



दिल्ली DELHI

R 144763

VISHESHWAR SHRIVASTAV
SOLE ARBITRATOR
IN

ARBITRATION PROCEEDINGS OF DOMAIN NAME
"novozymes.co.in"

Between

NOVOZYMES A/S

...COMPLAINANT

AND

K.S.VANANGAMUDI & ANR.

...RESPONDENTS

AWARD

1. This Arbitral Tribunal was constituted by nomination of undersigned as the Arbitrator in the aforesaid proceeding vide communication by National Internet Exchange of India herein

after called NIXI. This Tribunal while checking the records of the proceedings, found that there was nothing on record to show that a copy of the complaint has been supplied to the Respondents. Accordingly vide its communication dated 20/08/2011 this Tribunal directed the Complainants to send a copy of their complaint to the Respondents by Courier. The Respondents were given time of seven days after receipt of the complaint to send their Statement of Defense.

2. That the Tribunal in response to its communication received email dated 22/08/2011 from the Complainants stating that they have sent the soft copy by email and hard copy of the complaint to both the Respondents via DHL Courier and sent copy of DHL receipt. The DHL Courier Waybill No. 5986954503 sent to Respondent No.1 on 25/08/2011 stated "Address information needed" and then "Shipment on hold" whereas the DHL Courier Waybill No. 5986954514 sent to Respondent No.2 was duly delivered and signed for by L. Brown. Accordingly this Tribunal in terms of the orders passed by this Tribunal on 27/08/2011 & 06/09/2011 waited for the Respondent's Statement of Defense



to the Complaint but to no avail and hence was constrained to reserve it's Award after giving one last & final opportunity to the Respondents till 11/09/2011 to file their Statement of Defence.

3. This Tribunal finds that the Complainants had duly complied with the directions of this Tribunal and had tried level best to serve the Respondents on the addresses provided but to no avail. Besides, copy(s) of the order (s) passed by this Tribunal have also been emailed to the Respondents on their email id's hence it cannot be said that the Respondents are unaware of the proceedings.

4. This Tribunal notes that the Respondent no.1 has been elusive *qua* this domain name and had given incorrect address even in the WHOIS and despite being aware of these proceedings through email chose not to send any communication or file any Statement of Defense to the Complaint and maintained silence on the same. Hence in view of such peculiar facts and circumstances and in view of INDRP which makes it incumbent upon this Tribunal to decide the controversy within 60 days, this



Tribunal accordingly proceeds in the matter as per the material available before it. The Respondent no.2 even after receiving the hard copy of the Complaint and being given 2 opportunities to send their response/ statement of defense, chose to maintain silence to the reason best known to him.

DISPUTE

This dispute concerns the domain name '***novozymes.co.in***' that is registered with the .IN Registry through the sponsoring Registrar M/s Transecute Solutions Pvt. Ltd. (R120-AFIN).

CLAIM

The complainants claim a right in the said name based on the following assertions as given in their complaint which are briefly as under :

1. The Respondent No. 1 and the Respondent No. 2 have engaged in illegal domain name registration and upon the Complainant becoming aware of the registration of the domain



by the Respondent No. 2 sent an e-mail to the Respondent No. 2 advising him of its undisputable rights in the Novozymes mark and asking him to transfer the infringing domain name to the Complainant. Thereupon the Respondent No. 2 acted expeditiously to transfer the infringing domain name to the Respondent No. 1 in order to create confusion regarding the actual ownership. The Complainants rely upon WHOIS which is **Annexures "A" and "B"**.

2. That further it is alleged, the Respondent No. 2 sent a threatening note to the Complainant via e-mail details whereof are discussed at length at paragraph 31 of the Complaint.
3. It is alleged that Respondent No. 1 and the Respondent No. 2 are acting in collusion to prevent the Complainant from using the domain name <novozymes.co.in> and their act is a case of cybersquatting and therefore the domain name should be canceled or transferred to the Complainant, Novozymes, in accordance with Paragraph 4 of the Policy and Rule 3 (b) (vi) of the Rules.



4. The Grounds assigned by the Complainants are broadly as under:

- A) the infringing domain name is identical/confusingly similar to a trademark in which Novozymes has rights; and
- B) the Respondent No. 1 and the Respondent No. 2 have no rights or legitimate interests in respect of the infringing domain name which is the subject of the present Complaint; and
- C) the infringing domain name has been registered and is being used in bad faith.

For Ground A:

It is alleged that the domain name is confusingly similar to the Complainant's mark because it consists of Novozymes together with the extension ".co.in" making it virtually identical to

Novozymes. There is no difference not even of a single letter in the infringing domain name from the corporate name and trademark of the Complainant. The Complainants have cited some authorities to buttress his claim which are

(i) *Six Continents Hotels, Inc. v. The Hotel Crown* INDRP/151,

(ii) *Belupo d.d. v. WACHEM d.o.o.* WIPO Case No. D2004-0110.

(iii) *Uniroyal Engineered Products, Inc. v. Nauga Network Services* WIPO Case No. D2000-0503.

(iv) *Consorzio del Formaggio Parmigiano Reggiano v. La casa del Latte di Bibulic Adriano* WIPO Case No. D2003-0661

(v) *CVS Pharmacy, Inc. v. WhoisGuard Protected*, WIPO Case No. D2009-1604 (January 20, 2010)

(vi) *The Stanley Works and Stanley Logistics, Inc. v. Camp Creek Co. Inc.*, WIPO Case No. D2000-0113, *World Wrestling Federation Entertainment, Inc. v. Ringside Collectibles*, WIPO Case No. D2000-1306.

(vii) *Ticketmaster Corporation v. IM Panama*, WIPO Case No. D2008-0577



(viii) *Altavista Company v. Grandtotal Finances Ltd.* D2000-0848.

(ix) *Playboy Enterprises International, Inc. v. Saeid Yomtobi and ba Movie Name Company* D2001-1201.

(x) *Pepsico, Inc. v/s Bijon Chatterji* INDRP/014.

(xi) *Uniroyal Engineered Products, Inc. v. Nauga Network Services* WIPO Case No. D2000-0503

(xii) *Croatia Airlines d.d. v. Modern Empire Internet Ltd.* WIPO Case No. D2003-0455

(xiii) *Malayan Banking Berhad v. Beauty, Success & Truth International* WIPO Case No. D2008-1393

(xiv) *VAT Holdings v. Vat.com*, WIPO Case No. D2000-0607.

For Ground B.

It is alleged that the Respondent No. 1 and the Respondent No. 2 are not connected with the Complainant in any manner whatsoever and that the Complainant has neither licensed nor in any other way permitted the Respondent No. 1 or the Respondent No. 2 to use the Novozymes mark or to apply for



or use any domain name incorporating or simulating its mark.

The complainants have placed reliance on

(i) *Malayan Banking Berhad v. Beauty, Success & Truth International* WIPO Case No. D2008-1393

(ii) *Mpire Corporation v. Michael Frey* WIPO Case No. D2009-0258

(iii) *Television Food Network, G.P. v. Arif Siddiqi* INDRP/138

(iv) *Baccarat SA v. Value- Domain Com*, WIPO Case No. D2009-1186

(v) *Ticketmaster Corporation v. IM Panama*, WIPO Case No. D2008-0577

It is stated that by mere registration of a domain name does not give rise of any legitimate interest in the said name.

Complainants have placed reliance on *Educational Testing Service v. TOEFL*, WIPO Case No. D2000-0044, *Pharmacia & Upjohn Company v. Peoples Revolutionary Suicide Jazz Band*, WIPO Case No. D2000-0816 and *AT&T Corp. v. Swarthmore Associates LLC*, WIPO Case No. DBIZ2002-00077, *Luxottica Holdings Corp. v. Lokesh Morade*,



INDRP/139; *Cisco Technology, Inc. v. Nicholas Strecha, E-Careers Ltd.*, WIPO Case No. D2010-0391 and *Ticketmaster Corporation v. Wine Savant, LLC*, WIPO Case No. D 2008-0578 to support their allegations.

It is alleged that the Respondent No. 1 & 2 registered and used the infringing domain name to deliberately trade on Novozymes' reputation and goodwill. Reliance was placed on *Drexel University v. David Brouda*, WIPO Case No. D2001-0067, *Malayan Banking Berhad v. Beauty, Success & Truth International* Case No. D2003-1393 it is held that manner of use of the disputed domain name is also germane for determining rights and legitimate interests. Besides these the Claimants have relied upon *Quixtar Investments, Inc. v. Dennis Hoffman*, WIPO Case No. D2000-0253, *Advance Magazine Publishers Inc. v. Pablo Palermao*, WIPO Case No. D2008-026, *Bloomberg Finance L.P. v. Kanhan Vijay V*, INDRP/110; *Farouk Systems Inc. v. Chen Guoqiang*, WIPO Case No. D20100005 (March 1, 2010), *Lardi Ltd v. Belize Domain*

WHOIS Service Lt WIPO Case No. D2010-1437, *Accor v. Eren Atesmen* WIPO Case No. D2009-0701 , *Pfizer Inc. v. jg a/k/a Josh Green*, WIPO Case No. D2004-0784; *Legacy Health System v. Nijat Hassanov* WIPO Case No. D2008-1708, *LEGO Juris A/S v. Robert Martin*, INDRP/125.; *Budget Rent A Car System, Inc. v. Admin, Domain*, WIPO Case No. D2010-0149 (March 31, 2010)

For Ground C

It is stated that the Complainant's trade mark Novozymes has a strong reputation and is widely known throughout the world. Considering its reputation, the Respondent No. 1 and the Respondent No. 2 could not be unaware of the Complainant's rights in the word Novozymes, all the more since the trademark has a very distinctive character that makes it very unlikely for a third party to adopt it legitimately. It is alleged that the infringing domain name was registered and is being used in bad faith. Claimants place reliance on *Altavista Company v/s Grandtotal Finances Ltd.* WIPO Case No. D2000-0848 (decided on



October 26, 2000), *Banco Itau S.A. v. Laercio Teixeira* WIPO Case No. D2007-0912 , *British Sky Broadcasting Group plc, v. Mr. Pablo Merino and Sky Services S.A.*, WIPO Case No. D2004-0131 , *Educational Testing Service v. Mohamed Ahmed Aljarwan*, WIPO Case No. D2008-1073; *F Hoffmann-La Roche AG v. Anna Valdieri*, WIPO Case No. D2007-0956, *Parfums Christian Dior v. Javier Garcia Quintas and Christiandior.net* WIPO Case No. D2000-0226; *Veuve Cliquot Pansardin, Maison Fondée en 1772 v. The Polygenix Group Co.* WIPO Case No. D2000-0163; *SembCorp Industries Limited v. Hu Huan Xin* Case No. D2001-1092 , *Cellular One Group v. Paul Brien*, WIPO Case No. D2000-0028 *Lardi Ltd v. Belize Domain WHOIS Service Lt* WIPO Case No. D2010-1437, *Volkswagen AG v. Satya Bagla* INDRP/112 , *Missoni S.p.A. v. T.N.T. TerrificNTerry Inc.*, WIPO Case No. DWS2008-0003 (June 19, 2008), *Ticketmaster Corporation v. WhoisGuard Protected*, WIPO Case No. D2008-0350 (April 18, 2008), *Kate Spade LLC v. IQ Management Corporation*, WIPO Case No. D2005-0109 (May 9, 2005).



It is alleged that the Respondent No.1 had knowledge of the Complainant's prior rights in the Novozymes marks, and he registered the infringing domain name to intentionally attract internet users to its own web page by creating a likelihood of confusion as to the source, sponsorship, affiliation or endorsement of the its web site. Similarly, the Respondent No. 1 who has no association with the Complainant acquired the rights to the infringing domain name with an ulterior motive of attracting internet users for commercial gain by creating a likelihood of confusion with the Complainant's trademark. Complainants further relied upon *Microsoft Corporation v. Chun Man Kam*, INDRP/119, *Croatia Airlines d.d. v. Modern Empire Internet Ltd.* WIPO Case No. D2003-0455, *Accor v. Eren Atesmen* WIPO Case No. D2009- 0701 , *F. Hoffmann-La Roche AG v. DOMIBOT*, WIPO Case No. D2006-0327].

It is further alleged that as per Annexure 5 the webpage located at www.novozymes.co.in earlier owned and managed by the Respondent No. 2 essentially contained, several hyperlinks to



other websites which did not appear to be related to the Complainant or to each other. The content of the website also did not seem to have any bearing on the infringing domain name and the nature of the content and get up of the website www.novozymes.co.in has remained essentially unaltered since the transfer of the infringing domain name by the Respondent No. 2 to the Respondent No. 1. Reliance is placed on **Annexure K.**

Complainants have further relied upon *F. Hoffmann-La Roche AG v. Relish Enterprises* WIPO Case No. D2007-1629, *The Knot, inc., infra; Airbus Deutschland GmbH v. DOMAIN-NAME-4-SALE*, WIPO Case No. D2005-0092; *Accor v. Eren Atesmen* Case No. D2009-0701, *The Bear Stearns Companies Inc. v. Darryl Pope*, WIPO Case No. D2007-0593, *COMSAT Corporation v. Ronald Isaacs*, WIPO Case No. D2004-1082; *Fat Face Holdings Ltd v. Belize Domain WHOIS Service Lt*, WIPO Case No. D2007-0626, *Sanofi-aventis v. Montanya Ltd.*, WIPO Case No. D2006-1079, *Manheim Auctions Inc v Whois ID Theft Protection*, WIPO Case No. D2006-1044; *Fresh*



Intellectual Properties, Inc. v. Matt Braska, WIPO Case No. D2005-0096, *Nine West Development Corporation v. Registrant [1168318]/Moniker Privacy Services/Registrant [1260512]: Domain Administrator*, WIPO Case No. D2008-0154, *L'Oréal, Biotherm, Lancôme Parfums et Beauté & Cie v. Unasi, Inc.* WIPO Case No. D2005-0623, *Auer Lighting GmbH v. Domain Privacy Ltd./The Tidewinds Group, Inc.*, WIPO Case No. D2009-1622, *Pharmacia & Upjohn Company v. Peoples Revolutionary Suicide Jazz Band* WIPO Case No. D2000-0816.

It is also alleged that the Respondent No. 2 provided incomplete and/or inaccurate contact information to the Sponsoring Registrar/.IN Registry. When the Complainant called the Respondent No. 2's phone number as shown in the relevant record of the Whois database of the .IN Registry on June 8, 2011 (Reliance is placed on **Annexure "B"**), they got AMTRAK (National Railroad Passenger Corporation in US) which shows Respondent No. 2 was in breach of the

requirement in Paragraph 3 (a) of the Policy and establishes that the domain name was registered by the Respondent No. 2 in bad faith.

It is alleged by placing reliance on **Annexure L** that a general internet search for the Registrant organization, Apex Laboratories Limited of the Respondent No. 1 reveals that it is a pharmaceutical formulation manufacturer based in South India. The contact address of this entity as available on their website and some other websites

Apex Laboratories Limited
76, C. P. Ramasamy Road,
Alwarpet,
Chennai -600018,
Tamil Nadu,
INDIA

This address does not tally with the address of the Respondent No. 1 as available in Whois record dated July 20, 2011 of .IN Registry and reproduced at paragraph 5 of the Complaint. Thus it is clear that particulars of the current registrant-Respondent



No. 1 as furnished to the Sponsoring Registrar/.IN Registry are also false.

Reliance is placed on *Wachovia Corp. v. Peter Carrington*, WIPO Case No. D2002-0775, *Oxygen Media, LLC v. Primary Source*, WIPO Case No. D2000-0362 (June 19, 2000), *Morgan Stanley v/s M/s KEEP GUESSING INDRP/024*.

It is further alleged that the Respondent No. 2 invited inquiries from the general public about the domain name <novozymes.co.in> and the inquiry page, *inter alia*, allowed the person making an enquiry to enter the offering amount in dollars. Reliance is placed on **Annexure "M"** which shows that the link that invited inquiries about the domain name and the corresponding page found at that link enabling the third parties to enter their offering amount this clearly shows that the Respondent No.2 wanted to sell the domain for a price. Reliance is placed on *ISL Worldwide and The Federal Internationale de Football Association v. Western States Ticket Service* WIPO Case No. D2001-0070 - <fifatickets.com>.

It is stated that the bad faith of the Respondent No. 2 is evident from its e-mail reply to a warning e-mail written by the Complainant. The contents of the reply e-mail are reproduced below:

"Idiot, i am not a child.

Google is your company?

so funny

The following is my statement:

You either purchase the domain name, or go to arbitration.

However, if it is through arbitration, we will register your company domain name for more, and all domain names will be pointed to your competitors website.

*And, we are ready to hijack **novozymes.com**.*

If buy this domain, your company will be no bother.

In my opinion, the legal department of the company is always making trouble for his company." Reliance is placed on

Annexure N.

It is alleged that the Respondent No. 2 is a cyber-squatter and it registered the infringing domain name in bad faith solely to gain compensation by extortion for an amount in excess of any documented out-of-pocket costs incurred by it in registering the



infringing domain name. Reliance is placed on *Uniroyal Engineered Products, Inc. v. Nauga Network Services* Case No. D2000-0503, *Mpire Corporation v. Michael Frey* Case No. D2009-0258, *Societe des Produits Nestle SA, Switzerland v. Nescafe Limited, United Kingdom* INDRP/100, *Booz Allen Hamilton Inc. v. Servability Ltd.*, WIPO Case No. D2001-0243 (April 5, 2001) , *AIB-Vincotte Belgium ASBL v. Guillermo Lozada*, WIPO Case No. D2005-0485 (August 29, 2005) , *Scania CV AB v. Hong, Hee Dong*, WIPO Case No. D2004-0340 (June 23, 2004) .

It is stated that the above facts establish that the Respondent No. 1 and the Respondent No. 2 are acting in tandem and the transfer has been effected with malafide intention to cause confusion regarding the actual ownership of the infringing domain name and to prevent the Complainant from using the domain name <novozymes.co.in>. The conduct of the Respondent No. 1 and the Respondent No. 2 establishes clearly that it is a case of bad faith registration. It is reiterated by

the Complainants that neither the Respondent No. 1 nor the Respondent No. 2 has a legitimate interest or right in the infringing domain name and the motive for the infringing domain name's registration and use thereof is for commercial gain by attracting traffic and/or selling the domain name for valuable consideration in excess of the documented out-of-pocket costs directly related to the domain name. The deliberate registration and use of domain names that incorporate famous marks and use of those domains for commercial gain constitute bad faith use under the Policy. The adoption by the Respondent No. 2 and the subsequent acquisition by the Respondent No. 1 of the disputed domain name are in bad faith and actuated by a malafide intention to appropriate the goodwill of the Complainant in its widely known Novozymes mark.

ORDER

This Tribunal has given an anxious consideration to the allegations of the complainants and has seen that the Respondent(s) despite being aware of the present proceedings and despite being called upon by this Tribunal to give their Statement of Defense chose not



to give any and hence the allegations of the complainants remain un rebutted.

In view of the undisputed weighty evidence of the Complainants this Tribunal holds that the respondents no.1 & 2 did not have any claim on the domain name '**novozymes.co.in**' hence this Tribunal directs the Registry to transfer the domain name '**novozymes.co.in**' to the complainants. The Complainants too are free to approach the Registry and get the same transferred in their name.

The original copy of the Award is being sent along with the records of this proceedings to National Internet Exchange of India (NIXI) for their record and a copy of the Award is being sent to all the parties for their records

Signed this 19th day of September, 2011.

NEW DELHI
19/09/2011



V. SHRIVASTAV
ARBITRATOR