



தமிழ்நாடு தமில்நாடு TAMILNADU

AX 238503

30/24
12 JUN 2015

D. SARAVANAN
Advocate & Arbitrator
"Orient Chambers", No. 90 / 73,
5th Floor, Armenian Street,
Chennai - 600 081,

P.S. SHANMUGA SUNDARAM
STAMP VENDOR
L. No: B4 / 109 / 88
HIGH COURT CAMPUS,
CHENNAI-600104. (TAMILNADU)

BEFORE THE SOLE ARBITRATOR MR.D.SARAVANAN
.IN REGISTRY
(C/o. NATIONAL INTERNET EXCHANGE OF INDIA)

Disputed Domain Name: <boehringer.co.in>

Boehringer Ingelheim Pharma
GmbH & Co. KG
Binger Straße 173
55216 Ingelheim am Rhein
Germany

.. Complainant

Versus

Bel Arbor
(Street) 16
201301 Noida, Delhi
INDIA

.. Respondent

...2/



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भारतीय गैर न्यायिक

पचास
रुपये
रु.50



FIFTY
RUPEES
Rs.50

INDIA NON JUDICIAL

कमिशनर तमिलनाडु TAMILNADU

AK 221701

12 JUN 2015

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HIGH COURT CAMPUS,
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-2-

1. The Parties:

The Complainant is Boehringer Ingelheim Pharma GmbH & Co.KG having its place of business at Binger Straße 173, 55216 Ingelheim am Rhein, Germany

The respondent is Bel Arbor, (Street) 16, 201301 Noida, Delhi, INDIA

2. The Domain Name and Registrar:

The disputed domain name is: <www.boehringer.co.in>

The disputed domain name is registered with Webiq Domain Solutions Pvt. Ltd., (R131-AFIN)

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3. Procedural History:

15.05.2015	The .IN REGISTRY appointed D.SARAVANAN as Sole Arbitrator from its panel as per paragraph 5(b) of INDRP Rules of Procedure.
15.05.2015	Consent of the Arbitrator was given to the .IN REGISTRY according to the INDRP Rules of Procedure.
22.05.2015	.IN REGISTRY sent an email to all the concerned intimating the appointment of arbitrator
23.05.2015	The Complaint and annexures were received from the .IN Registry
25.05.2014	The hard copy of the Complaint with annexures sent to the respondent were returned as incorrect address.
25.05.2015	Pursuant to the directions of this Tribunal the Complainant had sent a soft copy of the complaint and annexures to the Respondent.
04.06.2015	Due date for filing response
09.06.2015	Notice of default was sent to the respondent notifying his failure in filing the response, a copy of which was marked to the Complainant's representative and .IN Registry.

4. Factual Background

4.1 The Complainants:

The Complainant is Boehringer Ingelheim Pharma GmbH & Co.KG having its place of business at Binger Straße 173, 55216 Ingelheim am Rhein, Germany

4.2 Complainants' Activities:

The Complainant belongs to the family owned Boehringer Ingelheim pharmaceutical group of companies with root going back to 1885, when it was founded by Albert Boehringer (1861-1939) in Ingelheim am Rhein (herinafter "Boehringer"). Ever since,



Boehringer has become a global research-driven pharmaceutical enterprise and has today about 142 affiliated companies world-wide with roughly 47,500 employees. The two main business area of Boehringer are: Human Pharmaceutical and Animal Health.

4.3 Complainant's Trading Name:

The Complainant, together with the Boehringer group of companies, is the owner of numerous registered trademarks world-wide relating to the designation BOEHRINGER, in particular the following International (IR) trademarks which enjoy protection, among others, also in the territory of India (IN):

Registration No.	Application/ Registration Date	Mark
IP INDIA 1 158 976	March 23,2007	Word mark "BOEHRINGER"
WIPO	December 2,2002	Word mark "BOEHRINGER"
OHIM 002932853	November 13, 2002	Word mark "BOEHRINGER"
DPMA 30255763	November 13, 2002	Word mark "BOEHRINGER"

Documentary evidence in form of printouts/copies from the official (online) registers of the IP INDIA, the World Intellectual Property Organization (WIPO), the Office for Harmonization in the Internal Market (OHIM) as well as the German Patent and Trademark Office (DPMA) are attached **ANNEX C6**. Moreover, Complainant is the owner of hundreds of domain names relating to the BOEHRINGER trademark, the registration of all of which again predates the Disputed Domain Name, *inter-alia*: **boehringer.biz, boehringer.com, boehringer.info, boehringer.org**. Documentary evidence in form of printouts from the respective WhoIs register for these domain names taken on January 7,2014 are provided as **ANNEX C7**. Accordingly, Complainant owns comprehensive trademark rights in the designation "Boehringer"



within the meaning of Paragraph 4(i) of the policy and Paragraph 3(b)(v) of the Rules.

5. Respondent's Identity and activities:

According to WHOIS search database, the respondent in this administrative proceeding is Bel Arbor, (Street) 16, 201301 Noida, Delhi, INDIA.

6. Dispute

The dispute arose when the respondent registered and used the domain name boehringer.co.in. According to the WHOIS database, the disputed domain name was registered on August 20, 2014. The registrar with whom the domain name is registered is Webiq Domain Solutions Pvt Ltd. Complainant first became aware of the disputed domain name in November, 2014 and issued a warning letter on November 18, 2014.

7. Parties contentions:

A. Complainant:

i. The domain name <boehringer.co.in> is identical/ confusingly similar to complainant's trade mark BOEHRINGER:

a) The complainant states that the impugned domain name boehringer.co.in consists of the Complainants' trademark BOEHRINGER in its entirety. It is submitted that the incorporation of the country name INDIA does not add distinctiveness to the impugned domain name and does not avoid a likelihood of confusion.

b) The Complainants cite that in Starbucks Corporation v. SRITE Institute , INDRP/456 (February 6, 2013)- starbucks.net.in) that the addition of a TLD suffix is irrelevant in an examination of identity. Therefore, the Disputed Domain Name



boehringer.co.in resulted in domain names which were confusingly similar to the trademarks.

ii. **Respondent has no rights or legitimate interests in respect of the domain name <boehringer.co.in>:**

The word BOEHRINGER is an extremely unique and rare surname with no denotative meaning. It is extremely distinctive in nature and serves as source identifier of the goods and services offered or licensed by the complainants. BOEHRINGER is a well known trade mark around the globe. The respondent was at no point of time being known by the name/ mark BOEHRINGER or the impugned domain name <boehringer.co.in>.

iii. **The domain name <boehringer.co.in> was registered and is being used in bad faith:**

a) The domain name has presumably been registered by the respondent intentionally to attract, for commercial gain, Internet users to his websites, by creating a likelihood of confusion which in turn is a circumstance that according to the policy for the conjunctive requirement of registration and use of the Disputed Domain Name in bad faith.

b) The complainant also states that the respondent domain name <boehringer.co.in> is for sale, with sponsored listings, and adduces that the domain name was acquired primarily to unlawfully gain from such sponsored listings/ squatting of the domain name and to usurp huge amount money from the Complainant. The respondent is trying to dilute the distinctiveness of the complainants' trademark BOEHRINGER.

B. Respondent:

In spite of repeated notices and reminders, the respondent did not submit any response. The respondent has not reflected his identity in the WHOIS database report.



8. Discussion and Findings:

It has to be asserted as to whether the Constitution of Arbitral Tribunal was proper? Whether the Respondent has received the notice of this Arbitral Tribunal?

Having gone through the procedural history, this Tribunal comes to the irresistible conclusion that the Arbitral Tribunal was properly constituted and Respondent has been notified of the complaint of the Complainants. However, the Respondent did not choose to submit any response and that non-submission of the Response by the Respondent had also been notified to the Respondent on 09.06.2015.

Under paragraph 4 of the IN Domain Name Dispute Resolution Policy (INDRP), the Complainants must prove each of the following three elements of its case:

- (i) The respondent's domain name <boehringer.co.in> is identical to the Complainant's trademark BOEHRINGER;
- (ii) Respondent has no rights or legitimate interests in respect of the domain name <boehringer.co.in>; and
- (iii) The registration and usage of domain name <boehringer.co.in> by the respondent is in bad faith.

(a) Identical or confusing similarity:

- i. The Arbitral Tribunal finds that the trade mark BOEHRINGER is identical to respondent's domain name <boehringer.co.in>
- ii. The Tribunal also finds that by merely affixing business description and a ccTLD (i.e., .co.in) as a prefix or suffix will not remove the distinctiveness of the trade mark.

The Arbitral Tribunal concludes that the Complainants have established paragraph 4(i) of the IN Domain Name Dispute Resolution Policy.



(b) Respondent's Rights or Legitimate Interests:

i. The Complainant contends that the Respondent has no legitimate interest in the disputed domain name. Paragraph 7 of the IN Dispute Resolution Policy sets out three elements, any of which shall demonstrate the Respondent's rights or legitimate interests in the disputed domain name for the purposes of paragraph 4(ii) of the Policy. The Respondent had been given the opportunity to respond and to present evidence in support of the elements in paragraph 7 of the INDRP. The Respondent has not chosen to do so and has not filed any response in these proceedings to establish any circumstances that could assist it in demonstrating, any rights or legitimate interests in the disputed domain name. Although, the Complainant is not entitled to relief simply by default of the Respondent to submit a Response, the Arbitral Tribunal can however and does draw evidentiary inferences from the failure of the Respondent to respond. The Complainant has established a prima facie case of lack of rights and legitimate interest and the Respondent has failed to rebut the presumption of absence of rights or legitimate interests.

ii. Based on the record, the Respondent does not have rights or legitimate interests in the disputed domain name as the Respondent's current use is neither an example of a bona fide offering of goods or services as required under paragraph 7(i) of the Policy nor is there any legitimate non-commercial or fair use of the disputed domain name and as such there is no evidence that paragraphs 7(ii) or 7(iii) of the Policy apply. The Complainant assert that they have not licensed or otherwise authorized the Respondent to use their trademark.

iii. The Arbitral Tribunal find that there is no evidence on record to show that Respondent is known by the disputed domain name or that he has used the disputed domain name in connection with a bona fide offering of goods or has any rights in the disputed domain name.

iv. The respondent has failed to show any justification for the adoption, usage or registration of disputed domain name.



v. The Arbitral Tribunal thus holds that the circumstances listed above demonstrate rights or legitimate rights of the Complainant in the domain name and holds that the respondent has infringed the rights of the Complainant by registering the trademarks of the complainant.

vi. The Arbitral Tribunal is satisfied that the Respondent has no rights or legitimate interests in respect of the disputed domain name and, accordingly paragraph 4(ii) of the Policy is satisfied.

(c) Registration and Use in Bad faith:

(i) Paragraph 6 of the Policy provides the circumstances evidencing registration and use of a domain name in bad faith are that, by using the same, the Respondent has engaged in a pattern of such conduct and the Respondent has intentionally attempted to attract, for commercial gain, internet users to the Respondent's web site or other online locations, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or location or of a product or service on the Respondent's web site or location. It is the specific case of the Complainant that the respondent's modus operandi is by creation of the website under the registered **<boehringer.co.in>** mark with generic/descriptive suffix, is seeking illegal commercial gain through its opportunistic bad faith registration of the disputed domain name.

(ii) The Arbitral Tribunal observes that the Respondent has registered the domain name which appears to have been selected precisely for the reason that it is identical to registered trademark of the Complainant. The Respondent has no affiliation or connection or any kind of relationship with the Complainant. Registration of a domain name that is identical to a famous trademark by any entity, which has no relationship to that mark, is itself sufficient evidence of bad faith registration and use.



(iii) In view of the submitted evidence and in the specific circumstances of this case, this Arbitral Tribunal draws the legal inference that Respondent's purpose of registering the domain name was in bad faith within the meaning of the Policy. The Respondent has no legitimate rights or interests in the disputed domain name and there was a malafide intent for registering the disputed domain name for commercial gains as the disputed domain name redirects to a typical "pay-per-click" website and that the intention of the Respondent was simply to generate revenue, either by using the domain name for its own commercial purpose or through the sale of the disputed domain name to a competitor or any other person that has the potential to cause damage to the ability of the Complainant to have peaceful usage of the Complainant's legitimate interest in using their own trade names.

In the light of the above, this Arbitral Tribunal finds that the Complainant have established that the disputed domain name was registered and is being used in bad faith.

9. Decision:

For all the foregoing reasons, in accordance with paragraph 10 of the Policy, the Arbitral Tribunal orders that the disputed domain name <boehringer.co.in> be transferred to the Complainant.

Dated at Chennai (India) on this June 22nd, 2015.


(D.SARAVANAN)
Sole Arbitrator