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BEFORE ALOK KUMAR JAIN, SOLE ARBITRATOR

INDRP Case No. 1414

Disputed Domain Name: www. biorad.in

ARBITRATION AWARD

Bio-Rad Laboratories, Inc,

..Complainant

Versus

Apex Consulting,

...Respondent

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BEFORE ALOK KUMAR JAIN, SOLE ARBITRATOR

.IN REGISTRY

NATIONAL INTERNET EXCHANGE OF INDIA(NIXI)

INDRP ARBITRATION

INDRP Case No. 1414

Disputed Domain Name: www.biorad.in

ARBITRATION AWARD

Dated 03.09.2021

IN THE MATTER OF:

Bio-Rad Laboratories, Inc,
1000, Alred Nobel Drive, Hercules
California, 94547,
United States of America
Telephone: +1-510-724-7000
Fax. +1-510-741-5817
Email: psdavar@psdavar.co.in

..Complainant

Versus

Apex Consulting,
76, C.P. Rama Road, Hongkong-999077
Email: hongzehuge@gmail.com, sunong@live.com

...Respondent

1. The Parties

- 1.1 The Complainant in this arbitration proceeding is **Bio-Rad Laboratories, Inc**, with its office at 1000, Alred Nobel Drive, Hercules California, 94547, United States of America. The

Complainant is represented by P.S.Davar and company with its office at 220, Greater Kailash -I, New Delhi -110048 having Email: psdavar@psdavar.co.in

- 1.2 The Respondent is Apex Consulting, with its office at 76, C.P. Rama Road, Hongkong-999077 having Email: hongzehuge @ gmail .com, sunong@live.com

2 **Domain Name and Registrar:-**

- 2.1 The Disputed Domain name is <www.biorad.in> bearing Registry Domain ID: D5D77179AB1014884B1A9E079094F215E-IN which was registered on 4th April 2020
- 2.2 The accredited Registrar with whom the Disputed Domain Name is registered is Dynadot, LLC (IANA ID: 472)

3 **Procedure History:**

- 3.1. This arbitration proceeding is in accordance with the .IN Domain Name Dispute Resolution Policy (the "Policy") adopted by the National Internet Exchange of India ("NIXI") and the INDRP Rules of Procedure (the "Rules") which were approved in accordance with the Indian Arbitration and Conciliation Act, 1996. By registering the Disputed Domain

Name with a NIXI accredited Registrar, the Respondent agreed to the resolution of disputes pursuant to the said Policy and the Rules.

As per the information received from NIXI, the history of the proceedings is as follows:

- 3.2. The Complaint was filed by the Complainant with NIXI against the Respondent. On 28.7.2021 I was appointed as Sole Arbitrator to decide the disputes between the parties. I submitted statement of Acceptance and Declaration of Impartiality and Independence same day as required by rules to ensure compliance with Paragraph 6 of the Rules.

NIXI notified the Parties of my appointment as Arbitrator via email dated 28.7.2021 and served by email an electronic Copy of the Complainant with Annexures on the Respondent at the email addresses of the Respondent.

- 3.3. I issued notice to the parties vide email dated 30.7.2021 directing the Complainant to serve complete set of Complaint

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on the Respondent in soft copies as well as in physical via courier /Post. The Complainant served the copies of the Complaint (including Annexures) in electronic form at the email addresses of the Respondent and also sent copy of the Compliant to the Respondent by Courier. The Respondent was directed to file its response within 10 days from the date of notice. No response was received from the Respondent. Therefore, on 10.8.2021, I granted further time to Respondent directing the Respondent to file response within 7 days failing which the matter shall be decided on merit. The extra time of one week given to the Respondent expired on 17.8.2021. On 27.8.2021 I informed the parties that the time for filing reply has expired and now the complaint shall be decided on merit. No personal hearing was requested.

- 3.4 On 20.8.2021, the Complainant's representative informed the Tribunal that the copy of complaint sent to Registrant/Respondent by Courier at the address of the Respondent (known to the Complainant) could not be

delivered to the Respondent due to incomplete address. Be that as it may, A Complete set of Complaint was sent by NIXI in electronic form by email to the Respondent on 28.7.2021 while informing the parties about my appointment as Arbitrator. There after a complete set of complaint was again sent to the Respondent in electronic form by email by the Complainant as per directions of the tribunal. 10 days time given to the Respondent to file response expired on 9.8.2021. on 10.8.2021 the tribunal granted further 7 days time to the Respondent to file its response. All communications were sent to Complainant, Respondent and NIXI by email. Therefore I hold that there is sufficient service on the Respondent through email as per INDRP rules. The Respondent has not filed any response to the Complaint despite two opportunities and there has been no communication from the Respondent till date.

- 3.5. Clause 8(b) of the INDRP Rules requires that the Arbitrator shall at all times treat the Parties with equality and provide each one of them with a fair opportunity to present their case.

3.6. Clause 12 of INDRP Rules provides that in event any party breaches the provisions of INDRP rules and/or directions of the Arbitrator, the matter can be decided ex-parte by the Arbitrator and such arbitral award shall be binding in accordance to law.

3.7 As stated above, Initially I gave 10 days time to the Respondent to file a Response and additional 7 days time to file response, but the Respondent failed to file any Response to the Complaint despite opportunities and chose not to answer the Complainant's assertions or controvert the Complaint and the contentions raised. As a result, I find that the Respondent has been given a fair opportunity to present his case but has chosen not to come forward and defend itself.

3.8 Further Clause 13(a) of the Rules provides that an Arbitrator shall decide a Complaint on the basis of the pleadings submitted and in accordance with the Arbitration & Conciliation Act, 1996 amended as per the Arbitration and Conciliation (Amendment) Act, 2015 read with the

Arbitration & Conciliation Rules, Dispute Resolution Policy, the Rules of Procedure and any by-laws, and guidelines and any law that the Arbitrator deems to be applicable, as amended from time to time.

In these circumstances the Tribunal proceeds to decide the complaint on merit in accordance with said Act, Policy and Rules in absence of the Respondent on Respondent's failure to submit a response despite having been given sufficient opportunity and time to do so.

4. Grounds for Arbitration Proceedings.

INDRP Policy para 4.Class of Disputes provides as under:

Any Person who considers that a registered domain name conflicts with his/her legitimate rights or interests may file a Complaint to the .IN Registry on the following premises:

(a) the Registrant's domain name is identical and/or confusingly similar to a name, trademark or service mark in which the Complainant has rights; and

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(b) the Registrant has no rights or legitimate interests in respect of the domain name; and

(c) the Registrant's domain name has been registered or is being used in bad faith.

5. The Case of the Complainant :-

The Complainant submits that the Disputed Domain Name is in complete disregard to clause 3 (The Registrant's Representations) of the Policy and attracts, inter-alia, the provisions of Clause 4 (Types of Disputes) and clause 7 (Evidence of Registration and use of Domain Name in Bad Faith) of the Policy as per details given in the complaint. The Complainant has prayed inter alia that the Disputed Domain name be transferred to the Complainant.

In support of its case, the Complainant has stated inter alia as under:

- 5.1. The Complainant submits that the Complainant Bio-Rad Laboratories, Inc. is the proprietor of the trademarks containing BIO RAD, BIO-RAD in words as well as in various device forms in numerous countries around the world and including in India since a substantially long period of time. In fact, the trademark BIO-RAD corresponds to the trading name of the Complainant which further enhances the association and

connection of the trademark BIO-RAD with the Complainant and none other. Further the Complainant is the registered proprietor of the trademarks BIORAD, BIO-RAD on a world wide basis in numerous countries around the world and including in India. An illustrative list of the worldwide trademark registrations in favour of the Complainant for the aforesaid trademarks is given in para A of the Complaint. Select registration certificates in relation to the said trademark registrations are enclosed as **Annexure C** with the Complaint.

Select registration certificates in relation to the Indian trademark registrations are enclosed with the Complaint as **Annexure D**

It is further averred by the Complainant that the Complainant has numerous domain names containing the component BIO-RAD registered in its favour and some such domain name registrations date back to as early as in 1991. Further, the Complainant is also the registered proprietor of numerous domain names containing the component BIORAD since as early as the year 1996. A list of such domain names along with select details of such domain name registrations are enclosed with the complaint as **Annexure E**

5.2. The Complainant further submits that the Complainant's origins date back to 1952 in Berkeley, California wherein the

Complainant offered life science products and services to identify, separate, purify and analyze chemical and biological materials. The Complainant was incorporated in the year 1957 and has been carrying on a well-established and reputed business of developing, manufacturing and marketing a broad range of innovative products for the life science research and clinical diagnostic markets since then. The Complainant coined and adopted the trading name and corresponding trademarks Bio-Rad in the year 1952 and has continuously and extensively used the same since then. In fact, the Complainant specializes in, inter-alia, life science research, clinical diagnostics, digital biology, antibody production, spectroscopy, food science, life science education etc. and has been carrying on its business activities under the trademark BIO-RAD since the past 65 years. The trademark BIO-RAD has all the trappings of a coined/ invented word and was adopted by the Complainant exclusively for its own use. Snapshots of the Complainant's-website showing the history and extensive scale of operations of the Complainant are enclosed as **Annexure F** with the Complaint.

- 5.3 Complainant further submitted that the Complainant is a global entity with more than 7800 employees headquartered in Hercules, California, USA. The Complainant has extensive worldwide operations in numerous countries worldwide and

global offices inter-alia in Australia, Greece, Portugal, Austria, Hong Kong, Russia, Belgium, Hungary, Singapore, Brazil, India, South Africa, Canada, Israel, South Korea, China, Italy, Japan, Sweden, Denmark, Switzerland, Netherlands, Taiwan, New Zealand, France, United Kingdom, Germany, Poland, United States of America, etc. In India alone, the Complainant has numerous offices in Gurugram, Chennai, Mumbai, Lucknow, Kolkata, Bengaluru, Hyderabad etc.

- 5.4 Complainant further averred that due to the legacy of the Complainant since 1952; extensive and continuous use of the trademark and corresponding trading name BIO-RAD around the world and including in India for many decades; numerous trademarks, trading name and domain name registrations; extensive advertisement and promotion; and excellence in quality of its products and services, the trademark BIO-RAD of the Complainant constitutes a well-known and reputed trademark in favor of Complainant. The trading name and trademark BIO-RAD are closely and only associated with the Complainant and none other. The trademark BIO-RAD constitutes a very valuable asset of the Complainant and the Complainant ' has diligently protected its rights in the said trademark by worldwide registrations, enforcements in various jurisdictions. In this respect, the Complainant had initiated legal proceedings against the unlawful registration of the

domain bio-rad.in (Bio-Rad Laboratories, Inc. v. Doublejst Limited; INDRP Dispute Case No. INDRP/1263). The Learned Tribunal passed a necessary order dated 8th November, 2020 transferring the said domain name to the Complainant. The copy of said award is enclosed as **Annexure G** with the complaint.

6. **Discussions and findings:**

The Complainant has invoked Clause 4 of the Policy to initiate the Arbitration Proceeding.

Clause 4 of the INDRP Policy provides as under:

4. Class of disputes:

Any Person who considers that a registered domain name conflicts with his/her legitimate rights or interests may file a Complaint to the .IN Registry on the following premises:

- (a) the Registrant's domain name is identical and/or confusingly similar to a name, trademark or service mark in which the Complainant has rights; and
- (b) the Registrant has no rights or legitimate interests in respect of the domain name; and

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(c) the Registrant's domain name has been registered or is being used in bad faith.

Therefore in order to succeed in the Complaint, the Complainant has to satisfy inter alia all the three conditions provided in clauses 4(a), 4(b) and 4(c) quoted above.

6.1 Condition 4(a):) the Registrant's domain name is identical and/or confusingly similar to a name, trademark or service mark in which the Complainant has rights;

I have gone through the complaint and perused all the documents annexed with the Complaint.

As per averments made in the Complaint, the Complainant is the inventor and bonafide adopter of the trading name and trademark BIO-RAD since as early as 1952. The Complainant is also the proprietor of the trademark BIO-RAD (and including BIORAD) in numerous countries around the world since as early as 1960 and in India since 1997. The Complainant's corresponding trading name includes BIO-RAD as an essential and prominent component. The

Complainant is the registered proprietor of the trademarks BIORAD, BIO-RAD on a world wide basis in numerous countries around the world and including in India. An illustrative list of the worldwide trademark registrations in favour of the Complainant for the aforesaid trademarks is given in para A of the Complaint. Select registration certificates in relation to the said trademark registrations are enclosed with the Complaint as **Annexure C**. Select registration certificates in relation to the Indian trademark registrations are enclosed with the Complaint as **Annexure D**. It is further averred by the Complainant that the Complainant has numerous domain names containing the component BIO-RAD registered in its favour and some such domain name registrations date back to as early as in 1991. Further, the Complainant is also the registered proprietor of numerous domain names containing the component BIORAD since as early as the year 1996. A list of such domain names along with select details of such domain name

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registrations has been enclosed with the complaint as **Annexure E.**

The Respondent has not filed any response to the complaint as such all the averments of the complainant has remained un rebutted.

It is evident from above submissions and documents annexed with the complaint that the complainant has sufficiently established its rights in and to the ownership of the BIO-RAD Trademarks.

The Complainant further stated that the Registrant has unlawfully and substantially subsequently adopted the Disputed Domain Name 'Biorad.in' in April 2020. The Disputed Domain Name is substantially identical and confusingly and deceptively similar to and wholly incorporates the prior registered and reputed trademark BIO-RAD and is in direct conflict with the corresponding trading name and domain name of the Complainant.

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The use of the Complainant's trading name in its entirety in the Disputed Domain Name will inevitably lead consumers to believe that the Disputed Domain Name is affiliated in some way to the Complainant.

In this regard, the Complainant has placed reliance on:

- i. *Lego Juris AIS v. Robert Martin (INDRI/125)* wherein the Learned Arbitrator observed that it is well recognized that incorporating a trademark in its entirety, particularly if the mark is an internationally well-known mark, is sufficient to establish that the domain name is identical or confusingly similar to the Complainant's registered mark.
- ii. *Incase Designs Corp v. Stavros Fernandes (INDRP/ 1209)* wherein the Learned Arbitrator observed that it is well established that the mere addition of the Country Code Top Level Domain '.in' does not add any distinctive or distinguishing element. In view of the same the Learned Arbitrator adjudged that the domain name *www.incase.in* of the respondent was identical to the trade mark *INCASE* of the Complainant.

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iii. *The Gillette Company v. Mr Gaurav Kana (INDRJ/049)* wherein the disputed domain name was *www.gillete.in* and the complainant was the proprietor of the trademark and trading name GILLETTE. The Learned Arbitrator in the matter observed that:

"The Complainant has been using the trade name GILLETTE in many countries including the United States. As such, consumers looking for GILLETTE may instead reach the Respondent's website. Therefore I hold that the domain name www.gillette.in is confusingly similar to the Complainant's trademark."

A mere perusal of the disputed domain name 'biorad.in' of the Registrant/Respondent shows that the Respondent has used the Complainant's trading mark 'BIORAD' in its entirety. it is well established that the mere addition of the Country Code Top Level Domain '.in' does not add any distinctive or distinguishing element.

In view of the above facts and submissions of the complainant, and on perusal of the documents annexed with the Complaint, I hold that the Disputed Domain Name

www.biorad.in of the Registrant is identical to the trademark BIORAD of the Complainant and the domain name www.biorad.com as well as substantially identical to the trademark BIO-RAD and the corresponding trading name containing BIO-RAD and the domain name www.biorad.com of the Complainant.

6.2 **Condition no.4 (b) the Registrant has no rights or legitimate interests in respect of the domain name;**

The trademark BIO-RAD is a coined and invented word which has no dictionary meaning. The said trademark has been derived by the Complainant from its corresponding trading name which dates back to 1952. The Complainant has now proved and established its extensive rights in the trademark BIO-RAD (and including BIORAD). Accordingly, the Registrant has no basis, reason or justification for having adopted a substantially identical disputed domain name. The Complainant has not licensed, authorized or otherwise permitted the Registrant to use its trading name or trademark

or to apply for or use the domain name incorporating said name.

The Respondent has not filed any response as such the facts stated in the complaint had remained unrebutted. Further the Respondent has failed to satisfy the conditions contained in clause 6(a),(b) and 6(c) of INDRP Policy.

On the contrary the Complainant has established that the Registrant has no rights or legitimate interest in respect of the Disputed Domain Name and has never been identified with the Disputed Domain Name or any variation thereof. The Registrant's use of the Disputed Domain Name is dishonest and with the sole intention to divert and mislead customers onto unrelated and sponsored links belonging to third parties including Competitors.

Therefore, in view of the submissions made in the complaint and on perusal of the accompanying documents, I am of the opinion that the Respondent has no rights or legitimate interests in respect of the domain name;

Accordingly I hold that the Registrant has no rights or legitimate interests in respect of the Disputed Domain Name.

6.3

Condition 4(C): the Registrant's domain name has been registered or is being used in bad faith

Clause 7 of INDRP Policy provides as under:

Clause 7. Evidence of Registration and use of Domain Name in Bad Faith

For the purposes of Clause 4(c), the following circumstances, in particular but without limitation, if found by the Arbitrator to be present, shall be evidence of the registration and use of a domain name in bad faith:

(a) 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

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Registrant's documented out-of-pocket costs directly related to the domain name; or

- (b) the Registrant has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the Registrant has engaged in a pattern of such conduct; or
- (c) by using the domain name, the Registrant has intentionally attempted to attract Internet users to the Registrant's website or other on-line location, by creating a likelihood of confusion with the Complainant's name or mark as to the source, sponsorship, affiliation, or endorsement of the Registrant's website or location or of a product or service on the Registrant's website or location.

It is shown by the complainant that the Complainant is a well known reputed and global entity with extensive operations around the world since 1952. The Registrant was most certainly aware of the repute and goodwill of the Complainant. Therefore adoption of the substantially identical Disputed Domain Name

by the Registrant in 2020 is with the sole intention to trade upon and derive unlawful benefits from the goodwill accruing to the Complainant. The Registrant has in fact knowingly adopted the Disputed Domain Name which wholly -contains the Complainant's prior trademark BIO-RAD to attract customers to the Disputed Domain Name by creating confusion with the Complainant's reputed trademark BIO-RAD and corresponding domain name.

The bad faith of the Registrant is further evident from the fact that Using the Disputed Domain Name for displaying links for commercial gain is clearly in bad faith. The Registrant is also offering the Disputed Domain Name for sale on online platforms. The bad faith of the Registrant is also abundantly clear from the fact that when the Complainant served a notice dated 8th June 2021 sent by email to the Respondent requesting the Respondent inter alia to transfer the said disputed domain to the complainant or to cancel the same and upon informing the Registrant of its prior rights in the trademark BIO-RAD and

highlighted that the Registrant's adoption of the Disputed Domain Name violates and infringes upon the Complainant's rights, the Registrant sought to extract a monetary payment to comply with the lawful and just requirements of the Complainant vide its reply email dated 8th June 2021. Copy of said email dated 8th June 2021 with copy of notice and reply of Respondent has been annexed with the Complaint as Annexure -I. This shows that the Registrant adopted the Disputed Domain Name for the purpose of selling, renting or otherwise transferring the same to the Complainant or to a competitor of the Complainant, for a valuable consideration in excess of documented out of pocket costs directly related to the Disputed Domain Name.

The Complainant has further averred that the Registrant is a cyber squatter and a cyber pirate and has been engaged in a pattern of such unlawful conduct wherein the Registrant routinely and in bad faith registers domain names containing reputed trademarks to derive unlawful and illegitimate gains by

misleading customers onto such identical substantially similar disputed domain names which then re-directs customers on to third party sponsored links. The Registrant offers such disputed domain names for sale and tries to extort monetary consideration from the lawful proprietors of reputed trademarks for transferring the such domain names.

The Complainant has placed reliance on the findings arrived at in the following Cases:

Samsung Electronics Co. Ltd v. Vishal Didwania INDRP/141) wherein the rights of the complainant Samsung Electronics Co. Ltd. in the trading name and trademark SAMSUNG were protected from the unlawful adoption of the domain name www.samsung.in and the disputed domain name was ordered to be transferred to the complainant.

PepsiCo .. Inc. v Mr. Wang S!nwng (fNDRP/400) wherein the rights of PepsiCo .. Inc. in the reputed PEPSI marks were protected from the unlawful adoption of the domain name www.pepsi.in and the disputed domain name was ordered to be transferred to the Complainant.'

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In view of above facts, submissions of the Complainant and on perusal of the documents annexed with the Complaint, I find that the Complaint has proved the circumstances referred in Clause 7(a)(b) and (c) of INDRP policy and has established that the registration of disputed domain name is in bad faith.

Accordingly I hold that the Registrant's Domain Name has been registered in bad faith.

7.

Decision:

7.1. In view of the foregoing, I hold that the Disputed Domain Name is identical and or confusingly similar to the Complainant's well-known 'BIORAD' Trademarks and that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name and that the Disputed Domain Name was registered in bad faith.

In accordance with the INDRP Policy and Rules, I direct that the Disputed Domain Name registration be transferred to the Complainant,

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7.2. In the facts and circumstances, as discussed above, I deem it appropriate to order the Respondent to pay cost of Rs.50,000/- for present proceedings to the Complainant.

Delhi
Dated 03.09.2021

Alok Kumar Jain

Alok Kumar Jain
Sole Arbitrator