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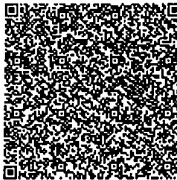
INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

₹100

e-Stamp

Certificate No.	: IN-DL23072947826735W
Certificate Issued Date	: 04-Jan-2024 11:53 AM
Account Reference	: IMPACC (IV)/ di717303/ DELHI/ DL-DLH
Unique Doc. Reference	: SUBIN-DL71730309287800597716W
Purchased by	: AJAY GUPTA ARBITRATOR
Description of Document	: Article 12 Award
Property Description	: Not Applicable
Consideration-Price (Rs.)	: 0 (Zero)
First Party	: AJAY GUPTA ARBITRATOR
Second Party	: OTHERS
Stamp Duty Paid By	: AJAY GUPTA ARBITRATOR
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)



Please write or type below this line IN-DL23072947826735W

INDRP Co. No. 1803,

Disputed Domain Name: 'BAYERS.IN'

Bayar Aktiengesellschaft

Vs.

Uttam Kumar

**Statutory Alert:**

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

INDRP ARBITRATION CASE No.1803  
THE NATIONAL INTERNET EXCHANGE OF INDIA (NIXI)

ADMINISTRATIVE PANEL DECISION  
SOLE ARBITRATOR: AJAY GUPTA

Bayer Aktiengesellschaft

Vs.

Uttam Kumar

DISPUTED DOMAIN NAME: **"BAYERS.IN"**



INDRP ARBITRATION CASE NO.1803  
THE NATIONAL INTERNET EXCHANGE OF INDIA (NIXI)

ADMINISTRATIVE PANEL DECISION  
SOLE ARBITRATOR: AJAY GUPTA

BAYER AKTIENGESELLSCHAFT  
Kaiser-Wilhelm-Allee  
51373 Leverkusen [GERMANY].

... Complainant

VERSUS

UTTAM KUMAR  
Pharmaceutical,  
Mumbai-400071 [Maharashtra] -India

... Respondent

Disputed Domain Name: **"BAYERS.IN"**

## 1. THE PARTIES

- 1.1 The Complainant, Bayer Aktiengesellschaft, in this arbitration proceeding, is a global enterprise with core competencies in the fields of healthcare, nutrition and plant protection and its contact address is 1400 Centrepark Blvd., Suite 200, West Palm Beach, FL 33401, United States of America.
- 1.2 The Complainant's Authorized Representative in this administrative proceeding is pm.legal and its contact details are: Address: Steinsdorfstraße 13 80538 München Germany.
- 1.3 In this arbitration proceeding, the **Respondent** is Uttam Kumar, Pharmaceutical, Mumbai-400071 (MAHARASHTRA), India as per the details given by the WHOIS database maintained by the National Internet Exchange of India (NIXI).

## 2. THE DOMAIN NAME AND REGISTRAR

- 2.1 The disputed domain name is "**BAYERS.IN**" and the Registrar with which the disputed domain name is registered is **GoDaddy.com, LLC**.

## 3. PROCEDURAL HISTORY [ARBITRATION PROCEEDINGS]

- 3.1 This arbitration proceeding is in accordance with the .IN Domain Name Dispute Resolution Policy [INDRP], adopted by the National Internet Exchange of India (NIXI). The INDRP Rules of Procedure [the Rules] were approved by NIXI on 28<sup>th</sup> June 2005 in accordance with the Indian Arbitration and Conciliation Act, 1996. By registering the disputed domain name with the NIXI



accredited Registrar, the Respondent agreed to the resolution of the disputes under the IN Dispute Resolution Policy and Rules framed thereunder.

3.2 The history of this proceeding is as follows :

3.2.1 By Rules 2(a) and 4(a), NIXI on 26.12.2023 formally notified the Respondent of the complaint along with a copy of the complaint & annexures/ documents, and appointed me as the Sole Arbitrator for adjudicating upon the dispute in accordance with the Arbitration and Conciliation Act, 1996, and the Rules framed thereunder, IN Domain Resolution Policy and the Rules framed thereunder. I submitted the Statement of Acceptance and Declaration of Impartiality and Independence dated 26.12.2023 to NIXI.

3.2.2 That commencing the arbitration proceedings an Arbitration Notice Dated 26.12.2023 was emailed to the Respondent on 26.12.2023 by this panel under Rule 5(c) of INDRP Rules of Procedure with direction to file a reply of the complaint, if any, within 10 days.

3.2.3 This panel vide Arbitration Notice dated 26.12.2023 had directed the Respondent to file the reply of complaint, if any, within 10 days of the notice and therefore Respondent was supposed to file the reply of the complaint by 04.01.2024.

3.2.4 This panel via its email dated 26.12.2023 had directed the Complainant to update the domain complaint with the registrant's missing details

*Any*

and send the same to all including the Respondent. The Complainant, complying with the directions via its mail dated 30.12.2023 filed the updated complaint before this panel and also emailed the same to the Respondent. The Complainant also submitted the proof of service/delivery of the physical copy of the complaint to the Respondent through courier, which shows delivery of the same to the Respondent on 05.01.2024.

3.2.5 However, since the Respondent failed to file the reply of Complaint, if any, within time, as directed, this panel again in the interest of justice via its email dated 05.01.2024 granted a further period of 05 days i.e. by 09.01.2024 to the Respondent to file the reply of the complaint. The Respondent despite the receipt of arbitration notice Dated 26.12.2023, copy of complaint and reminder dated 05.01.2024 of this panel, neither replied to the Arbitration notice nor filed a reply of complaint; hence, on 10.01.2024 the Respondent was proceeded ex-parte.

#### **4. THE RESPONDENT'S DEFAULT**

4.1 The Respondent failed to reply to the notice regarding the complaint. It is a well-established principle that once a Complainant makes a prima-facie case showing that a Respondent lacks rights to the domain name at issue; the Respondent must come forward with proof that it has some legitimate interest in the domain name to rebut this presumption. The disputed domain name in question is "bayers.in".



- 4.2 The INDRP Rules of Procedure require under Rule 8(b) that the arbitrator must ensure that each party is given a fair opportunity to present its case. Rule 8(b) reads as follows :

*"In all cases, the Arbitrator shall ensure that the parties are treated with equality and that each party is given a fair opportunity to present its case."*

- 4.3 The Respondent was notified of this administrative proceeding per the Rules. The .IN Registry discharged its responsibility under Rules paragraph 2(a) to employ reasonably available means calculated to achieve actual notice to the Respondent of the complaint.

- 4.4 The panel finds that the Respondent has been given a fair opportunity to present his case. The Respondent was given direction to file a reply to the complaint if any, but the Respondent neither gave any reply to notice nor to the complaint despite repeated opportunities. The 'Rules' paragraph 12 states, "In the 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 the law." In the circumstances, the panel's decision is based upon the Complainant's assertions, evidence, inferences, and merits only as the Respondent has not replied despite repeated opportunities given in this regard and is proceeded ex parte.

5. **BACKGROUND OF THE COMPLAINANT & ITS SUBMISSIONS ABOUT THE TRADEMARK "BAYER", ITS STATUTORY AND COMMON LAW RIGHTS ADOPTION :**

5.1 The Complainant, in the present arbitration proceedings to support their case, has relied and placed on records documents as Annexures and made the following submissions :

5.1.1 The Complainant submits that it is a global enterprise with core competencies in the fields of healthcare, nutrition and plant protection with global headquarter in Germany. The Complainant submits its stock is included in nearly all the major share indices, traded on all German stock exchanges and included in the DAX 40, a Blue-Chip stock market index consisting of the 40 major German companies trading on the Frankfurt Stock Exchange.

5.1.2 The complainant submits that company name BAYER dates back to 1863, when the firm of "Friedrich Bayer & Co." was established in the town of Elberfeld, now part of the city of Wuppertal in Germany. In 1881, the name was transferred to a stock corporation called "Farbenfabriken vorm. Friedrich Bayer & Co.". This company began manufacturing and marketing pharmaceutical products in 1888 and has sold such products under the BAYER trademark ever since that time.

5.1.3 The Complainant submits that it is represented by over 354 consolidated companies in 83 countries and has more than 101,000 employees worldwide. The Complainant, itself or through the subgroups like Health Care and Crop Science, does business on all five continents, manufacturing

and selling numerous of products, inter alia human pharmaceutical and medical care products, diagnostic products, and agricultural chemicals. The Complainant provides information on its company online inter alia at <https://www.bayer.com/>. The Complainant submits that in India, the Complainant's maintains a subsidiary under the name Bayer Crop Science Limited, which is located at Bayer House, Central Avenue, Hiranandani Estate, Thane (West) - 400607, Maharashtra, India. The Complainant further submits that company is regularly listed beyond the world's leading companies in various categories.

#### **TRADEMARK REGISTRATIONS BY THE COMPLAINANT**

5.1.4 The Complainant submits that it is the owner of about 700 registrations and pending applications of the word mark "BAYER" alone, including the international trademark no. 1462909 for "BAYER" registered since November 28, 2018, which is in force inter alia in India. It is submitted by the complainant that the Complainant's registrations cover an extensive range of goods and services.

5.1.5 The Complainant submits that complainant has a strong presence on the Internet. The Complainant and its subsidiaries own hundreds of domain name registrations containing the BAYER Mark, including <bayer.com>, <bayer.in>, <bayer.com.au>, <bayer.co>, <bayer.be>, and <bayer.us>. Due to the Complainant's global online use of its BAYER Mark, such mark is obviously and solely



connected with the Complainant. A search for the query "bayer" at the website [www.google.co.in](http://www.google.co.in) shows that nearly all of the search results refer to the Complainant or its subsidiaries.

5.1.6 The Complainant submits that as a result of the exclusive and extensive use, the Complainant's BAYER Marks have acquired a significant goodwill and are widely known. It is further submitted by the complainant that Previous decisions decided under the UDRP for more than 20 years have found that the Complainant's BAYER Marks are well-known. The complainant in support of his submissions has relied on the following decisions:

WIPO decision D2001-0205 <[www.bayer.com](http://www.bayer.com)>;  
WIPO decision D2002-0138 <[bayer-healthcare.org](http://bayer-healthcare.org)> et al.; WIPO decision DRO2005-0006 <[bayer.ro](http://bayer.ro)>; WIPO decision D2006-1349 <[bayer-schering.com](http://bayer-schering.com)>; WIPO decision D2009-0484 <[bayermedical.com](http://bayermedical.com)>; WIPO decision D2011-0201 <[bayercontour.com](http://bayercontour.com)>; WIPO decision DAE2012-0004 <[bayer.ae](http://bayer.ae)>; WIPO decision D2012-2492 <[bayergardenshop.com](http://bayergardenshop.com)>; WIPO decision D2013-1286 <[bayerdca2000.com](http://bayerdca2000.com)> et al.; WIPO decision D2014-1991 <[bayerdemexico.com](http://bayerdemexico.com)>; WIPO decision D2015-1932 <[bayer.online](http://bayer.online)>; WIPO decision D2016-2354 <[bayermonsanto.com](http://bayermonsanto.com)>; WIPO decision D2017-0328 <[bayer-mon1santo.org](http://bayer-mon1santo.org)>; WIPO decision D2017-1706 <[bayermaterialssciencenafta.com](http://bayermaterialssciencenafta.com)>; WIPO decision D2018-2676 <[ger-bayer.com](http://ger-bayer.com)>; WIPO decision D2019-2576 <[bayer.shop](http://bayer.shop)>; WIPO decision D2020-0051 <[bayer-canada.com](http://bayer-canada.com)>; WIPO decision D2021-2726 <[crop1science-bayer.com](http://crop1science-bayer.com)>; WIPO decision D2022-0514 <[agro-bayerpl.com](http://agro-bayerpl.com)>

## 6. THE ISSUES INVOLVED IN THE DISPUTE

6.1 The Complainant in its complaint has invoked paragraph 4 of the INDRP, which reads :

### **"Types of Disputes**

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

*The disputed domain name is identical or confusing similar to a trademark in which the Complainant has statutory/common law rights.*

*The Respondent has no rights or legitimate interests in respect of the disputed domain name.*

*The disputed domain name has been registered or is/ are being used in bad faith."*

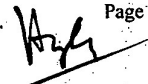
- 6.2 The above-mentioned 3 essential elements of a domain name dispute are being discussed hereunder in light of the facts and circumstances of this complaint.

### **7. PARTIES' CONTENTIONS**

- 7.1 **The domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.**

#### **COMPLAINANT**

- 7.2 The Complainant submits that the disputed domain name is confusingly similar to the Complainant's BAYER Marks. The disputed domain name includes the Complainant's BAYER Marks, the additional letter "s", and the Top-Level-Domain ".in". The Complainant further submits that, it is well established that the specific top level of a domain name such as ".in", ".co.in" etc. does not affect the domain name for the



purpose of determining whether it is identical or confusingly similar. The Complainant has relied on decisions in INDRP/1661 <teavana.co.in>; INDRP/1681 <ixigo.co.in>; INDRP/1674 <orbimed.in>; INDRP/1658 <thombrowne.co.in>; INDRP/1651 <omcpower>; INDRP/1642 <facebook.co.in>

- 7.3 The Complainant submits that the fact that disputed domain name includes the additional letter "s" does not eliminate the similarity between the Complainant's trademark and the disputed domain name as well. The Complainant submits that it is well established that a domain name is confusingly similar to a trademark despite the addition of an additional "s" at the end and has relied on INDRP decision INDRP/ 1408 <whatsapp.in>; INDRP/1302 <youtubes.in>; INDRP /998 <accentures.in>. The Complainant submits as a result, it is clear that the disputed domain name is confusingly similar to the BAYER Marks under paragraph 4(a) of the INDRP Policy.

#### **RESPONDENT**

- 7.4 The Respondent has not replied to Complainant's contentions.

#### **8. PANEL OBSERVATIONS**

- 8.1 This Panel on pursuing the documents and records submitted by Complainant observes that the complainant is a global enterprise with core competencies in the fields of healthcare, nutrition and plant protection. It is further observed that the Complainant, itself or through the subgroups like Health Care and Crop Science, does business on all over the world,



manufacturing and selling numerous products, inter alia human pharmaceutical and medical care products, diagnostic products, and agricultural chemicals under its brand "BAYER".

8.2 This panel observes that the Complainant has common law as well as statutory rights in its trade/service mark "BAYER". It is also observed by this panel that the Complainant has successfully secured registrations for the BAYER mark all over the world including India. The Complainant has proved that it has trademark rights and other rights in the mark "BAYER" by submitting substantial documents in support of it.

8.3 It is observed by this panel that the trademark "BAYER" in the Disputed Domain Name "bayers.in" comprises the Complainant's trademarks in their entirety has the potential to cause consumer confusion and will cause the user to mistakenly believe that it originates from, is associated with or is sponsored by the Complainant. The disputed domain name includes the additional letter "s" after complainant's Trademark "bayer" and that does not eliminate the similarity between the Complainant's trademark and the disputed domain name. It is further observed by this panel that suffix "in" is not sufficient to escape the finding that the domain is confusingly similar to Complainant's trademark.

8.4 This panel, therefore, is of opinion that the disputed domain name "BYAYERS.IN" being identical/confusingly similar to the trademark of Complainant will mislead the public and will cause an unfair advantage to



Respondent. The Panel is of the view that there is a likelihood of confusion between the disputed domain name and the Complainant, its trademark, and the domain names associated. The disputed domain name registered by the Respondent is confusingly similar to the trademark "BAYER" of the Complainant.

8.5 It is the responsibility of the Respondent to find out before registration that the domain name he is going to register does not violate the rights of any proprietor/brand owner and the Respondent has miserably failed in following this condition.

8.6 This Panel, therefore, in light of the contentions raised by the Complainant concludes that the disputed domain name is confusingly similar to the Complainant marks. Accordingly, the Panel concludes that the Complainant has satisfied the first element required by Paragraph 4(a) of the INDR Policy.

**The Registrant/Respondent has no rights or legitimate interest in respect of the disputed domain name.**

#### **COMPLAINANT**

8.7 The Complainant submits that the Registrant has no rights or legitimate interests in respect of the domain name. The Complainant states that Paragraph 6 of the Policy sets out three illustrative circumstances, which, although not exclusive, are evidence of the registrant's rights to or legitimate interests in the domain name for the purposes of paragraph 4(b) of the Policy, i.e. :

(a) before any notice to the Registrant of the dispute, the Registrant's use of, or demonstrable preparations to use the domain name or a name corresponding

to the domain name in connection with a bona fide offering of goods or services;

(b) the Registrant (as an individual, business, or other organization) has been commonly known by the domain name, even if the Registrant has acquired no Trade mark or Service Mark rights; or

(c) the Registrant is making a legitimate non-commercial or fair use of the domain name, without the intention of commercial gain by misleadingly or diverting consumers or to tarnish the Trademark or Service Mark at issue.

8.8 The Complainant submits that even though the Policy requires the complainant to prove that the respondent has no rights or legitimate interests in the disputed domain name, it is the consensus view that a complainant has to make only a prima facie case to fulfil the requirements of paragraph 4(b) of the Policy. As a result, the burden of proving that the respondent has rights or legitimate interests in the disputed domain name will then shift to the respondent. In this regard the complainant has relied on the decision of INDRP decision INDRP/103 <ampnetconnect.co.in>; INDRP decision INDRP/106 <digitalbroadcom.co.in>; INDRP decision INDRP/116 <eurocopter.in>; INDRP decision INDRP/130 <tenneco.co.in>; INDRP decision INDRP/912 <potterbernkids.in>; INDRP decision INDRP/910 <westelm.in>; INDRP/1672 <makemytrips.co.in>; INDRP/1659 <makesmytrip.in>; INDRP/1667 <novartisevent.in>; INDRP/1643 <facebookliker.in>;

INDRP/1631 <whatsappmarketing.in>; INDRP/1651  
<omcpower.in>

8.9 The Complainant submits that it has not licensed or otherwise permitted the Respondent to use any of its trademarks and has not permitted the Respondent to apply for or use any domain name incorporating the BAYER Marks. The word "BAYER" is highly distinctive and obviously connected with the Complainant's products and is not a word a trader would legitimately choose unless seeking to create an impression of an association with the Complainant.

8.10 The Complainant further submits that there is no evidence of the Respondent's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services. In fact, the disputed domain name is not actively used at all. Furthermore, the Respondent - to the best of the Complainant's knowledge - has not been commonly known by the disputed domain name or under BAYERS, as required under paragraph 6(b) of the Policy.

8.11 The Complainant further submits that the Respondent's use of the disputed domain name in the way set out above is also not a legitimate non-commercial or fair use of the domain name under paragraph 6(c) of the Policy.

8.12 The Complainant submits that under these circumstances, there is no doubt that the Respondent has no rights or legitimate interests in respect of the disputed domain name and that the requirement of paragraph 4(b) of the Policy is also satisfied.

## **RESPONDENT**

8.13 The Respondent has not replied to Complainant's contentions.

### **9. PANEL OBSERVATIONS**

9.1 This Panel holds that the second element that the Complainant needs to prove and as is required by paragraph 4(b) of the INDRP is that the Respondent has no legitimate right or interests in the disputed domain name.

9.2 This panel observes that the Complainant by placing documents/records and evidence along with the complaint has been able to prove that the Complainant is doing its business under the mark 'BAYER' in many countries including India. The Complainant by its priority in adoption, goodwill, and long, continuous and extensive use of the mark, the Complainant has acquired the exclusive right to the use of the 'BAYER' mark in respect of its business.

9.3 Whereas, it is observed by this panel that the Respondent has failed to rebut the allegations of the Complainant that it has not licensed or otherwise permitted the Respondent to use any of its trademarks and has not permitted the Respondent to apply for or use any domain name incorporating the BAYER Marks.

9.4 It is also observed by this panel that the Respondent has failed to rebut the contention of the Complainant that there is no evidence of the Respondent's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection

with a bona fide offering of goods or services. The Respondent has further failed to rebut the contentions of the Complainant that the disputed domain name is not actively used at all and, the Respondent - to the best of the Complainant's knowledge - has not been commonly known by the disputed domain name or under BAYERS as required under paragraph 6(b) of the Policy.

9.5 Once the Complainant makes a prima facie case showing that the Respondent does not have any rights or legitimate interest in the domain name, the burden to give evidence shifts to the Respondent to rebut the contention by providing evidence of its rights or interests in the domain name. The Respondent has failed to place any evidence to rebut the allegations of the Complainant.

9.6 It is further observed by this panel that para 6 of the .IN Domain Name Dispute Resolution Policy (INDRP) states :

*"Any of the following circumstances, in particular, but without limitation, if found by the Arbitrator to be proved based on its evaluation of all evidence presented, shall demonstrate the Registrant's rights to or legitimate interests in the domain name for Clause 4 (b) :*

*(a) before any notice to the Registrant of the dispute, the Registrant's use of, or demonstrable preparations to use the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services;*  
*(b) the Registrant (as an individual, business, or other organization) has been commonly known*

*by the domain name, even if the Registrant has acquired no trademark or service mark rights; or (c) the Registrant is making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue."*

- 9.7 This panel observe that the Respondent also failed to full fill any of the requirements as mentioned in para 6 of INDRP Policy which demonstrates the Registrant's rights to or legitimate interests in the domain name for Clause 4 (b): For these reasons, the Panel holds that the Complainant has proved that the Respondent does not have any rights or legitimate interests in the disputed domain name "BAYERS.IN".

***The disputed domain name has been registered or is/ are being used in bad faith.***

**COMPLAINANT**

- 9.8 The Complainant submits that the Respondent has registered and is using the disputed domain name in bad faith. The complainant submits that Paragraph 7 of the Policy sets out four illustrative circumstances, which, although not exclusive, are evidence of the registration and use of the domain name in bad faith for the purposes of paragraph 4(c) of the Policy, i.e. :
- (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 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; or
- (d) The Registrant has registered the domain name primarily for the purpose of disrupting the business of a competitor.

9.9 The Complainant submits that the Respondent does not conduct any legitimate commercial or non-commercial business activity. The Complainant's highly distinctive BAYER Marks have a strong reputation and are widely known, including India, where the Respondent is located.

9.10 The Complainant further submits that based on the Complainant's worldwide fame and the fact, that the Respondent's included the organization name



"pharmaceutical" in the WHOIS, which clearly points to the Complainant as a major pharmaceutical company, it is inconceivable that the Respondent registered the disputed domain name unaware of the Complainant's rights in its BAYER Marks and reasonable to infer that the Respondent has registered the disputed domain name with full knowledge of the BAYER Marks and therefore in bad faith as required under paragraph 4(c) of the Policy.

9.11 The Complainant submits that the fact, that the disputed domain name is not actively used but merely passively held does not obstruct a finding of bad faith use under the Policy as, in the present case, such passive holding of domain name is equal to active use. The Complainant submits that there is consensus view among Panelists that the element of use in bad faith is satisfied not only if a domain name is actively being used on the Internet, but also if in the light of the overall circumstances of the domain registration, the passive holding of a domain name equates with an active use of a domain name. The Complainant has relied on WIPO decision D2000-0003 <telstra.org>; INDRP decision <delonghi.in>; INDRP decision INDRP/1706 <sonyze.co.in>; INDRP decision <cic-securities.in>.

9.12 The Complainant submits that the circumstances in this case clearly justify the equation of passive holding and active use, because :

- The Complainant's BAYER Marks are highly distinctive and well-known;
- The Respondent had provided no evidence whatsoever of any actual or contemplated good faith use; and

- From all of the circumstances, there does not appear to be any possible or conceivable good faith use of the disputed domain name that would not be illegitimate.

9.13 The Complainant submits that as the elements expressly mentioned in paragraph 7 of the Policy are non-exhaustive, practice has regarded a number of other indications and aspects to indicate a respondent's bad faith :

- Where a domain name is found to have been registered with the intention to attract Internet users by exploiting the fame of a well-known trademark, it constitutes bad faith registration. See INDRP decision INDRP/125 <lego.co.in> - The registration of a domain name that is confusingly similar or 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. The Complainant has relied on INDRP decision INDRP/119 <msn.com>; INDRP decision INDRP/130 <tenneco.co.in>; INDRP/1643 <facebookliker.in>; INDRP/1631 <whatsappmarketing.in>; INDRP/1658 <thombrowne.co.in> -

9.14 The Complainant submits that the Respondent ought to have been aware when it registered the disputed domain name that such registration would impede the use of the disputed domain name by the legitimate owner of the trademark, which is found to be bad faith and has relied on INDRP decision INDRP/125 <lego.co.in>; INDRP/1643 <facebookliker.in>.

9.15 The Complainant submits that the Respondent has registered and used the disputed domain name in bad faith and that the requirement of paragraph 4(c) of the Policy is also satisfied.

#### **RESPONDENT**

9.16 The Respondent has not replied to Complainant's contentions.

#### **10. PANEL OBSERVATION**

10.1 Paragraph 7 of the INDRP provides that the following circumstances are deemed to be evidence that Respondent has registered and used a domain name in bad faith :

- “(a) Circumstances indicating that the Respondent has registered or has acquired the domain name primarily for 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 over the Registrar's documented out of pocket costs directly related to the domain name; or*
- (b) the Respondent has registered the domain name to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the Respondent has engaged in a pattern of such conduct; or*
- (c) by using the domain name, the Respondent has intentionally attempted to attract internet users to its website or other online location, by creating a likelihood of*

*confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of its Website or location or a product or services on its website or location."*

10.2 This panel while going through the complaint and documents which are placed in the form of annexures has observed that the Respondent registered the disputed domain name in February 2023, by which time the Complainant has been using the mark BAYER mark for many years. It is observed by this panel that the Complainant has statutory and common law rights in the mark BAYER worldwide including in India and Complainant is also using the BAYER mark on the internet, in other domain names, and as a trading name before registration of disputed domain name. It is observed by this panel that given the above-mentioned facts and circumstances, it is impossible to conceive that the Respondent could have registered the disputed domain name in good faith or without knowledge of the Complainant's rights in the mark BAYER.

10.3 It is further observed by this panel that the Respondent has failed to rebut the allegation of the Complainant that, the Respondent does not conduct any legitimate commercial or non-commercial business activity and based on the Complainant's worldwide fame as a major pharmaceutical company, the Respondent included the organization name "pharmaceutical" in the WHOIS.

10.4 It is further observed by this panel that the Respondent has failed to rebut the allegation of the Complainant that, it is inconceivable that the



Respondent registered the disputed domain name unaware of the Complainant's rights in its BAYER Marks and it is reasonable to infer that the Respondent has registered the disputed domain name with full knowledge of the BAYER Marks and therefore criteria of bad faith as required under paragraph 4(c) of the Policy.

- 10.5 The Complainant has rightly established that the Respondent registered the disputed domain name "BAYERS.IN" in bad faith with contention that the Respondent provided no evidence whatsoever of any actual or contemplated good faith use; and also passive holding of domain name is equal to active use. The Respondent's domain name registration meets the bad faith elements outlined in para 4 (c) of the INDRP Policy. Therefore the Panel concludes that the registration by Respondent is in bad faith. Consequently, it is established that the disputed domain name was registered in bad faith or used in bad faith and the Respondent has wrongfully acquired/registered the domain name in its favor in bad faith.

## **11. REMEDIES REQUESTED**

- 11.1 The Complainant has prayed to this Administrative Panel that the domain name <BAYERS.IN> be transferred to the complainant and imposing of the cost on the Respondent.

## **12. DECISION**

- 12.1 The following circumstances are material to the issue in the present case :

Through its contentions based on documents/ records and evidence, the Complainant has been able to establish that the mark "BAYER" is a well-known name globally including in India in the field of manufacturing and selling numerous products, inter alia human pharmaceutical and medical care products, diagnostic products, and agricultural chemicals. The Complainant has established that the trademark BAYER is inherently distinctive of the products and business of the Complainant and it has secured trademark protection for BAYER by registering trademarks in many countries.

12.2 The Respondent, despite repeated opportunities given, has failed to provide any evidence that it has any rights or legitimate interests in respect of the domain name, and the Respondent is related in any way to the Complainant. The Respondent has provided no evidence whatsoever of any actual or contemplated good faith use of the Disputed Domain Name.

12.3 The Complainant by its contentions has been able to prove, that by passive holding of the disputed domain name without any actual or contemplated good faith use of the Disputed Domain Name, *the disputed domain name has been registered by the Respondent in bad faith.* The addition of the word "s" after complainant's well known registered trade mark "bayer" also indicate that *disputed domain name has been registered by the Respondent in bad faith.* It is unbelievable that while adding the word "s" the Respondent was not aware of the complainant's rights in mark "bayer".



12.4 The Respondent failed to comply with Para 3 of the INDRP, which requires that it is the responsibility of the Respondent to ensure before the registration of the impugned domain name by him that the domain name registration does not infringe or violate someone else's rights. The Respondent should have exercised reasonable efforts to ensure there was no encroachment on any third-party rights.

12.5 Taking into account the nature of the disputed domain name with addition to the word 's' and in particular, the ".in" extension alongside the Complainant's mark which is confusingly similar, which would inevitably associate the disputed domain name closely with the Complainant's group of domains in the minds of consumers, all plausible actual or contemplated active use of disputed Domain Name by the Respondent is and would be illegitimate.

12.6 This panel is of the view that it is for the Complainant to make out a prima facie case that the Respondent lacks rights or legitimate interests. Once such a prima facie case is made, the Respondent carries the burden of demonstrating rights or legitimate interests in the domain name but the Respondent has miserably failed to do that. The Respondent's registration of the domain name **[bayers.in]** is in bad faith. The Respondent has no rights or legitimate interests in respect of the domain name and also the domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.



**RELIEF**

Following INDRP Policy and Rules, this Panel directs that the disputed domain name **[BAYERS.IN]** be transferred from the Respondent to the Complainant, requesting NIXI to monitor the transfer.

New Delhi, India  
Dated: January 18, 2024

  
[AJAY GUPTA]  
Sole Arbitrator