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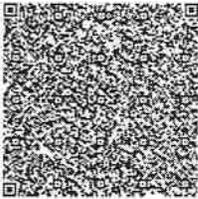
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Purchased by	: IRA LAW PREETIKA KASHYAP
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Property Description	: ARBITRATION AWARD
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First Party	: BINNY KALRA
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Stamp Duty Amount(Rs.)	: 100 (One Hundred only)

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ARBITRATION AWARD
.IN REGISTRY

(C/O NATIONAL INTERNET EXCHANGE OF India)

Before the Sole Arbitrator, Binny Kalra

Disputed domain name <bioderma.in>

INDRP Case No: 1595

In the matter of:

NAOS, France

Complainant

vs

Apex Consulting
(Email: sunong@live.com)

Respondent

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ARBITRATION AWARD

.IN REGISTRY

(C/o National Internet Exchange of India)
Before the Sole Arbitrator, Binny Kalra

Disputed Domain Name: <**bioderma.in**>

NAOS

355 Rue Pierre-Simon Laplace
13290 AIX-EN-PROVENCE
FRANCE

... **Complainant**

VS

Apex Consulting

(Email: sunong@live.com)

No. 33, Tongji East Road,
Chancheng District, FoShan City,
Guangdong Province, China
(Arbitration documents to
FoShan, Hong Kong 528000
HONGKONG

... **Respondent**

In the matter of INDRP 1595

1. The Parties

The Complainant is **NAOS**, a French Champagne producing company which is represented in this proceeding by **NAMESHIELD** having its address at 79 rue Desjardins, 49100 Angers, France. The Respondent is Apex Consulting (email: sunong@live.com) with the International Postal Name Yitao and its address at No. 33, Tongji East Road, Chancheng District, FoShan City, Guangdong Province, China. The Whois records mention an international postal address of the Respondent for Arbitration documents i.e., FoShan, Hong Kong 528000 HONGKONG and the email sunong@live.com Phone (+86)18823253979.

2. The domain name, Registrar, and Policy:

The disputed domain name is <www.bioderma.in> (hereinafter referred to as the “**Disputed Domain Name**”). The Registrar for the disputed domain name is Dynadot LLC. The present arbitration is being conducted in accordance with the Arbitration and Conciliation Act, 1996, the .IN Domain Name Dispute Resolution Policy (“**Policy**”) and the INDRP Rules of Procedure (“**Rules**”).

3. Procedural history:

- 5 August 2022: The .IN Registry transmitted information of appointment of the arbitrator and circulated the complaint and its annexures to the parties, while also asking the Complainant to update the complaint with the missing details of the Registrant/Respondent.
- 9 August 2022: An amended complaint was shared by the Complainant
- 11 August 2022: Notice of commencement of arbitration proceedings was sent to the parties and a period of 15 days, until 26 August 2022, was given to the Respondent to submit a statement of defense
- 27 August 2022: The panel informed the parties that since the Respondent did not file a statement of defense its right to do so was deemed to be forfeited. The award was reserved.

4. Complainant’s case:

The Complainant has made the following submissions, which the Panel has paraphrased:

- a. The Complainant was founded in France over 40 years ago by Jean-Noël Thorel, a pharmacist-biologist, and is a major player in skincare. It has three leading

brands, namely, Bioderma, Institut Esthederm and Etat Pur.

- b. The Complainant is ranked among the top 10 independent beauty companies and is a pioneer in biology. It has shifted the Skincare industry paradigm. The Complainant has dedicated employees numbering 2900 who are located around the world and it has an international presence through 40 affiliates and long-term partnerships with local distributors. Reliance is placed on **Annex 2** in this regard.
- c. The Complainant operates under the name BIODERMA and sells its products under this brand in over 100 countries. Reliance for this purpose is placed on **Annex 3**.
- d. The Complainant owns a large portfolio of trademarks in several countries, including:
 - International trademark no. 267207 dated 19 March 1963 for BIODERMA®;
 - International trademark no. 510524 dated 9 March 1987 for BIODERMA®;
 - Indian trademark no. 1320019 dated 10 November 2004 for BIODERMA®;
 - International trademark no. 1252380 dated 16 April 2015 for BIODERMA®.
- e. The Complainant also owns several domain names, including <bioderma.com> registered since 25 September 1997 and <bioderma-india.in> registered since 24 October 2013, and relies on **Annex 5**.
- f. The disputed domain name <bioderma.in> was registered on 8 December 2015 as seen in **Annex 1**. It resolves to a parking page with commercial links as seen in **Annex 6**. The disputed domain name is offered for sale as seen in **Annex 7**.

5. Respondent's case:

Despite being served with a notice of commencement of Arbitration Proceedings in

respect of the Disputed Domain Name by the Panel and thereafter being granted adequate time to respond, the Respondent has failed to submit any response, communication or evidence to the Panel in this matter.

6. Legal grounds:

Under Paragraph 4 of the Policy, the Complainant must establish the following three elements to succeed:

- a) the Disputed Domain Name is identical and/or confusingly similar to a name, trademark or service mark in which the Complainant has rights; and
- b) the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name; and
- c) the Disputed Domain Name has been registered or is being used in bad faith.

7. Discussion and findings:

The Panel has gone through the complaint and annexures submitted by the Complainant. The three elements that the Complainant must satisfy to succeed in the Domain Name Dispute are discussed below.

A. Whether the Disputed Domain Name is identical and/or confusingly similar to a name, trademark or service mark in which the Complainant has rights

The Disputed Domain Name is <www.bioderma.in>. The Complainant has shown that it has rights in the BIODERMA Marks by virtue of:

- i. prior adoption and continuous use of the distinctive trademark BIODERMA;
- ii. trademark registrations of the trademark BIODERMA in India listed at Annexure 4, including an international registration designating India;
- iii. prior domain names of the Complainant, namely <bioderma.com> registered since 25 September 1997 and <bioderma-india.in> registered since 24 October 2013;

- iv. The Complainant's trademark BIODERMA qualifies as an inherently distinctive trademark and also enjoys statutory protection in India.

The Complainant's statutory and common law rights in the said trademark, read along with findings in preceding awards and decisions in the Complainant's favour, persuade the Panel that the Complainant has strong and enforceable rights in its trademark. The Disputed Domain Name wholly contains the trademark BIODERMA and is indistinguishable from the said trademark irrespective of the .in ccTLD. There is undeniably a high likelihood of confusion. For the above reasons, the Panel finds that the Disputed Domain Name is identical to the trademark BIODERMA in which the Complainant has rights.

B. Whether the Respondent has any rights or legitimate interests in respect of the Disputed Domain Name

The Panel has earlier noted that the Respondent has not submitted a statement of defence. The Panel therefore takes into consideration the following facts:

- i. the Registrant does not appear to have any demonstrable intent to use the Disputed Domain Name or a name corresponding to the Disputed Domain Name in connection with a bona fide offering of goods or services.
- ii. There is nothing to suggest that the Respondent is commonly known by the Disputed Domain Name or a name corresponding to the Disputed Domain Name or that it has authorization, license or any rights to use the trademark of the Complainant.
- iii. Annexures 6 and 7 relied on by the Complainant show that the Disputed Domain Name was being used to direct Internet users to a parking page with commercial links. The Respondent thus appears to have no defensible rights or any claim in respect of the Disputed Domain Name. Therefore, the Panel finds that the Respondent has no rights or legitimate interests in the Disputed Domain Name.

C. Whether the Disputed Domain Name has been registered or is being used in bad faith

Section 3 of the INDRP stipulates that by applying to register a domain name, or by asking a Registrar to maintain or renew a domain name registration, the Registrant thereby represents and warrants that:

- (a) the credentials furnished by the Registrant for registration of Domain Name are complete and accurate;
- (b) to the knowledge of registrant, the registration of the domain name will not infringe upon or otherwise violate the rights of any third party;
- (c) the Registrant is not registering the domain name for an unlawful and malafide purpose; and
- (d) the Registrant will not knowingly use the domain name in violation or abuse of any applicable laws or regulations.

The registrant therefore has an express duty of care when it applies to register a domain name. In the opinion of the Panel, the Respondent does not appear to have complied with Section 3. It is also highly unlikely that Registrant's choice of the Disputed Domain Name is accidental or coincidental given the inherently distinctive nature of the trademark BIODERMA and the Complainant's registrations that are a matter of public record. The presumption therefore is that the Respondent has sought to take undue advantage of the Complainant's trademark and given the distinctive nature of the mark, bad faith can also be presumed.

It is instructive to refer to paragraph 3.2.1. of the WIPO Overview of which relevant excerpts are given below:

"Particular circumstances panels may take into account in assessing whether the respondent's registration of a domain name is in bad faith include: (i) the nature of the domain name (e.g., a typo of a widely-known mark, or a domain name incorporating the complainant's mark plus an additional term such as a descriptive or geographic term, or one that corresponds to the complainant's

area of activity or natural zone of expansion), (ii) the chosen top-level domain (e.g., particularly where corresponding to the complainant's area of business activity or natural zone of expansion), (iii) the content of any website to which the domain name directs ... (iv) the timing and circumstances of the registration ... (v) ... (vi) a clear absence of rights or legitimate interests coupled with no credible explanation for the respondent's choice of the domain name, or (viii) other indicia generally suggesting that the respondent had somehow targeted the complainant."

In view of the factors discussed above, the Panel finds that the Disputed Domain Name has been registered and is being held in bad faith.

Decision:

In conclusion, the Panel finds that the Complainant has succeeded in making a case for transfer of the Disputed Domain Name by meeting the criteria under paragraph 4 of the Policy.

The Panel directs that the disputed domain name <**bioderma.in**> be transferred to the Complainant.

Signed:

(Binny Kalra)

Arbitrator

Date: 10 October 2022