARBITRATOR**

Appointed by the .IN Registry - National Internet Exchange of India

INDRP Case No: 1598

In the matter of:

BioNTech SE,
An der Goldgrube,
12, 55131 Mainz,
Germany.

Through it's authorized representative:

S.S. Rana & Co., Advocates,
317, Lawyers Chambers,
High Court of Delhi,
New Delhi 110003, India

Telephone: +91 11 40123000

Fax: +91 11 40123010

Email: inf@ssrana.com

.....Complainant

Versus

Xu Xiantao,
Tianmushan Road 148,
Hangzhou, Zhejiang,
China-310027
E.mail:domainmi@163.com
Phone: +86.57187951349
(Registrant)

.....Respondent

Disputed Domain Name : <**BIONTECH.CO.IN**>

ARBITRATION AWARD

DATED NOVEMBER 10, 2022.

1) The Parties:

The Complainant in the present arbitration proceedings is BioNTech SE,
An der Goldgrube, 12, 55131 Mainz, Germany. The Complainant is



represented by its Authorized Representative S.S. Rana & Co. Advocates,
317, Lawyers Chambers, High Court of Delhi, New Delhi- 110003, India.

The Respondent in the present case is Xu Xiantao, Tianmushan Road 148,
Hangzhou, Zhejiang, China-310027 E.mail:domainmi@163.com, as per
the details available in the 'WHOIS' database by National Internet
Exchange of India (NIXI).

2) The Domain Name, Registrar and Registrant:

The disputed domain name is <BIONTECH.CO.IN>

The Registrar is 'IAPI GmbH'

The Registrant is Xu Xiantao, Tianmushan Road 148, Hangzhou, Zhejiang
China – 310027.

3) Procedural History:

This arbitration proceeding is in accordance with the .IN Domain Name
Dispute Resolution Policy (INDRP) adopted by the National Internet
Exchange of India (NIXI). The INDRP Rules of Procedure (the Rules) were
approved by NIXI on 28th June 2005 in accordance with the Indian
Arbitration and Conciliation Act, 1996. By registering the disputed domain
name with the NIXI accredited Registrar, the Respondent agreed to the
resolution of the disputes pursuant to the .IN Dispute Resolution Policy and
Rules framed thereunder.

In accordance with the Rules 2(a) and 4(a), NIXI formally notified the
Respondent of the Complaint and appointed Ms. Deepali Gupta as the Sole
Arbitrator to arbitrate the dispute between parties in accordance with the
Arbitration and Conciliation Act, 1996, and the Rules framed thereunder,
.IN Domain Dispute Resolution Policy and the Rules framed thereunder.
The Arbitrator submitted the Statement of Acceptance and Declaration of
impartiality and independence, as required by NIXI.



- The Complaint was produced before the Arbitrator on 1st September, 2022.

That as the Complaint filed by the Complainant was incomplete hence amended complaint was filed by the complainant. Thereafter Notice was issued to the Respondent on 8th September 2022, at his e.mail address 'domainmi@163.com', communicating the appointment of the Arbitrator in the case and outlining that the Complainant had prayed for transfer of the disputed Domain name <BIONTECH.CO.IN> in its favour. The Respondent was called upon to submit their response within twelve (12) days of the receipt of the Arbitrators email i.e. on or before 20th of September, 2022.

- The Arbitrator received no response from the respondent within the said timeline and even thereafter. Further the Arbitrator did not receive any delivery failure notification from the Respondents email id, therefore the respondent is deemed to be served with the complaint. In view of no response / acknowledgement / communication from the Respondent, the Complaint is being decided ex-parte and solely based on the materials and evidence submitted by the Complainant and contentions put forth by them.

4) FACTUAL BACKGROUND:

The Complainant, 'BioNTech SE', which includes it's predecessor(s)-in-interest, subsidiary companies, licensees, franchisees, sub-franchisees, distributors, associates and affiliates and group companies, is a company incorporated under the laws of Germany and is a global biotechnology company engaged in developing and manufacturing individualized cancer Medicine. The Complainant has developed a COVID-19 vaccine which is manufactured and commercialized in conjunction with Pfizer. The Complainant is engaged in developing and manufacturing active immunotherapies for patient-specific approaches to the treatment of diseases under the brand name 'BIONTECH' and its variations. The legal predecessor of the Complainant, 'BioNTech AG', was incorporated in Germany on June 2, 2008 and the mark 'BIONTECH' was adopted by it as



a company name, trade name as well as a trade mark for its goods/ services in the year 2008. On November 30, 2018, BioNTech AG changed its legal form from a German stock company to the Societas Europaea, a European stock company, BioNTech SE.

The Complainant 'BioNTech' has registered the top-level domain name www.biontech.com wherein it operates its interactive website. The Complainant has also registered the domain name www.biontech.de on which the said website is accessible as well. The said website(s) showcase information about BioNTech's business network and achievements as well as their goods/ services under the trade mark 'BIONTECH' and variations thereof. The said websites is accessible globally and can be viewed by persons all over the world. From their roots in Mainz, Germany, BioNTech has become a leading global biotechnology company for individualized cancer medicine.

The Complainant owns the registered trademark 'BIONTECH' in Germany and also owns registrations over its trade mark 'BIONTECH' and variations thereof in other jurisdictions of the world such as the European Union, India etc. By virtue of such registrations, the Complainant has the exclusive statutory right to use the trade mark 'BIONTECH' and variants thereof globally.

5) Summary of Complainant's contentions:

The Complainant has contended that each of the element in the .IN Domain Name Dispute Resolution Policy are applicable to the present dispute. It has thus been contended that the Registrant's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights; that the Registrant's has no rights or legitimate interests in respect of the domain name that is the subject of complaint; and the Registrant's domain name has been registered or is being used in bad faith. The Complainant has in support of its case has made the following submissions:



- a) The Complainant submits that the Complainant BioNTech, is a leading global biotechnology company for individualized cancer medicine. Leveraging their scientific and business expertise, BioNTech has advanced a development pipeline of over 20 oncology product candidates. BioNTech aims to change the treatment paradigm for cancer patients worldwide and believes in a tailor-made cancer therapy for each individual patient, based on the genetic features of the tumor. To translate this idea into reality, the Complainant has combined groundbreaking research with cutting-edge technologies to develop pioneering therapeutics for cancer and beyond in a reproducible, timely and cost-effective way.
- b) It is submitted by the Complainant that since 10th October 2019, BioNTech has been publicly traded as American Depository Shares (ADS) on the NASDAQ Global Select Market under the ticker symbol, BNTX. BioNTech is proud of their contribution to the worldwide efforts to address the global COVID-19 pandemic. "Project Lightspeed", the project to develop a novel mRNA technology for a COVID-19 vaccine, began in mid-January 2020. Within less than a year, BioNTech was able to develop the COVID-19 mRNA vaccine following highly scientific and ethical standards in collaboration with Pfizer. BioNTech and Pfizer are also working to jointly commercialize the vaccine worldwide. The Complainant's various goods, including its world-famous and globally available COVID-19 vaccine, are available across all continents of the world, and is distributed in tens of thousands hospitals and medical facilities worldwide. Further, through the years, the Complainant and its trade mark BIONTECH, have been featured/ mentioned in a wide variety of print and electronic media, including newspapers and magazines, and many articles have been written about the Complainant, adding to widespread awareness of its products and brand among consumers throughout the world. The most notable product of the Complainant is COVID-19 vaccine or Pfizer/BioNTech COVID-19 vaccine (sold under the trade 'COMIRANTY'). The BIONTECH trademark is present on each bottle of the vaccine. This vaccine has been approved and used in 137 countries throughout the world (as of February



8, 2022), while in many other countries it is under a regulatory approval procedure

- c) The Complainant submits that the Complainant under the mark 'BIONTECH' have gained immense popularity around the world. The Complainant is also present on and connects with its customers worldwide through various popular social networking websites such as Twitter and LinkedIn. The Complainants official handle/ account on LinkedIn has over 145,465 followers, which evidences the worldwide fame of the Complainant and its name/ mark. The Complainant has been bestowed with numerous awards and recognitions.
- d) Complainant further submitted that BioNTech considers its name and trade marks 'BIONTECH' and its variations as its valuable intellectual property and makes every effort to protect the same. BIONTECH is not only the trade mark and trade name of the Complainant, but it is its trading style as well as its House Mark. By virtue of the prior adoption, long standing and uninterrupted use, extensive publicity and the proprietary rights in its trade mark and name BIONTECH and variations thereof, both under common law and statutory protection, the said trade mark has acquired a high degree of distinctiveness and are identified by the market and general trade and public as exclusively belonging to the Complainant and its goods/ services, the spread of COVID-19 around the world, the Complainant and its marks have a significant reputation amongst the trade and public. As a result of the above- BIONTECH and variations thereof have become distinctive and well-known and have enjoyed distinctiveness, goodwill and reputation long prior to the date on which the Respondent registered the disputed domain name.
- e) The Complainant submits that it is the proprietor of the trademark 'BIONTECH' in India and has been continuously and exclusively using the same in relation to their business since at least as early as 2008, i.e. almost a decade and a half prior to the date on which the Respondent registered the domain <BIONTECH.CO.IN>. By virtue of long standing use and registration, the Complainants trademark BIONTECH qualifies to be a well-known mark. The impugned domain name <BIONTECH.CO.IN> comprises the complainants trade mark



BIONTECH in toto. Therefore, the domain name <BIONTECH.CO.IN> is visually, phonetically, conceptually, deceptively and confusingly identical/ similar corporate and trade name BIONTECH SE, trade mark BIONTECH and domain <BIONTECH.DE>. Given the identity of the impugned domain name <BIONTECH.CO.IN> with the Complainants name and mark BIONTECH, the same is bound to cause confusion and deception in the minds of the public that the Respondent has some connection, association or affiliation with Complainant, when it is not so. The complainant has relied on '*Kenneth Cole Productions v. Viswas Infomedia, INDRP/093*' deciding under the INDRP that where the disputed domain name wholly incorporates the complainant's trademark then there is confusing similarity .

- f) Complainant has submitted that Complainant has acquired rights in the trade mark 'BIONTECH' by way of trademark registrations, and by virtue of use as part of their company and domain names since much prior to the date on which the Respondent created the impugned domain <BIONTECH.CO.IN> incorporating the Complainants identical company name, trade mark and trade name 'BIONTECH' in toto.
- g) It is submitted by the Complainant that Complainant's rights over the marks 'BIONTECH' predate the Respondents registration of the impugned domain <BIONTECH.CO.IN> by more than two decades, which as per the WHOIS records, was only registered/created on May 21, 2022. Given that the Complainant is engaged in providing goods/ services related to medicines and vaccines, any confusion as to the source of the same is bound to be detrimental to public health and safety at large.
- h) The Complainant submitted that the Respondent has no right or legitimate interest in the domain name <BIONTECH.CO.IN>. Complainant submitted that Complainant has not authorized the Respondent at any point of time to register the impugned domain name. Further, the Complainant submitted that the Respondent cannot assert that it is using the domain name in connection with a bona fide offering of goods and services in accordance with Paragraph 6(a) of the .IN



Policy, as it is not operating any website from the impugned domain and is instead using the domain in connection with a parked page hosting commercial/ sponsored links. Such links cannot constitute a bona fide offering of goods and services. Complainant relies on “*Case No. INDRP/ 481 L'oreal v. Yerect International Limited*”. It is submitted by Complainant that Respondent is not commonly known by the name BIONTECH within the meaning of Paragraph 6(b) of the Policy nor does it appear to have been known as much prior to the date on which Respondent registered the impugned domain name. Accordingly, Respondent is not making a legitimate, non-commercial fair use of the domain name. Therefore, Complainant submitted that Respondent has deliberately chosen to use the domain name <BIONTECH.CO.IN>, which is phonetically, visually, conceptually, deceptively and confusingly identical to Complainant’s trademark, so as to suggest a direct connection or affiliation with Complainant’s trademark ‘BIONTECH’ and to create a direct affiliation with Complainant and its business when in fact there is none.

- i) It is submitted by the Complainant that the Respondent cannot assert that they are currently making a legitimate, non-commercial or fair use of the domain name, in accordance with Paragraph 6(c) of the .IN Policy. In fact, the Respondent is not making any use of the impugned domain at all, and instead has listed it prominently for sale at the exorbitant sum of USD 9,999, thereby clearly illustrating their mala fide intentions to reap unjust profits therefrom. In view thereof, it is clear that the Respondent is not making any legitimate or fair use of the impugned domain name so as to fall within the ambit of Paragraph 6(c) of the INDRP. Further, any use of the domain name <BIONTECH.CO.IN> in the future by the Respondent is likely to create a false association and affiliation with the Complainant and its well-known trade mark ‘BIONTECH’ as well as its official website ‘BIONTECH.DE’. Therefore, it is submitted that Respondent has no rights or legitimate interests in respect of the impugned domain name and is incapable of making a legitimate, non-commercial or fair use of the domain name in accordance with Paragraph 6(c) of the .IN Policy.



- j) The Complainant submitted that in the circumstances of this case the Respondent's use of the disputed domain name is not "bona fide" within the meaning of Paragraph 6(c) of the .IN Policy since there is no apparent legitimate justification for the Respondent's registration of the <BIONTECH.CO.IN> domain name that is visually, phonetically, conceptually, deceptively and confusingly identical/ similar to the Complainants' trade name/mark. Further, the continued ownership of the disputed domain <BIONTECH.CO.IN> by the Respondent, despite not having any legitimate or fair reason to do so, prevents the Complainant from reflecting their trademark in the subject domain name. The Complainant relies on "*Motorola, Inc. vs NewGate Internet, Inc.* (WIPO Case D2000-0079)", holding that use of the trademarks can not only create a likelihood of confusion with the Complainants' marks as to the source, sponsorship, affiliation or endorsement of its web site, but also creates dilution of the marks.
- k) The Complainant submitted that It is not possible to conceive of any plausible use of the domain name <BIONTECH.CO.IN> by Respondent that would not be illegitimate, as it would inevitably create a false association and affiliation with Complainant and its well-known trade mark BIONTECH. Therefore, it is submitted that Respondent has no rights or legitimate interests in respect of the impugned domain name.
- l) It was further submitted by the Complainant that as per paragraph 7(a) of the .IN Policy, it is stipulated that a "bad faith" registration and use of a domain name can be established inter alia by showing circumstances indicating that the Registrant has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant, who bears the name or is the owner of the Trademark or Service Mark, or to a competitor of that Complainant, for valuable consideration in excess of the Registrant's documented out-of-pocket costs directly related to the domain name. The Complainant has submitted that the Respondent has registered the impugned domain name solely for the purpose of selling it at the extravagant price of USD 9,999, which is prominently being advertised as soon as one attempts to access the said domain. This makes



it clear beyond doubt that the respondent's sole objective in registering the impugned domain name bearing the complainants registered and famous trademark as well as trade name is to ride off their fame, renown and great reputation towards acquiring undeserved monetary gains well beyond any conceivable cost that may have been incurred towards registration and maintenance of a newly acquired domain name.

- m) The fact that the impugned domain name currently being held by the Respondent comprises of the Complainant's registered and famous trademark as well as trade name in toto, there can be no doubt as to the likelihood of confusion of the lay internet user in assuming affiliation of the Respondent with the Complainant and their critical life saving business, which in truth is not there.
- n) Complainant submitted that additionally, the fact that the mark '**BIONTECH**' is a unique combination of words that has been coined by the Complainant further aggravates the Respondent's bad faith, in as much as, the Respondent is using the identical combination with respect to the impugned domain name <**BIONTECH.CO.IN**>. There can be no other plausible explanation as to how the Respondent arrived at the impugned domain name <**BIONTECH.CO.IN**> which incorporates the Complainant's mark BIONTECH in toto. In light of the continuous and exclusive use of the mark 'BIONTECH' by the Complainant over many years, these marks have no meaning other than as an identifier of the Complainant. Reliance is placed on a prior decision of this Panel in *M/s Merck KGaA v Zeng Wei INDRP/323* wherein it was stated that:

"The choice of the domain name does not appear to be a mere coincidence, but a deliberate use of a well-recognized mark... such registration of a domain name, based on awareness of a trademark is indicative of bad faith registration."

Hence, the Respondent had no reason to adopt an identical name/combination with respect to the impugned domain name except to create a deliberate and false impression in the minds of consumers that the Respondent is somehow associated with or endorsed by the Complainant, with the sole intention to ride on the massive goodwill and reputation associated with the Complainant and to unjustly gain



enrichment from the same. Given that the Complainant is engaged in providing goods/ services related to medicines and vaccines, any confusion as to the source of the same is bound to be detrimental to public health and safety at large. Moreover, the Respondent is a habitual domain squatter and is in the business of registering domain names containing well-known trademarks and making illegal profits by offering them for sale (*Reliance is placed on INDRP/692 for <HotelFormule1.co.in>, INDRP/1134 for <vespa.co.in>, INDRP/1132 for <aprilia.in>, INDRP/675 for <emiratesgroup.co.in>, INDRP/796 for <soprabanking.in> and INDRP/812 for <bmwmotorrad.co.in>*). The Complainant thus submitted that the facts and contentions enumerated above establish that Respondent's domain name registration for <BIONTECH.CO.IN> is clearly contrary to the provisions of Paragraph 4(c) read with Paragraph 7 of the INDRP. In consideration of the Complainant's longstanding reputation, and the ubiquitous presence of the Complainant's registered mark BIONTECH on the Internet, the Respondent was, or should have been aware of the Complainants' trade mark long prior to registering the domain name. Thus it can be presumed that the respondent had constructive notice of the complainants mark 'BIONTECH' which is registered in India and many other jurisdictions around the world. Thus, Complainant asserts that it is established that the mark 'BIONTECH' is distinctive and well known and it is apparent that Respondent had prior knowledge of aforesaid mark owing to the fame attached to Complainant's mark BIONTECH, which is a result of extensive use and promotion in relation to its world renowned goods/ services and the fact the same are available all over the world, the respondent has registered the disputed domain name for the reason to trade off the reputation and goodwill of Complainants Mark "BIONTECH".

- o) It is submitted that adoption of the Disputed Domain Name, that is identical to the Complainants registered trade mark infringes the Complainants Rights and proves, beyond reasonable doubt, bad faith adoption by the Respondent.



6) RESPONDENT:

The Respondent did not respond in these proceedings although notice was sent to the Respondent under the INDRP Rules.

7) DISCUSSION AND FINDINGS

Under the INDRP Policy the following three elements are required to be established by the Complainant in order to obtain the relief of transfer of the disputed domain name:

- (i) The disputed domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights and
- (ii) The Respondent lacks rights or legitimate interests in respect of the disputed domain name; and
- (iii) The disputed domain name has been registered or is being used in bad faith.

Identical or confusingly Similar:

The Disputed Domain Name incorporates the Complainant's 'BIONTECH' mark without addition or alteration. The Complainant has submitted that respondent's domain name incorporates the Complainant's 'BIONTECH' mark exactly, without addition or alteration.

It is well established that the full incorporation of a complainant's trademark in a disputed domain name is sufficient for a finding of identical or confusing similarity. Addition of generic terms to a well known trademark does not prevent a finding of confusing similarity between the disputed domain name and mark. It is a well established principal that when a domain name wholly incorporates a complainant's registered mark, the same is sufficient to establish identity or confusing similarity for purposes of the Policy. Further it is evident that the disputed domain name "BIONTECH.CO.IN." is identical to the Complainant trademark except for the generic term ".CO.IN" appended to it. However, such differences can be ignored for the purpose of determining similarity between the disputed domain name and the Complainant's trademark as it is a generic and technical requirement and is non-



distinctive and does not prevent a finding of confusing similarity between the disputed domain name and mark.

Further a TLD / ccTLD such as '.in' '.co.in' is an essential part of domain name. Therefore it cannot be said to distinguish the Respondents Domain Name <BIONTECH.CO.IN> from the Complainants trademark 'BIONTECH'.

The Complainant has submitted evidence of its trademark registrations for the "BIONTECH" mark in India as also in other Jurisdictions and has accordingly established its rights in the mark. The Complainant has also provided evidence of the reputation, goodwill and fame associated with its mark due to its extensive use. Further in addition to the above, the Complainant is also the owner of the domain names '**www.biontech.com**' and '**www.biontech.de**'.

In *Motorola, Inc. vs NewGate Internet, Inc.* (WIPO Case D2000-0079), it was held that use of the trademarks can not only create a likelihood of confusion with the Complainants' marks as to the source, sponsorship, affiliation or endorsement of its web site, but also creates dilution of the marks.

It is well established that in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark.

The disputed domain name is accordingly found to be identical or confusingly similar to the Complainant's mark. The Complainant has successfully fulfilled the first element under paragraph 4 of the Policy, that the disputed domain name is identical or confusingly similar to a mark in which the Complainant has rights.

Rights and Legitimate Interests:

The second element requires the Complainant to put forward a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. Although the onus of proving that the Respondent lacks rights or legitimate interests in the disputed domain name lies on the Complainant, the same may amount to 'proving in negative' hence may not be possible. Hence the Complainant has to make out a prima facie case that the respondent lacks rights or legitimate interests, whereafter, the burden of proof on this element shifts to the respondent to come



forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.

The Complainant has argued that the Respondent lacks rights or legitimate interests in the disputed domain name and has submitted that the Registrant does not own any registered rights in any trademarks that comprise part or all of the disputed domain name. It is further observed that the trademark 'BIONTECH' was already registered in India when the Respondent registered the Disputed Domain Name. Further, a perusal of the website under the Disputed Domain Name depicts that the Respondent is not making any use of the impugned domain at all, and instead has listed it prominently for sale at the exorbitant sum of USD 9,999, thereby clearly illustrating their mala fide intentions to reap unjust profits therefrom.

The Complainant has submitted that the Disputed Domain Name, 'BIONTECH.CO.IN', includes the identical well-known and earlier trademark 'BIONTECH' and mirrors the domain name 'BIONTECH.COM' of the Complainant inasmuch as the Disputed Domain Name incorporates the trademark BIONTECH in its entirety. That the term 'BIONTECH' is etched in the minds of the members of trade and public as signifying the Complainant's goods and services.

That the use of the Domain Name to provide competing services to those in which the Complainant enjoys a global reputation, cannot constitute a legitimate non-commercial interest in the Domain Name. The Claimant states that prima facie, the Registrant has no rights or legitimate interests in respect of the disputed Domain Name.

The Complainant has argued that due to extensive use of the 'BIONTECH' mark globally and in India, the mark is distinctive and enjoys substantial goodwill, reputation and fame. It is found that the Complainant has acquired rights in the mark 'BIONTECH' through use and registration and the Complainant has provided evidence of the mark being distinctive and having a substantial recognition. In the light of these facts and circumstances, it is found that the respondent's use of the 'BIONTECH' mark which is distinctive of the Complainant and its products &



services, does not constitute legitimate use or fair use of the mark by the Respondent.

The Complainant has further argued that the Respondent has registered the disputed domain name after a considerable time of the Complainant having established its rights in the 'BIONTECH' mark. It is found that the Complainant has provided evidence of its prior adoption of the 'BIONTECH' mark. The Complainant has submitted that the use of the mark by the respondent is likely to mislead people and the respondent lacks rights to use the said trademark in the disputed domain name. The Complainant's submissions that the Respondent's use of mark in the disputed domain name is likely to mislead Internet users is plausible.

Use of the said trademark 'BIONTECH' by the Respondent with the intention of attracting customers is likely to cause confusion and deception to those who encounter the disputed domain name. Internet users are likely to believe that the disputed domain name is in some way connected to the Complainant or is endorsed or authorized by the Complainant. Use of a trademark with the intention to derive benefit from the mark and to make improper commercial gains by such use is recognized as infringing use under INDRP Policy. Refer to, *Google LLC V Gurdeep Singh*, INDRP Case No.1184 (<googlepays.in>) where use of GOOGLE mark in the domain name <googlepays.in> by the respondent in that case was found to lack rights or legitimate interests because the mark was used to attract customers by a respondent who was found to have no connection with the well known mark. The use of the Complainant's 'BIONTECH' mark by the Respondent, is found to be misleading use of the mark, and is accordingly found not qualifying as legitimate use by the Respondent.

The Respondent has not participated in these proceedings. The Complainant has categorically submitted that it has not consented, authorized or permitted the Respondent for use of the disputed domain name.

In the light of the facts and circumstances discussed, it is accordingly found that the Complainant has made out a prima facie case that the Respondent lacks rights and legitimate interests in the disputed domain name. The second element under paragraph 4 of the Policy has been met by the Complainant.



Bad faith

The evidence on record clearly demonstrates the Complainant's prior adoption and extensive use of the 'BIONTECH' mark. The disputed domain name has been registered on 5th March 2021 whereas the trademark registration of BIONTECH mark was obtained by the Complainant in Germany on 30th March 2008 and in India since April 5, 2019, under Class 1, 5, 42, and 44. These facts establish the Complainant's prior adoption of the BIONTECH mark and the evidence filed by the Complainant also establish that it has extensively used the said trademark in commerce for a number of years continuously and the mark is recognized internationally and is well known, which has substantial value. The evidence filed by the Complainant clearly establishes the international recognition and reputation associated with the BIONTECH mark.

Further the evidence placed on record depicts that the Respondent has registered the Disputed Domain Name primarily for the purpose of selling or otherwise transferring the domain name registration to the Complainant for valuable consideration. The evidence depicts that Respondent is not making any use of the impugned domain at all, and instead has listed it prominently for sale at the exorbitant sum of USD 9,999, thereby clearly illustrating their mala fide intentions to reap unjust profits therefrom.

It is further observed that the adoption of the aforementioned Disputed Domain Name by the Respondent is solely for attracting online traffic and then offering for sale the alleged domain name to the Complainant. This only shows the *mala fide* intention of the Respondent to wrongfully gain monetary benefits at the cost of the goodwill and reputation of the Complainant's trademark 'BIONTECH'.

It is observed that such acts constitute misrepresentation. Such acts are not only prejudicial to the rights of the Complainant but also to the members of trade and public. The activities of the Respondent rise to the level of a bad faith usurpation of the recognition and fame of Complainant's well-known and earlier trademark 'BIONTECH' to improperly benefit the Respondent financially and are in violation of applicable laws. It has been argued by the Complainant that these activities demonstrate bad faith registration.



The Respondent has been found to have no rights or legitimate interests in the disputed domain name. It is furthermore observed that the facts circumstances and the evidence indicate that the Respondent has used the 'BIONTECH' Mark in the disputed domain name to intentionally mislead and attract for commercial gain, internet users to its website by creating a likelihood of confusion with the mark of Complainant and based on the reputation associated with the mark.

There are numerous precedents under the Policy, where it has been held that the registration of a domain name with a well known mark which is likely to create confusion in the minds of Internet users and attempting to use such a domain name to attract Internet traffic based on the reputation associated with the mark is considered bad faith registration and use under the Policy. Similarly in the present case it is found that the use of the 'BIONTECH' mark by the Respondent is likely to attract customers based on the Complainant's mark and Internet users are likely to be misled by the use of the trademark in the disputed domain name.

For the reasons discussed, the registration of the disputed domain name by the Respondent leads to the conclusion that the domain name in dispute was registered and used by the Respondent in bad faith.

In the light of all that has been discussed, it is found that the Respondent has registered the disputed domain name in bad faith. Accordingly, it is found that the Complainant has established the third element under paragraph 4 of the Policy.

DECISION

In view of the above findings it is ordered that the disputed domain name <**BIONTECH.CO.IN**> be transferred to the Complainant.



Deepali Gupta
Sole Arbitrator

Date: 10th November, 2022.