



सत्यमेव जयते

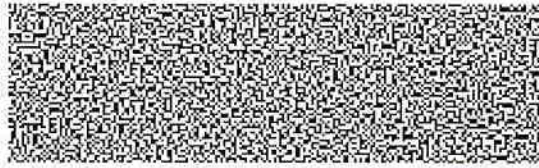
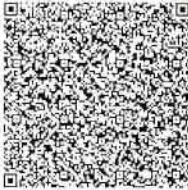
INDIA NON JUDICIAL

Government of Karnataka

Rs. 100

e-Stamp

Certificate No. : IN-KA90781383920942V
Certificate Issued Date : 14-Jun-2023 11:29 AM
Account Reference : NONACC/ kakscsa08/ NAGARABAVI/ KA-RJ
Unique Doc. Reference : SUBIN-KAKAKSCSA0860894490871512V
Purchased by : MARAM SURESH GUPTA
Description of Document : Article 12 Bond
Description : ARBITRATION AWARD
Consideration Price (Rs.) : 0
(Zero)
First Party : MARAM SURESH GUPTA
Second Party : MARAM SURESH GUPTA
Stamp Duty Paid By : MARAM SURESH GUPTA
Stamp Duty Amount(Rs.) : 100
(One Hundred only)



Please write or type below this line

ARBITRATION AWARD
.IN REGISTRY – NATIONAL INTERNET EXCHANGE OF INDIA [NIXI]
.IN Domain Name Dispute Resolution Policy
INDRP Rules of Procedure

Disputed Domain Name: <NOVARTISHEALTH.IN>
INDRP Case No. 1699
Before the Sole Arbitrator: Mr. Maram Suresh Gupta

Maram Suresh Gupta

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Statutory Alert:

1. The authenticity of this Stamp certificate should be verified at 'www.shcstamp.com' or using e-Stamp Mobile App of Stock Holding Corporation of India. Any discrepancy in the details on this Certificate and as available on the website / Mobile App renders it invalid.
2. The onus of checking the legitimacy is on the users of the certificate.
3. In case of any discrepancy please inform the Competent Authority.

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Disputed Domain Name: <NOVARTISHEALTH.IN>
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Before the Sole Arbitrator: Mr. Maram Suresh Gupta

IN THE MATTER OF:

Novartis AG

4002 Basel,
Switzerland.

Email: corporate.trademarks@novartis.com

.....Complainant

Versus

Hemaswaroop Dindukurthi

1-160, Somagutta Street
Kadiri – 515 591,
Andhra Pradesh, India.

Phone No.: +91 9035253384

Email: hemaswaroop.rvhs@gmail.com

.....Respondent

1. The Parties

- a) The Complainant in the present arbitration proceedings is **NOVARTIS AG**, (hereinafter referred as '**Complainant**'), with its office at 4002, Basel, Switzerland. The Complainant is represented by Ms. Mamta R. Jha, of INTTL ADVOCARE, Express Trade Tower, B-36, Sector – 132, Noida Expressway, Noida – 201 303, NCR Delhi, India, **Email:** mamta@inttladvocare.com. **Phone No.:** +91 120 2470 200 – 298.
- b) The Respondent in the present arbitration proceedings is **Hemaswaroop Dindukurthi**, address: 1-160, Somagutta Street, Kadiri – 515 591, Andhra Pradesh, India, **Email:** hemaswaroop.rvhs@gmail.com. The contact details of the Respondent were provided by NIXI along with the copy of the complaint and the same were also mentioned in the revised copy of the complaint filed by the Complainant, dated 6th June 2023.

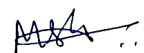


2. The Disputed Domain Name and The Registrar

- a) The following information about the disputed domain name and the registrar is as per the information furnished by the Complainant in its complaint and supporting exhibits/ annexures thereof.
- b) The disputed domain name is <NOVARTISHEALTH.IN> and the same was created on 7th July 2022. **It was set to expire on 7th July 2023.** Based on information from WHOIS database, the registrant client ID is CR565714545 and registrant ROID is C746FE942FC7A4C76A91331C67EE3A07A-IN. The accredited Registrar with whom the disputed domain name was registered is GoDaddy.com.

3. Procedural History

- a) The present arbitration proceedings are as per 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”), under 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 according to the Policy and the Rules thereunder.
- b) NIXI vide its email dated 2nd June 2023 requested the availability of Mr. Maram Suresh Gupta to act as the Sole Arbitrator in the present matter. In return, on the same day, I have indicated my availability and accordingly submitted the fully signed Statement of Acceptance and Declaration of Impartiality and Independence, which complied with the .INDRP Rules of Procedure.
- c) Pursuant to the above acceptance and declaration of the Sole Arbitrator, NIXI appointed, vide in its email dated 2nd June 2023, Mr. Maram Suresh Gupta as the sole Arbitrator and the same was also intimated to both the Complainant and Respondent (hereinafter ‘parties’). Thereafter, on the same day, a notice having directions to both



the parties was issued by me. In the said notice, the Complainant was directed to furnish copies of the complaint along with supporting annexures to the Respondent both via email and courier. In addition, the Respondent was also directed to file his response to the complaint within 10 days from the date of the notice. The Complainant was also instructed to furnish confirmation copies of both the means of communication to the Arbitrator with a copy to NIXI. Further, the Complainant was also directed to file the missing parts – amended complaint with name and contact details of the Respondent.

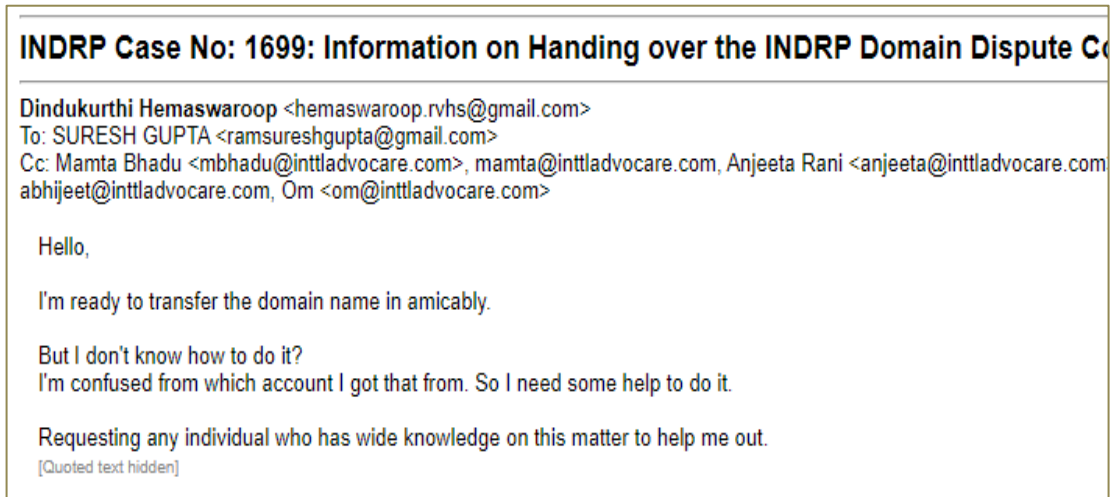
d) The Complainant served copies of the Complaint (revised version) and its supporting annexures via email to the Respondent dated 6th June 2023. The confirmation copies of the email sent to the respondent were submitted by the Complainant to the Arbitrator with a copy to NIXI, dated 6th June 2023. As regards serving hard copies, the Complainant failed to provide courier receipts to the Panel. Nonetheless, the Respondent replied on 14th June 2023. Therefore, serving documents (complaint + annexures) via email to the Respondent was considered sufficient.

e) On 13th June 2023, I informed the Parties that though no Response was received by the Panel from the Respondent within the allotted time, in the interest of justice, I granted an additional time of 5 days and that if no reply is filed by 18th June 2023, the award would be passed on merits. On 14th June 2023, the Respondent replied and the same is provided below as **screen shot # 1**.



Screen shot # 1: Reply from the Respondent

f) In light of the reply from the Respondent, on the same day, I have asked the Respondent to read the complaint and its annexures to understand the matter in greater detail. Additionally, I have directed both the parties to discuss and settle the dispute amicably. Thereafter, I received another email from the Respondent dated 16th June 2023 – provided below as screen shot # 2.



Screen shot # 2: Reply from Respondent dated 16th June 2023

g) After my follow-up email, finally, on 19th June 2023, the Complainant replied saying that they would share the settlement terms with the Respondent shortly. In light of this reply from the Complainant I have set a deadline of 25th June 2023 for the parties to sign the legal instrument (settlement) and furnish a copy to this panel. Nonetheless, there is no response from the Complainant. At one point of time, I was under the impression that Complainant was unable to receive my emails. Therefore, as a matter of caution I have called the attorney of the Complainant and sought their confirmation on whether they received my emails. In reply, the Complainants attorney confirmed they are in receipt of my emails and also admitted saying they are in touch with their client regarding the settlement terms. Thereafter, the Respondent sent another email dated 23rd June 2023 saying that he has not yet received email/ settlement terms from the Complainant. After my follow-up email the Complainant replied back to the Respondent saying they would provide settlement terms next week. Nonetheless, I have set a deadline of 25th June 2023

to settle the matter. Further, firstly, the Complainant failed to seek any additional time from the panel in view of settlement with the Respondent. Secondly, in fact, till today, the Complainant failed to provide the settlement terms for execution by the Respondent. Accordingly, I have decided to proceed based on the merits of the case.

4. Factual Background and Parties Contentions: The Complainant has made the following submissions in support of its complaint against the Respondent. The contentions are detailed as follows:

- a) First and foremost, the Complainant is a Swiss based leader in the healthcare industry and actively involved in developing new healthcare products. Its products are available in more than 140 countries. **Annexure D and Annexure J** are merely cover pages of the annual report without any financial details about the revenue spent by the Complainant for research and development (R&D). On the other hand, **Annexure E** provides insights about the recognitions received in view of its R&D in healthcare sector. Besides this, the Complainant is also involved in corporate social responsibility activities (digital health and LDEP) as detailed under the **Annexure F**. The Complainant is active in India since 1947 under the corporate name as NOVARTIS which is a protected trademark of the Complainant in more than 70 countries – see **Annexure G**. The Complainant also has several domain names registered to its credit.
- b) A perusal of **Annexure H** reveals details about the registered trademark, NOVARTIS, of the Complainant in different countries. Few of the registered marks (*see Table 1*) of the Complainant under different classes are recited below:

Table 1: Registered Trademarks of the Complainant in different jurisdictions

Sl. No.	Indian TM Application No./ Registration No. and classes	Name of the mark
1	700020 (class: 05)	NOVARTIS
2	1953515 (IRDI – 3050272) (classes: 1, 3, 5,9, 10, 16, 29, 30, 31, 32, 35, 40, 41, 42, 44)	
3	702108 (classes: 09)	

- c) A perusal of **Annexure – K**, it is evident that the Complainants trademark NOVARTIS extensively appeared in different magazines, internet and other public domains. In short, it is a well-known trademark.
- d) Therefore, the Complainant contends that the disputed domain name (**NOVARTISHEALTH.IN**) subsumes its registered trademark **NOVARTIS** thereby amounting to infringement. The Complainant submits here that the disputed domain name was registered by the Respondent in bad faith, as the distinctive and dominant element in the Respondents domain is the word **NOVARTIS**.
- e) The Respondent did not file any proper reply to the Complainant's contentions even after providing a fair opportunity. Also, his intention to settle the dispute is evident from the email communications recited above as screenshots. But, settlement has not happened within the allotted deadline set forth by the panel. Also, no request for extension of time was made by the Complainant. Accordingly, the panel has decided to proceed based on the merits of the case.

5. Discussion and Findings

- a) As per Paragraph 4(i) of the Policy, the Complainant is required to show that it has a right in the trademark which it intends to assert. Based on the documents furnished by the Complainant it is abundantly evident that the trademark **NOVARTIS** is registered in India and also in more than 70 countries (*see Table 1 above and Annexure G and H of the Complaint*). In addition, the Complainant has never authorized the Respondent in any manner whatsoever to offer the goods and/or services for sale under its registered trademark NOVARTIS. Therefore, from the averments made by the Complainant, it is clear that the Respondent is neither a licensee nor has it otherwise obtained the authorization of any kind whatsoever to use the registered trademark NOVARTIS.



Accordingly, the Respondent does not have any legitimate interest and it appears that the Respondent has registered the disputed domain name only to enrich itself unjustly from such unauthorized adoption and registration.

- b) Once the Complainant makes a *prima facie* case showing its legal rights and lack of any kind of rights/ authorizations to the Respondent from the Complainant, the Respondent must come with proof of legitimate interest in the disputed domain name to rebut the presumption. Nonetheless, the Respondent has failed to file any Response till today towards the Complaint. According to the Rules, I have given a fair opportunity to the parties to present their case and also to settle the dispute amicably. Though sufficient time (24 days) was offered, the Respondent failed to file any response to the Complaint and also failed to settle the dispute. Accordingly, the proceedings are set to award based on the merits of the case.
- c) In light of the above circumstances, my decision is based upon the assertions; evidences presented by the Complainant and inferences drawn from the Respondent's failure to submit a Response and/or to settle the dispute despite offering sufficient opportunity and time to do so.

6. Issues in the Dispute

The Complainant invoked Paragraph 3 of the Rules to initiate arbitration proceedings by filing a Complaint with NIXI. The Respondent in registering the disputed domain name has submitted to the mandatory arbitration proceedings in terms of the Policy, which determines the essential elements for a domain name dispute, which are as follows:

- Whether the disputed domain name is identical or confusingly similar to the registered trademark (legal right) of the Complainant?
- Does the Registrant/ Respondent have any right or legitimate interest in the disputed domain name?



- Does the disputed domain name of the Registrant/ Respondent is registered and is being used in bad faith?

All the above three essential elements are discussed in the following sections:

Essential Element No. 1: Whether the disputed domain name is identical or confusingly similar to the registered trademark (legal right) of the Complainant?

The test for confusing similarity involves the comparison between the registered trademark and the disputed domain name. In the present case, the disputed domain name incorporates the Complainant's registered trademark NOVARTIS in its entirety with the addition of 'health'. This addition does not prevent a finding of confusing similarity. In order to assess confusing similarity, it is permissible for the Panel to ignore the country code Top-Level Domain ("ccTLD") ".in". In short, the disputed domain <NOVARTISHEALTH.IN> consists of the registered and well-known trademark 'NOVARTIS' of the Complainant. In addition, the Complainant has furnished sufficient evidence (see **Annexures G and H and above Table 1**) in support of its registered trademark NOVARTIS, arising out of its use.

Therefore, given the Complaint and its accompanying annexure documents, I am convinced beyond any ambiguity that the disputed domain name is confusingly similar to the Complainants registered trademark NOVARTIS. Further, the aforesaid attempt of the Respondent will inevitably lead consumers to believe that the disputed domain name is associated/ authorized by the Complainant. Accordingly, the disputed domain name is identical to Complainant's registered trademark. The complainant has satisfied the first essential element.

Essential Element No. 2: Does the Registrant/ Respondent have any right or legitimate interest in the disputed domain name?



Initially, from the submissions of the Complainant it is clear that they have never authorized the Respondent in any fashion or otherwise not licensed to use its registered trademark NOVARTIS for a domain name registration. Besides, it **appears** that the Respondent is an individual. There is also no evidence to suggest that the Respondent is commonly known by the disputed domain name or that the Respondent has any rights in NOVARTIS. In short, the Respondent is not affiliated or related to the Complainant in any way whatsoever.

Secondly, the burden of proof to establish legitimate interest over the disputed domain name lies with the Respondent. However, the Respondent failed to submit a reply to the Complainant within the allotted time. Also, the Respondent was interested to settle the dispute but failed to settle within the allotted time. Thus, the Respondent fully and completely failed to establish any legitimacy in registering the disputed domain name. Accordingly, in light of the Complaint with the annexures and Respondents failure to file proper reply to the Complaint, I believe that the Respondent does not have a right and legitimate interest.

Essential Element No. 3: Does the disputed domain name of the Registrant/ Respondent is registered and is being used in bad faith?

The Complainant is the registered owner of the mark NOVARTIS. In addition, the panel accepts that the Complainant's mark NOVARTIS enjoys world-wide reputation and also has wide presence in the internet and other platforms. At present, due to rapid advancement in information technology services, reputation of marks transcends national borders. In the present case, a simple cursory internet search for the disputed domain name would have disclosed its ownership and its use thereof by the Complainant. Accordingly, a strong presumption arises towards the aspect that the Respondent was very much aware of the existence of the Complainant's mark NOVARTIS at the time of



registering the disputed domain name. Therefore, using the same known and registered mark of the Complainant strongly suggests opportunistic bad faith. The fact that the Respondent has not replied to the Complainant's contentions, further points to bad faith. In light of the above, it is evident beyond reasonable doubt that the Respondent has adopted the disputed domain name in bad faith.

7. Decision

The Complainant has succeeded in establishing all the three essential elements of the .INDRP Policy. In light of the above discussions and in accordance with the Policy and Rules, the Panel directs the transfer of disputed domain name <NOVARTISHEALTH.IN> to the Complainant with a request to NIXI to monitor the transfer. This award is being passed within the statutory deadline of 60 days from the date of commencement of arbitration proceedings.



Maram Suresh Gupta
Sole Arbitrator

Date: 27th June 2023