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INDIA NON JUDICIAL

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Description of Document : Article 12 Award
Property Description : Not Applicable
Consideration Price (Rs.) : 0
(Zero)
First Party : SUDHIR KUMAR SENGAR
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INDRP ARBTRATION

THE NATIONAL INTERNET EXCHANGE OF INDIA [NIXI]

ADMINISTRATIVE PANEL DECISION

SOLE ARBITRATOR: SUDHIR KUMAR SENGAR

NOVARTIS AG

Vs

Ding Ding, DINGCORP

ARBITRATION AWARD Disputed Domain Name: SANDOZ.CO.IN

Statutory Alert:

1. The authenticity of this Stamp certificate should be verified at www.shoestamp.com or using e-Stamp Mobile App of Stock Holding.
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3. In case of any discrepancy please inform the Competent Authority.

1. The Parties

The Complainant in this administrative proceedings is NOVARTIS AG, CH - 4002 Basel, Switzerland. The Complainant, in these proceedings, is represented by its authorized representative Dreyfus & Associates, 78 Avenue Raymond Poincare, 75116, Paris, France (Email: contact@dreyfus.fr, Telephone: +33(0)144700704).

The Respondent is Ding DING Dingcorp, California, 516000, United States (Email: chromebooks@hotmail.com, Telephone: +86-17172121151).

2. Domain Name and Registrar

(i) The disputed domain name is < sandoz.co.in >.

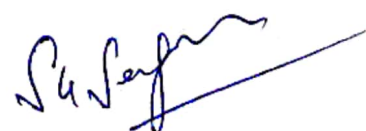
(ii) The Registrar with whom the domain name is registered is Dynadot LLC, Post Box No 345, San Mateo, CA 94401, United States (Telephone: +1 6502620100, E-mail: info@dynadot.com)

3. Procedural History

The arbitration proceedings is in accordance with the .IN Domain Name Dispute Resolution Policy (the policy) adopted by National Internet Exchange of India ("NIXI") and INDRP Rules of Procedure ("the Rules") which were approved on June 28, 2005 in accordance with the Indian Arbitration and Conciliation Act, 1996. By registering disputed domain name with a NIXI registrar, the respondent agreed to the resolution of disputes pursuant to the Policy and the Rules.

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

On Aug 05, 2022, I submitted the statement of Acceptance and Declaration of impartiality and independence, as required by NIXI to ensure compliance with Paragraph 6 of Rules. NIXI notified the parties of my appointment as Arbitrator via email on Aug 5, 2022 and served an electronic copy of the complaint on the respondent. I informed the Parties about commencement of arbitration proceedings on Aug 5, 2022 and the Respondent was directed to submit a response to the arbitration notice within 10 (ten) days. On 07.08.2022, the Complainant submitted exemption of sending the hard copies of the complainant to the respondent intimating that the complainant, its representative and the respondent are located in different countries and it will cause delay in arbitration proceedings and additional cost to the Complainant. The Complainant was granted waiver for sending hard copies of the complainant in view of pandemic situation still prevailing in many countries and directions to ensure delivery of soft copies of complainant to the respondent. The Complainant submitted proof of delivery of soft copies of the complaint to the respondent on 09.8.2022. The service of notices/summons/complaint through electronic mode such as email is considered valid and sufficient and is an established and acceptable practice in India. The complainant has properly served the copies of the complaint on the respondent by email on chromebooks@hotmail.com. The Complainant's submission of proof of delivery of Complaint to the Respondent through email fulfills the conditions required in accordance with INDRP Rules of Procedure Paragraph 3(d).



The Respondent failed to submit reply to the arbitration issued on 05.08.2022 within the stipulated time. The Respondent was given another opportunity through email dated 16.08.2022 and was directed to file his response within another 5 days (five days). The Respondent failed to submit any reply within the extended time line. In fact the Respondent has not submitted any response till date.

4. Grounds for Administrative Proceedings

- (i) The disputed domain name is identical to Complainant's trademarks.
- (ii) The respondent has no rights or legitimate interests in respect of the domain name.
- (iii) The registered domain name has been registered or being used in bad faith.

5. Background of the Complainant

The Complainant Novartis AG, having its office in CH - 4002 Basel, Switzerland, is a global healthcare company based in Switzerland that provides solutions to address the evolving needs of patients worldwide. The Complainant submitted that it was created in 1996 through a merger of Ciba-Geigy and Sandoz. The Complainant further submitted that Novartis and its predecessor companies trace roots back more than 250 years, with a rich history of developing innovative products. The Complainant further submitted that from beginnings in the production of synthetic fabric dyes, the companies that eventually became Novartis branched out into producing chemicals and ultimately pharmaceuticals. The Complainant further submitted that Novartis uses innovative science and digital technologies to create transformative treatments in areas of great medical need and in its quest to find new medicines; it consistently ranks among the world's top companies investing in research and development. The Complainant submitted that Novartis products reach more than 750 million people globally and is finding innovative ways to expand access to its latest treatments. The Complainant further submitted that Novartis purpose is to reimagine medicine to improve and extend people's lives and its vision is to be a trusted leader in changing the practice of medicine. The Complainant further submitted that its strategy is to focus Novartis as a leading medicines company powered by advanced therapy platforms and data science and it provides healthcare solutions that address the evolving needs of patients and societies worldwide. The Complainant further submitted that Novartis products are available in about 155 countries, reached nearly 1 billion people globally in 2017. The Complainant further submitted that about 126 000 people of 145 nationalities work at Novartis around the world and Novartis has an international presence including in the United States and has several offices/subsidiaries



located in America. The Complainant submitted that Novartis Corporation is a wholly owned subsidiary of Novartis AG and it develops pharmaceutical, consumer health, generic and eye care. The Complainant further submitted that Novartis' US presence extends from coast to coast and Novartis campuses are designed to foster a world-class work environment and promote a culture of collaboration and innovation to help continually meet the evolving needs of patients, customers and the communities they serve. The Complainant further submitted that about 110 000 people of more than 140 nationalities work at Novartis around the world & in the US, Novartis has nearly 16000 full-time equivalent employees in skilled positions, including more than 5,500 scientist, physicians and other R&D professionals. The Complainant submitted that Novartis is present worldwide, including India and Biome India is a digital lab powered by Novartis which aims to bring together and empower technology companies and people who are passionate about disrupting healthcare through data and digital technologies. The Complainant further submitted that apart from workspace, Biome will also provide state-of-the-art IT sandbox infrastructure that will host a series of emerging technologies to promote collaboration and innovation. The Complainant further submitted that Biome aims to scale up, complement and enhance the progress made by startups and health innovators in India. The Complainant further submitted that powering productivity through innovation, data, and process expertise, Customer and Technology Solutions (CTS) delivers high-quality business services to all of Novartis in areas such as IT, Procurement, HR, Product Lifecycle Services (PLS), Financial Reporting and Analytics (FRA), and Real Estate and Facility Services (REFS) and India hosts all of the key CTS functions for Novartis worldwide by combining deep functional expertise with advanced, integrated data analytics to deliver an innovative and data-driven approach to business services thus playing a critical role in the delivery of the Novartis mission . The Complainant submitted that India hosts one of the three global drug development centers for Novartis worldwide and Novartis combine deep therapeutic area knowledge with advanced, integrated data analytics to drive an agile approach to drug development. Further they support critical components of the drug development process across the broad, integrated pipeline of Novartis including pharmaceuticals, cancer treatments, generics, and biosimilars. The Complainant further submitted that Novartis India is also part of the Netra Suraksha initiative - India Against Diabetes campaign which aims to increase awareness about the risks of eye disorders due to diabetes and educate patients with diabetes to get their eyes checked regularly to minimize the risk of preventable blindness and this initiative will lead to actionable conversations involving leading medical experts, leaders, think tanks and policy maker.

Policy makers. The Complainant further submitted that Sandoz, the generic pharmaceuticals division of Novartis, is a worldwide leader in generic pharmaceuticals and biosimilars. The Complainant submitted that with a history of more than 120 years, Sandoz is a trusted leader with a reputation for exceptional quality and Sandoz's strategic and customer-focused approach to developing, producing and marketing high-quality affordable medicines, has successfully made it one of the two largest and most respected generics companies worldwide. The Complainant further submitted that Sandoz's medicines are already available to 90 percent of people across the world and Sandoz is committed to further increase global access to affordable healthcare. The Complainant submitted that in 2019, Sandoz' products reached well over 500 million patients worldwide and Sandoz contributes to society's ability to support growing healthcare needs by pioneering novel approaches to help people around the world access high-quality medicine. The Complainant submitted that The Sandoz global portfolio comprises approximately 1,100 molecules, which accounted for 2020 sales of USD 9.6 billion and Sandoz holds the global #1 position in biosimilars as well as in generic anti-infectives, ophthalmics and transplantation medicines. The Complainant further submitted that along with its presence in the United States, Sandoz is also very active in India, with multiple offices and manufacturing sites. The Complainant further submitted that Sandoz Private Limited Private, incorporated on 30 March 1995, is classified as Non-govt company . The Sandoz Private Limited is registered at Registrar of Companies, Mumbai and is involved in Manufacture of other chemical products .The Complainant further submitted that Complainant's attention was drawn by the registration of the domain name <sandoz.co.in> which entirely reproduces its trademark SANDOZ without adding any generic term that could reduce the risk of confusion among Internet users. The Complainant further submitted that on the contrary, reproduction of the trademark SANDOZ along with the extension ".co.in" increases the likelihood of confusion as Internet users may be led into believing that the domain name is endorsed by Complainant or that it will direct them to an official website displaying Complainant's products intended for the Indian market. The Complainant submitted that the disputed domain name directs Internet users towards a parking page displaying sponsored links related to medications and monoclonal therapy, directly targeting Complainant's field of activity. The Complainant further submitted that , when detected, the domain name <sandoz.co.in> was configured with the email servers: mx76.mb1p.com 134.209.79.108 ; mx76.mb1p.com 2001:430:fff6::2 ; mx76.m2bp.com134.209.79.108 and mx76.m2bp.com 2001:430:fff6::3

increasing the risk of phishing activities. The Complainant submitted that before starting the present proceeding, Complainant made some efforts to resolve this matter amicably. The Complainant further submitted that "having performed the preliminary research and in order to secure the situation, Complainant sent a cease and desist letter to Respondent on September 15, 2021, asserting its trademark rights and asking them to cease the use of the domain name <sandoz.co.in>, as well as to proceed with its transfer to Complainant free of charge. The Respondent replied to Complainant's request with a sale offer in the amount of 1890 EUR. Having insisted with Respondent to transfer the disputed domain name free of charge in order to reach an amicable solution, the latter refused to settle and threatened Complainant with launching cyber attacks if the matter is taken to further arbitration." The Complainant further submitted that, in view of the seriousness of the case and Respondents threats, as no amicable settlement could be found, Complainant has no other choice but to initiate an INDRP procedure against Respondent in order to obtain the transfer of the disputed domain name and to eradicate any additional risk of illegal and infringing use of the disputed domain name.

The Respondent

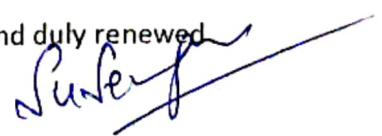
The Respondent is Ding Ding, Dingcorp, California, 516000, United States (Email: chromebooks@hotmail.com; Telephone: +86-17172121151); A-3 JiaZhaoYe, ZiyangBei, Heicheng District, HuiZhao, Guangdong, China). The Respondent has registered the disputed domain name <sandoz.co.in>.

6. Legal Grounds

A. The domain name registered by Respondent is identical to the trademarks of Complainant. (Policy, para.4 (i); Rules, para. 3(b)(vi)(1))

Complainant's Contentions

The Complainant contends that the Complainant and its trademark SANDOZ enjoy a worldwide reputation and the Complainant owns numerous SANDOZ trademark registrations around the world, as well as in the United States and India. The Complainant further contends that Complainant is in particular the owner of the trademark registrations Indian trademark "SANDOZ" n° 1704440, dated June 27, 2008 and duly renewed, covering goods in class 5; Indian trademark "SANDOZ" n° 1199548, dated May 19, 2003 and duly renewed, covering goods in class 10; United States trademark SANDOZ n° 4179672, dated August 29, 2008 and duly renewed



covering services in class 42; The Complainant further contends that the Complainant operates, among others, the domain names -<sandoz.com> registered on January 6, 1993; <sandoz.in> registered on April 26, 2005 reflecting its trademark in order to promote its services. The Complainant further contends that the disputed domain name <sandoz.co.in> is virtually identical to Complainant's prior trademarks SANDOZ and the official domain name <sandoz.in> and the domain name <sandoz.co.in> reproduces Complainant's trademark SANDOZ in its entirety. The Complainant further contends that in many decisions, Panels considered that the incorporation of a trademark in its entirety may be sufficient to establish that a domain name is identical or confusingly similar to Complainant's registered trademark. The Complainant has relied on WIPO Case No. D2013-0150 Swarovski Aktiengesellschaft v. mei xudong; INDRP Case No. INDRP/493, <sandoz.in> decided on July 15, 2013, INDRP Case No. INDRP/887 <colgate.in> and INDRP Case No. INDRP/741 <goodyear.in>. The Complainant contends that in many decisions, it is well established that "Where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark". The Complainant has relied on WIPO Case No. D2011-1627, L'Oréal, Lancôme Parfums et Beauté & Cie v. Jack Yang ; WIPO Case No. D2010-1059, Rapidshare AG, Christian Schmid v. InvisibleRegistration.com, Domain Admin and WIPO Case No. D2000-0113, The Stanley Works and Stanley Logistics, Inc. v. Camp Creek Co., Inc.). The Complainant has also relied on section 1.7 of the WIPO Jurisprudential Overview 3.0. The Complainant further contends that the disputed domain name <sandoz.co.in> is virtually identical to Complainant's domain name <sandoz.in> easing eventual typing error by Internet users; thus, resulting to diversion from Complainant's site to that of Respondent. The Complainant further contends that the structure of the domain name <sandoz.co.in> enhances the false impression that this domain name is somehow officially related to Complainant, as it may be perceived as the official domain name differing only in the extension and the disputed domain name is likely to confuse Internet users into believing that the domain name will direct them to the official website or to a page providing information on Complainant's products. The Complainant has submitted that the disputed domain name <sandoz.co.in> has been registered in the TLD "co.in" and the presence of the suffix ".co.in" is not to be taken into account when assessing the likelihood of confusion between Complainant's trademark and the disputed domain name. The Complainant has further submitted that it is well established in domain name cases that the suffix to indicate the top level of



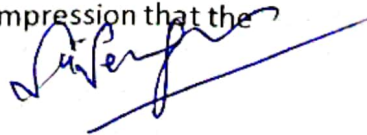
the domain name, such as “.co.in”, has to be disregarded for the purpose of determining whether the domain name is identical or confusingly similar to Complainant’s trademark. The Complainant has relied on INDRP Dispute Decision n°L-2/1/R1 <Pepsico.in>; INDRP Dispute Decision n°L-2/1/R4 <Mothercare.in> and INDRP Dispute Decision n°L-2/9/R4 <sensex.in> .The complainant has submitted that Complainant uses the trademark SANDOZ in connection with specific medical products around the world and consequently, the public has learnt to perceive the goods and services offered under these trademarks as being those of Complainant. The Complainant has further submitted that the public would reasonably assume that the disputed domain name would be owned by Complainant or at least assume that it is endorsed or in other way related to Complainant. The Complainant contends that with the registration of the disputed domain name, the Respondent created a likelihood of confusion with Complainant’s trademarks and it is likely that this domain name could mislead Internet users into thinking that this is, in some ways, associated with Complainant and thus may heighten the risk of confusion.

B. Respondent has no rights or legitimate interests in respect of the domain name.

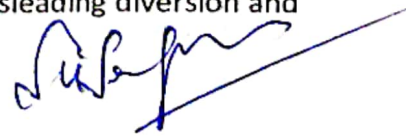
(Policy, paras. 4 (ii) and 7; Rules, para. 3(b)(vi)(2))

Complainant’s Contentions

The Complainant contends that the Respondent is neither affiliated with Complainant in any way nor has he been authorised or licensed by Complainant to use and register its trademarks, or to seek registration of any domain name incorporating the previously mentioned trademark. The complainant further contends that the Respondent is not known by the name of SANDOZ. The Complainant has submitted that in previous WIPO decisions, Panels found that in absence of any license or permission from the Complainant to use such widely known trademarks, no actual or contemplated bona fide or legitimate use of the domain name could reasonably be claimed. The Complainant has relied on WIPO Case No. D2013-0188, Groupe Auchan v. Gan Yu; WIPO Case No. D2010-0138, LEGO Juris A/S v. DomainPark Ltd, David Smith, Above.com Domain Privacy, Transure Enterprise Ltd, Host master. The Complainant further contends that the Respondent has no prior rights or legitimate interests in the disputed domain name. The Complainant further contends that the registration of the SANDOZ trademarks preceded the registration of the disputed domain name for years. The Complainant further contends that the domain name in dispute is virtually identical to the Complainant’s SANDOZ trademark and the official domain name <sandoz.in> so Respondent cannot reasonably pretend it was intending to develop a legitimate activity through the disputed domain name. The Complainant contends that in the present case, the composition of the domain name constitutes clear evidence that the Respondent wishes to give an overall impression that the



disputed domain name is related to Complainant and misleadingly divert consumers for fraud or commercial gain, therefore, such composition cannot constitute fair use, further demonstrating a lack of legitimate interests regarding said domain name. The complainant has submitted that the Respondent did not demonstrate use of, or demonstrable preparations to use, the disputed domain name in connection with a bona fide offering of goods or services. The Complainant further contends that the disputed domain name resolves to a parking page displaying commercial links relating to pharmaceutical products directly targeting Complainant's field of activity. The Complainant further contends that the Respondent fails to show that the non-commercial intention or the fair use of the disputed domain name and it is most likely to be believed that Respondent has no legitimate interest or rights in the disputed domain name. The Complainant further contends that the domain name in dispute directs Internet users to a parking page with pay-per-clicks which are likely to generate revenues. The Complainant further contends that it cannot be inferred that Respondent is making a legitimate non-commercial or fair use of disputed domain name. The Complainant has relied on WIPO Case No. D2009-1529, *Société nationale des télécommunications: Tunisie Telecom v. Ismael Leviste*, INDRP Case No. INDRP/167 <lazard.in>. The Complainant further contends that the Respondent has never been given the authorization from Complainant for developing such website that will lead Internet users into wrongly believing it is endorsed by Complainant and the diversion of Internet traffic to an illicit website in order to generate revenues, do not represent a use in connection with a bona fide offering of goods and services. The Complainant has submitted that the Respondent is not accurately disclosing its relationship with the trademark by falsely suggesting it is the trademark owner and its website is an official website, which is contrary to the Policy. The Complainant has relied on WIPO Case No. D2001-0903, *Oki Data Americas, Inc. v. ASD, Inc.* The Complainant further contends that the email servers have been configured on the disputed domain name <sandoz.co.in> and thus, there might have been a risk that Respondent is engaged in a phishing scheme, even more so considering Respondent's threats of launching cyber attacks if Complainant pursue this matter to further arbitration. The Complainant further contends that the disputed domain name is not used in any type of legitimate business or services and a legitimate non-commercial or fair use of the domain name cannot be inferred due to Respondent's clear intention for commercial gain. The Complainant further contends that the considering the exchanges with the Respondent, it appears that the only reason why the Respondent has registered the disputed domain name is for the purpose of selling it to Complainant for valuable consideration in excess of documented out-of-pocket costs directly related to the domain name. The Complainant further contends that the given Complainant's goodwill and renown worldwide, and the nature of the disputed domain name, which is confusingly similar to Complainant's trademark and virtually identical to the official domain name, it is not possible to conceive a plausible circumstance in which Respondent could legitimately use the disputed domain name, as it would invariably result in misleading diversion and taking unfair advantage of Complainant's rights.

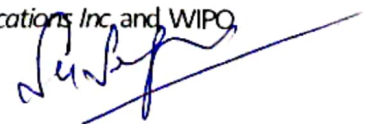


C. The domain name has been registered or is being used in bad faith.

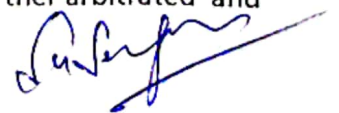
(Policy, paras. 4 (iii) and 6 ; Rules, para. 3(b)(vi)(3))

Complainant's Contentions

The Complainant contends that It is implausible that Respondent was unaware of Complainant when he registered the disputed domain name. The Complainant contends that bad faith can be found where respondent "*knew or should have known*" of Complainant's trademark rights and, nevertheless registered a domain name in which he had no rights or legitimate interests. The Complainant has relied on WIPO Case No. D2009-0320, *Research In Motion Limited v. Privacy Locked LLC/Nat Collicot* and WIPO Case No. D2009-0113, *The Gap, Inc. v. Deng Youqian*. The Complainant further contends that Complainant is well-known throughout the world, including the United States & India and secondly, the disputed domain name reproduces entirely Complainant's trademark SANDOZ and associates it with the extension ".co.in" increasing the likelihood of confusion. The Complainant further contends that it is impossible that Respondent was not aware of Complainant's trademarks and activities at the time of the registration of the disputed domain name. The Complainant contends that considering the fact that the disputed domain name is virtually identical to Complainant's official domain name <sandoz.in> differing only in the extension, which makes potential typing error by Internet users more likely to happen, and as result diverting the traffic from Complainant's site to the Respondent's. The Complainant further contends that bad faith has already been found where a domain name is so obviously connected with a well-known trademark that its very use by someone with no connection to the trademark suggests opportunistic bad faith. The Complainant has relied on WIPO Case No. D2010-0494, *LEGO Juris A/S v. Reiner Stotte* and WIPO Case No. D2006-0303 *Sanofi-Aventis v. Nevis Domains LLC*). The Complainant further contends that, given the reputation of the SANDOZ trademarks, registration in bad faith can be inferred and moreover, a quick SANDOZ trademark search would have revealed to Respondent the existence of Complainant and its trademarks. The Complainant further contends that the Respondent's failure to do so is a contributory factor to its bad faith. The Complainant has also relied on WIPO Case No. D2008-0226, *Lancôme Parfums et Beauté & Cie, L'Oréal v. 10 Selling*. The Complainant further contends that supposing that Respondent was not aware of the possibility of searching trademarks online before registering a domain name, a simple search via Google or any other search engine using the keyword "SANDOZ" demonstrates that all first results relate to Complainant's field of activities or news. The Complainant further contends that in this day and age of the Internet and advancement in information technology, the reputation of brands and trademarks transcends national borders. The Complainant further contends that taking into account the worldwide reputation of Complainant and its trademarks, it is hard to believe that Respondent was unaware of the existence of Complainant and its trademarks at the time of registration of the disputed domain name. The Complainant further contends that it has been held in previous cases that knowledge of a corresponding trademark at the time of registration of the domain name suggests bad faith. The Complainant has also relied on WIPO Case No. D2000-0270, *Document Technologies, Inc. v. International Electronic Communications Inc.* and WIPO



Case No. D2006-0464, *Caixa D'Estalvis I Pensions de Barcelona ("La Caixa") v. Eric Adam*). The Complainant further contends that previous Panels have established that knowledge of Complainant's intellectual property rights, including trademark, at the time of registration of a disputed domain name proves bad faith registration. The Complainant has also relied on WIPO Case No. D2008-0287, *Alstom v. Domain Investments LLC* and WIPO Case No. D2007-0077, *NBC Universal Inc. v. Szk.com*). The Complainant further contends that it can be presumed that many Internet users attempting to visit Complainant's website may have ended up on the site of Respondent. The Complainant further contends that as the disputed domain name is confusingly similar to Complainant's trademarks, previous Panels have ruled that "a likelihood of confusion is presumed, and such confusion result and such confusion result in the diversion of internet traffic from complainant's site to Respondent's site". The Complainant has also relied on WIPO Case No. D2012-1765, *MasterCard International Incorporated ("MasterCard") v. Wavepass AS* and WIPO Case No. D2006-1095, *Edmunds.com, Inc. v. Triple E Holdings Limited*). The Complainant further contends that there is little doubt in this case that, at all times, Respondent was not aware that SANDOZ enjoyed a substantial reputation worldwide. The Complainant further contends that the Respondent used the disputed domain name <sandoz.co.in> to direct Internet users and generate more traffic to a parking page displaying commercial links targeting Complainant's field of activity, that are likely to generate revenues. The Complainant further contends that the Respondent is intentionally attempted to attract Internet users to the its website for commercial gain by creating likelihood of confusion with the Complainant's mark and official domain name as to the affiliation or endorsement of either the Respondent or its website. The Complainant further contends that the Respondent's use of a domain name that is confusingly similar to the trademark SANDOZ may also prevent Internet users from accessing Complainant's official website by confusing prospective users and the Respondent is taking undue advantage of Complainant's trademark to generate profits. The Complainant further contends that the use of a well-known trademark to attract Internet users to a website for commercial gains constitutes a use in bad faith pursuant to the policy. The Complainant has also relied on WIPO Case No. D2007-0956, *F Hoffmann-La Roche AG v. Anna Valdieri* ; WIPO Case No. D2009-1231 *L'Oréal SA v. LV Kefeng*, and WIPO Case No. D2007-1736, *Alstom v. FM Laughna*). The Complainant further contends that the clear inference to be drawn from the Respondent's activities is that its intention to abusively benefit from Complainant's reputation and particularly from the latter's trademark SANDOZ to obtain commercial gains. The Complainant further contends that Respondent's immediate offer to sell the domain name despite having being summoned to transfer the domain name to Complainant free of charge through a cease-and-desist letter, without giving any reasons why he had registered the domain name or without contesting Complainant's trademark, are clear indications that he was aware of Complainant's trademark when he registered the disputed domain name and indeed, the Respondent has attempted to sell the domain name for a sum of 1890 EUR, which is in excess of the Respondent's out of pocket expenses in registering the domain name. The Complainant further contends that the Respondent has not only reiterated their offer to sell the domain name for the excessive sum, but they threatened Complainant with launching cyber attacks in case they are further arbitrated and



this behavior is a strong indication that the Respondent hoped to sell the domain name to the Complainant or to a competitor of Complainant, which is a clear evidence of registration and use in bad faith. The Complainant further contends that it is well established that the offer to sell a domain name in excess of the out of pocket expenses of the respondent in registering the domain names can be compelling evidence of bad faith registration and use. The Complainant has also relied on WIPO Case No. D2012-2183, *Imara Trade Marks BVI Limited v. Direct Privacy ID 1078D, Domain Name Proxy Service, Inc.* ; WIPO Case No. D2000-0282, *Massachusetts Medical Society v. Michael Karle*, and WIPO Case No. D99-0001, *World Wrestling Federation Entertainment, Inc. v. Michael Bosman*). The Complainant further contends that given Complainant's goodwill and renown worldwide, and the nature of the disputed domain name, which is confusingly similar to Complainant's trademark and its official domain name, it is not possible to conceive a plausible circumstance in which Respondent could legitimately use the disputed domain name, as it would invariably result in misleading diversion and taking unfair advantage of Complainant's rights. The Complainant further contends that email servers were configured on the disputed domain name at the time of its detection enhancing the risk that Respondent is engaged in a phishing scheme having in mind their threats. The Complainant further contends that the use of an email address with the disputed domain name presents a significant risk where Respondent could aim at stealing valuable information such as credit cards from Complainant's clients or employees and such risk has been recognised by prior Panel . The Complainant has relied on WIPO Case No. D2017-1225, *Accor SA v. Domain Admin, C/O ID#10760, Privacy Protection Service INC d/b/a PrivacyProtect.org / Yogesh Bhardwaj*). The Complainant further contends that it is more likely than not, that Respondent's primary motive in registering and using the disputed domain name was to capitalise on or otherwise take advantage of Complainant's trademark rights, through the creation of initial interest of confusion and therefore, it can be deduced that Respondent registered the domain name to prevent Complainant from using its trademarks in the disputed domain name. The Complainant further contends that according to former panel, this type of conduct constitutes evidence of Respondent's bad faith. The Complainant further relied on (WIPO Case No. D2009-0242, *L'oreal v. Chenxiansheng*).

Respondent's Contentions

The Respondent has failed to submit any response to arbitration notice issued by this panel rebut the contentions of the Complainant.

7. Discussion and findings

The Complainant Novartis AG , a healthcare company based in Switzerland, was created with merger of Ciba-Gigy and Sandoz in 1996. The Complainant is operating in many countries of the world and its pharmaceuticals products cater to the needs of large sections of people worldwide. The Complainant has an international presence including in the United States. The Complainant has large number of employees working in many countries of the world. The Complainant is also operating in India where the disputed domain name was registered. The Complainant registered



Sandoz Private Limited Private in 1996 at Registrar of Companies, Mumbai . The Complainant is owner of number of combination of 'SANDOZ' marks. To safeguard its interests , the Complainant registered the its mark in many jurisdictions including India. The trade mark comes under the category of well known mark. These marks are valid and constitute invaluable intellectual property which need to be protected against misuse by unauthorized persons. The Complainant is the owner of domain <sandoz.com> which was registered in 1993 and is also the owner of domain <sandoz.in> which was registered in 2005. The disputed domain name was registered by the Respondent in 2019 years after the registration of domains and trademarks by the Complainant. The disputed domain <sandoz.co.in> fully contains the mark 'SANDOZ' of the Complainant. The disputed domain <sandoz.co.in> is identical to the domain <sandoz.com> and <sandoz.in> of the complainant as addition of top level domain extension 'co.in' is irrelevant and does little to make it different. The Complainant has not licensed, authorized or given consent to the Respondent to use/utilize the Complainant's registered and well-known trademark. The identical disputed domain is likely to be taken as one belonging to the Complainant by ordinary internet users. The purpose of respondent appears to profit from the reputation of the Complainant by registering an identical domain. The disputed domain is likely to attract internet traffic intended to the Complainant's domain. The registration of disputed domain name chosen by the Respondents shows his intent of using identical mark of the Complainant to divert an ordinary internet user who may consider disputed domain name to be that of the Complainant. The Respondent failed to produce any evidence of bonafide or legitimate use of disputed domain as he has preferred not respond to the notice issued by this panel. The Complainant sent a cease and desist letter to the Respondent but the respondent responded with sale offer of the disputed domain to the Complainant. The Respondent also threatened the Complainant of cyber attacks if any arbitration proceeding are undertaken by the Complainant. The mark is well-known and prominently associated with business of the Complainant. The domain name in dispute directs Internet users to a parking page with pay-per-clicks which are likely to generate revenues. The Respondent has in fact offered the disputed domain on sale at a high price to the Complainant. The Respondent has not provided proper contact information in whois information page indicating his malafide intent. The respondent has also failed to submit any response to the arbitration notice issued by this panel to rebut the contentions of the Complainant.

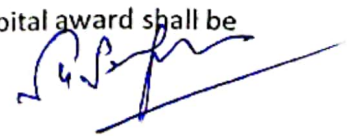
Respondent's Default

The INDRP Rules of Procedure require that Arbitrator must ensure that each party is given fair opportunity to present its case. Rule 8(b) reads as follows;

" In all cases, 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."

Rule 12 empowers arbitrator to proceed with an ex parte decision in case any party does not comply within the time limits or fails to reply against the complaint. Rule 12 reads as follows:

"In the event any party breaches the provisions of INDRP rules and /or the directions of the Arbitrator, the matter can be decided ex parte by the Arbitrator and such arbitral award shall be



binding in accordance with the law." The respondent was given notice of administrative proceedings in accordance with Rules. The panel finds that the Respondent has been given fair opportunity to present his case. The Rules paragraph 12(a) provides that the Arbitrator shall decide the complaint on the basis of the Complainant's contention and documents submitted in accordance with Rules and any other law which Arbitrator deems fit to be applicable. In the circumstances, the Arbitrator's decision is based upon the Complainant's assertions, evidence and inferences as the respondent has not replied.

The domain name <sandoz.co.in> is identical to Complainant's trademark or service in which the Complainant has rights.

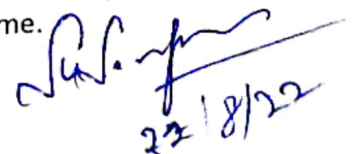
The Complainant has been able to prove that it has trademark rights and other rights in marks 'SANDOZ' by submitting substantial documents. The disputed domain <SANDOZ.CO.IN> is identical to mark 'SANDOZ' as the disputed domain entirely contains the Complainant's mark "SANDOZ". Addition of top level domain (CCTLD) extension 'co.in' is insignificant and does little to make it different. There can't be coincidence that the respondent has chosen domain name similar to the mark of the Complainant. The top level domain <sandoz.com> was registered by the Complainant in 1993 years before registration of disputed domain by the Respondent in 2021. The Respondent has failed to submit any response to rebut the contentions of the Complainant.

Bases on the forgoing analysis, I am of the opinion that the disputed domain name is nearly identical and confusingly similar to the complainant's mark.

The Respondent has no rights or legitimate interests in respect of the Domain Name.

The Complainant has been able to prove by submitting evidences that it has legitimate interest in trademark 'SANDOZ'. The Respondent is not known by the mark and can't have legitimate interest in the disputed domain. This panel is of the view that mere registration of domain name can't establish rights in disputed domain. According to the Policy that "once the Complainant makes a prima facie showing that the registrant does not have rights or legitimate interests in the domain name, the burden shifts to the registrant to rebut it by providing evidence of its rights or legitimate interests in the domain name". The burden to establish any legitimate interest falls on the Respondent. The Respondent could have invoked legitimate interests in the Disputed Domain Name. The primary objective of the Respondent in registering the disputed domain is definitely to gain from the popularity of the Complainant mark. The Respondent has failed to submit any response to rebut the contentions of the Complainant.

Therefore, in light of complaint and accompanying documents, I am therefore of the opinion that the Respondent has no rights or legitimate interest in the disputed domain name.


22/8/22

The Domain Name was registered or is being used in bad faith.

This can't be a coincidence that the Respondent registered disputed domain name fully incorporating well known mark of the Complainant. The Complainant has been using the mark for several years when the Respondent registered the disputed domain name in 2021. The intent of the Respondent to offer for sale of the disputed domain is definitely a bad faith in accordance with Para 7(C) of INDRP Rules. The panel finds that the Respondent has registered the domain name to profit from the popularity of the Complainant's mark. The Respondent must have done dilly diligence to ensure that domain name registered does not infringe upon someone other's rights. The respondent has failed to submit any response to arbitration notice issued by this panel to rebut the contentions of the Complainant

In view of the above, In view of the above, I am of the opinion that registration of disputed domain name is in bad faith.

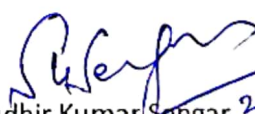
Decision

Based on the of contentions of the complainant , the attached documents , cited decisions and in view of the above read with all the facts of the present case, the Complainant's contentions are tenable. The test of prudence demands fairness of actions by the Respondent. The Respondent is involved in cybersquatting aiming to profit from the popularity of third party domain. In view of the forgoing discussion, I am of the opinion that the disputed domain name is identical to the Complainant's marks/domain. The Respondent does not have rights or legitimate interest in the disputed domain name and disputed domain name was registered in bad faith. In accordance with the Policy and Rules I direct that the Disputed Domain name be transferred to the Complainant, with a request to NIXI to monitor the transfer.

The award is being passed within statutory deadline of 60 days from the date of commencement of arbitration proceedings.

No order to costs.

Aug 22,2022


Sudhir Kumar Sengar 22/8/22

Sole Arbitrator