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Government of National Capital Territory of Delhi

₹100

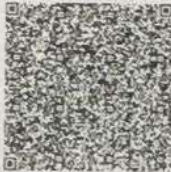
e-Stamp

Reprinted e-Stamp Certificate

Certificate No. : IN-DL74682478774450U
Certificate Issued Date : 06-Jan-2022 04:23 PM
Account Reference : SELFPRINT (PU)/ dl-self/ NEHRU/ DL-DLH
Unique Doc. Reference : SUBIN-DLDL-SELF40678289443145U
Purchased by : IRA LAW PREETIKA KASHYAP
Description of Document : Article 12 Award
Property Description : ARBITRATION AWARD
Consideration Price (Rs.) : 0
(Zero)
First Party : BINNY KALRA
Second Party : BINNY KALRA
Stamp Duty Paid By : BINNY KALRA
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 <**SUDOCREM.IN**>

In the matter of:

INDRP Case No: 1458

Tosara Pharma Limited

VS

Beau Shop

Complainant

Respondent

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Binny Kalra

ARBITRATION AWARD

.IN REGISTRY

(C/O NATIONAL INTERNET EXCHANGE OF India)

Before the Sole Arbitrator, Binny Kalra

Disputed domain name <**SUDOCREM.IN**>

In the matter of:

Tosara Pharma Limited

Unit 146, Baldoyle Industrial Estate,
Grange Road, Baldoyle,
Dublin D13 CD79, Ireland

Complainant

v.

Beau Shop

25/5, Bannerghatta Main Road,
J.P. Nagar, 4th Phase, Dollars Colony,
Bengaluru - 560078
Karnataka, India

Respondent

INDRP Case No: 1458

1. The Parties:

The Complainant is Tosara Pharma Limited, having its registered office in Ireland, and is represented in these proceedings by an attorney, Ms. Cecilia Borgenstam of the lawfirm M/s SILKA AB, having its address at Strandvägen 7A, 114 56 Stockholm, Sweden.

The Respondent is Beau Shop, an entity whose constitution is unclear. The Respondent was briefly represented at the commencement of the proceedings by one Mr. Mohammed Shees from whom communications were received by the Panel. The said individual also purportedly signed a joint settlement agreement with the Complainant which was shared with the Panel, NIXI and the Complainant, from the email address <mohdsheez@yahoo.com>



2. The domain name, Registrar, and Policy:

The disputed domain name is www.sudocrem.in (hereinafter referred to as the "**Disputed Domain Name**"). The Registrar for the Disputed Domain Name is GoDaddy.com, 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:

- 12 November 2021: The .IN Registry transmitted information of appointment of the arbitrator and circulated the complaint and its annexures to the parties
- 13 November 2021 Notice of commencement of the arbitration proceedings was sent by the Panel to the Parties
- 17 November 2021 The Respondent's representative sent an email to the Panel and the Complainant acknowledging receipt of the complaint and stating inter alia "If complainant wants us to transfer the domain name to them, we are ready for it."
- 17 November 2021: The Panel advised the Complainant about the communication from Mohd Shees as representative of the Respondent and suspended the proceedings until 24 November 2021 to give time to the Complainant to confirm if the dispute was likely to be settled in view of the said communication.
- 18 November 2021 The Complainant's attorney sent a communication to the Panel requesting for suspension of the proceedings until 3 December 2021 so that they could communicate with the Complainant "and finalise a potential settlement agreement".



- 18 November 2021 The Panel allowed the request of the Complainant's attorney and confirmed suspension of the proceedings until 3 December 2021. Thereafter the Complainant's attorney sent emails to the Respondent's representative in regard to a joint settlement while marking the Panel, NIXI and others on cc
- 1 December 2021 The Respondent's representative circulated a signed document titled "Standard Settlement Form".
- The Complainant's attorney requested the Respondent's representative to send a similar signed agreement for another domain name <sudocrem.co.in> and the Respondent's representative responded by sending another attachment.
- 2 December 2021 The Respondent's representative sent a response to the Complainant's attorney's communication offering to pay the registration fees for the disputed domain name stating:
- "Thank you for your offer, We do not need any compensation from your client for domain transfer.
- Regards,
Mohammed Shees"
- 2 December 2021 The Complainant's attorney wrote to the Panel informing that the settlement agreement had been countersigned by the Respondent and inquired about the implementation of the settlement.
- 2 December 2021 The Panel addressed both Parties in a communication drawing attention to its email of 17 November 2021 which required them to provide certain clarifications and proof of authorisation in favour of the respective signatories of the settlement agreement. In subsequent communications



with the Complainant's attorney the Panel explained why the letter of authority filed by them was inadequate for the purpose of the settlement.

- 7 December 2021 The Panel sent a reminder to the Parties to comply with the requirements for satisfaction of the criteria for the settlement agreement. The Respondent's representative was unresponsive to the communications from the Panel.
- 10 December 2021 The Complainant's attorney wrote to the Panel requesting that the proceedings be continued and that the Complainant wished to obtain a decision.
- 10 December 2021 The Panel accepted the Complainant's request and intimated the Parties that the proceedings that were suspended on 17 November 2021 had resumed with effect from 10 December 2021. An opportunity was granted to the Respondent to file its statement of defence by 20 December 2021, albeit the Panel noted in view of the circumstances that it did not appear that the Respondent wished to contest the proceedings.
- 22 December 2021 The Panel informed the Parties that since no statement of defence had been filed, the award was reserved.

The narration of the above given detailed procedural history was necessary in the unusual circumstances of this dispute. While the Parties appear to have intended to arrive at a joint settlement, the Panel found itself unable to formally accept the settlement agreement as furnished because of lacunae that appeared significant and not merely technical. The exact text of the settlement provided by the Parties is reproduced below:



Before Binny Kalra and IN Registry India's Official .IN Domain Name Registry

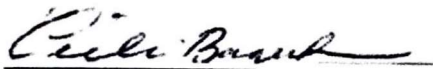
**Standard Settlement Form
INDRP Case No: 1458**

The Parties have reached an agreement regarding the following disputed domain name:

<sudocrem.in>

Pursuant to such agreement, the Parties request the Registrar and NIXI to take the following action

☒ The disputed domain name should be transferred from the Respondent's control to the Complainant.



For Complainant
Tosara Pharma Limited

Date: November 26, 2021



For Respondent
Beau Shop

Date:

Although the Parties did not conclude the settlement agreement formally, the Panel can take into account the contents of the email communications between the representatives of the Parties to conclude that the Parties intended to settle the dispute. In *Govind Rubber Ltd. v. Louis Dreyfus Commodities Asia (P) Ltd.*; (2015) 13 SCC 477 it was held by a bench of the Hon'ble Supreme Court that "If there is consensus *ad-idem* on the contents of the contract, then it would bind the parties even if the contract is not signed. Hence, an agreement, even if not signed by the parties can be spelt out from correspondence exchanged between the parties."

Nonetheless, this award is being passed on merits as requested by the Complainant.



4. Complainant's case:

The Complainant's submissions in the complaint are summarized below:

- i. The Complainant is a subsidiary of an Israeli company, Teva Pharmaceutical Industries Ltd. and it is an Irish pharmaceutical company founded in 1954. The Complainant specializes in developing and marketing branded ethical products and non-prescription pharmaceutical products sold over-the-counter (OTC), such as topical creams, antiseptic creams, cough drops, pain medicine, antibiotics, psoriasis medicines, infection medication, and other pharmaceuticals. Reliance is placed on the detailed information available at the Complainant's official website www.sudocrem.com.
- ii. One of the pharmaceutical products sold by the Complainant is an OTC medicated cream under the name **SUDOCREM** for soothing sore skin, treating nappy rash, eczema and acne. This product was invented by a pharmacist named Thomas Smith in 1931. **SUDOCREM** is a multi-award-winning product available in more than 40 countries, with estimated global quantitative sales of 34.5 million pots annually.
- iii. The Complainant was the first in the world to have conceived and adopted the mark **SUDOCREM** in respect to goods and services covered under classes 3 and 5 in 1950. Complainant is a registered proprietor of the trademark **SUDOCREM** in many countries around the world including India and has been continuously and exclusively using the same in relation to its business, since 1953.
- iv. The Complainant is the exclusive owner and proprietor of Indian registration No. 1994095 dated 15 July 2010 for the trade mark SUDOCREM in class 3 (for *Non-medicated preparations for the skin; non-medicated toilet preparations; not including anti-perspirant preparations*) and class 5 (for *Pharmaceutical and veterinary preparations and substances; medicinal cream for human and*



veterinary use; medicated skin care products). The registration is filed at **Annex IV**.

- v. The Complainant is the owner of the Domain Name <**sudocrem.com**> which was registered in 1999 and is active since 2003. Other domain names owned by the Complainant incorporating the mark **SUDOCREM** are, illustratively:

DOMAIN NAME	REGISTRATION DATE (Y/M/D)
sudocrem.com	1999-05-02
sudocrem.co.uk	1999-11-03
sudocrem.ca	2003-01-14
sudocremtube.com	2009-07-30
sudocremskincare.com	2011-06-08
sudocremskincare.co.uk	2011-06-08
sudocrembabyshower.com	2012-05-10
sudocremcareandprotect.com	2013-05-21
sudocremservice.com	2014-07-02
sudocremadmin.com	2014-07-02
mylittlesudocrem.com	2019-08-01

- vi. The disputed Domain Name was registered on 3 September 2020 whereas the Complainant first registered the trademark **SUDOCREM** in 1953, almost 67 years prior to the date on which Respondent registered the domain <**sudocrem.in**>. By virtue of long standing use and registration, the Complainant's trademark **SUDOCREM** qualifies to be a well-known mark and is entitled to be protected.

King Lake

- vii. Reliance is placed by the Complainant on WIPO decisions in [Forest Tosara Limited v. Wang Xiao Wen](#) [WIPO DCN2019-0008], [Tosara Pharma Limited v. Super Privacy Service LTD c/o Dynadot](#) [WIPO D2019-2536] and [Tosara Pharma Limited v. WhoisGuard Protected, WhoisGuard, Inc. / Stephen Jadon](#) [WIPO D2020-2273], wherein the Panel found Complainant has rights in the mark **SUDOCREM** and the disputed Domain Names incorporating **SUDOCREM** mark were transferred to the Complainant.

5. Respondent's case:

The Respondent has not filed a formal statement of defense. However, the Panel takes note of the fact that the Respondent clearly intended to transfer the disputed domain name to the Complainant once it was served with the notice of commencement of the arbitration proceedings and the following statement in email dated 17 November 2021 from Mohammed Shees, identified as the representative of the Respondent by the Complainant, is self-speaking as to the case of the Respondent:

"Dear All,

We have received your complaint regarding domain (SUDOCREM.IN). We want to clarify that we had no intentions of misusing or misleading any customers or companies. Yes, we are not the Authorized dealers of Sudocrem in India. But we had been importing Sudocrem from UAE's Authorized Dealer and reselling them in India for few months now. We are a small organisation. We bought the domain as it was publicly available on Domain Registrar's websites. We launched the site just few months ago without understanding the Trademark Infringement Issues that could come along.

And now that we know that complainant do not want us to have a site as such, we have removed the site and its content from online.

If complainant wants us to transfer the domain name to them, we are ready for it."

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. Based on the communications from the Respondent's representative as referred to above, and the fact that the Complainant's submissions in the complaint are uncontroverted, the Panel finds that the Complainant has established the presence of the aforesaid three elements in this case so as to succeed in the Domain Name Dispute.

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:

- i. The Disputed Domain Name is <SUDOCREM.IN>.
- ii. The Complainant has shown that it has rights in the trademark SUDOCREM by virtue of its registrations in India for the said mark filed as Annexure IV.
- iii. The statutory protection granted to the Complainant's trademark SUDOCREM in India confirms that it has strong and enforceable rights in the said mark.
- iv. The Complainant's use of the trademark SUDOCREM dates back to 1953.
- v. The domain name <**sudocrem.com**> was registered by the Complainant since 1999. The operation of the website at www.sudocrem.com which is accessible in India and confirms the online presence of the Complainant and its products under the trademark SUDOCREM.
- vi. The trademark SUDOCREM has been used in India since the year 2010.



- vii. The Complainant's social media accounts which are accessible in India and evidence the Complainant's goodwill and reputation.
- viii. The trademark SUDOCREM is replicated in entirety in the Disputed Domain Name.
- ix. The disputed domain name **<sudocrem.in>** was registered by the Respondent on 3 September 2020, which is deemed to be with complete knowledge of the Complainant's well-known mark **SUDOCREM** on account of the subsisting registration and use of the trademark in India.

The above points confirm that the Disputed Domain Name is identical and/or confusingly similar to a name / trademark 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 assesses the claims of exclusive rights in the trademark SUDOCREM by the Complainant to be correct. There is also no doubt that the Disputed Domain Name is identical to the mark SUDOCREM and the Respondent was aware of the Complainant's products under the trademark.

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.”

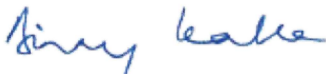
Based on the material on record, the Panel finds that the Respondent did not comply with Section 3 (b) and (d). A registered trademark is a matter of public record and the registration constitutes constructive notice to the public at large as to the rights of the proprietor. Moreover, the Respondent has admitted to re-selling the Complainant’s products which it imported into India through the latter’s UAE Authorized Dealer. Hence, the Respondent was undoubtedly aware of the Complainant’s rights in the trademark SUDOCREM and it is, therefore, deemed to be aware that registration of the disputed domain name would violate these rights and the use thereof would be in violation of applicable laws. It is a well settled proposition that ignorance of law is not a defence. Hence the Panel must reach a finding that the Disputed Domain Name was registered in bad faith.

Decision:

As such, the Panel finds adequate grounds for a determination in favour of the Complainant.

The Panel directs that the Disputed Domain Name <WWW.SUDOCREM.IN> be transferred to the Complainant.

Signed:



(Binny Kalra)

Arbitrator

Date: 7 January 2022