

ARBITRATION PROCEEDINGS OF DOMAIN NAME

www.boehringer-ingelheim.co.in

between

**BOEHRINGER Ingelheim Pharma
GmbH & Company.KG**

...COMPLAINANT

AND

ELIZABETH ROSE

...RESPONDENT

AWARD



**VISHESHWAR SHRIVASTAV
SOLE ARBITRATOR
NEW DELHI**



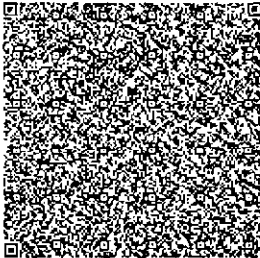
सत्यमेव जयते

INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

e-Stamp

Certificate No. : IN-DL48151850411944P
Certificate Issued Date : 15-Feb-2017 10:27 AM
Account Reference : IMPACC (SH)/ dlshimp17/ SAKET/ DL-DLH
Unique Doc. Reference : SUBIN-DLDSLHIMP1796758416392889P
Purchased by : V SHRIVASTAV
Description of Document : Article 12 Award
Property Description : Not Applicable
Consideration Price (Rs.) : 0
(Zero)
First Party : V SHRIVASTAV
Second Party : Not Applicable
Stamp Duty Paid By : V SHRIVASTAV
Stamp Duty Amount(Rs.) : 100
(One Hundred only)



Please write or type below this line.....

VISHESHWAR SHRIVASTAV

SOLE ARBITRATOR

IN

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AWARD

1

1. This Arbitral Tribunal was constituted by nomination of undersigned as the Arbitrator in the aforesaid proceeding vide communication by NIXI and accordingly this Tribunal issued notice to the parties on 03/01/2017. However, while checking the records of the proceedings, this Tribunal found that there is nothing on record which shows that the copy of the complaint has been supplied to the Respondents. It was also noticed that the Complainants had not filed their Power of Attorney/ Vakalatnama. Accordingly vide the aforesaid communication this Tribunal directed the Complainants to file their Vakalatnama and either supply proof of dispatch of the hard copy of the complaint to the respondent or send a copy of their complaint to the Respondents vide Courier .

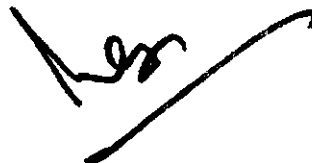
2. That vide email dated 03/01/2017 NIXI stated that they have sent the complaint by email as well as by courier on 29/12/2016 to the Respondent and are awaiting the delivery / status report from the Courier Company. This Tribunal having

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seen the tracking of the Courier slip supplied by NIXI and found that the same had been delivered on 03/01/2017.

3. That vide its order dated 09/01/2017 this Tribunal directed the Respondent to send their Reply / Statement of Defence by 17/01/2017 to this Tribunal, NIXI and the Complainants as the Respondents were in receipt of the hard copy of the complaint as well as emails sent by this Tribunal. The Respondents were notified that in case no response is received from the Respondent this Tribunal will be constrained to move further and pass its award based on the material placed before it. Vide the same order this Tribunal also directed the Complainants to comply with the order dated 03/01/2017 by sending their POA within next 4 days.

4. This Tribunal received an email dated 09/01/2017 from the Complainant attaching their POA. However, this Tribunal found that the same was neither on the Company letter head nor was any Company seal affixed on the POA. Hence, the

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complainants were directed to give a proper POA within 3 days by soft copy and also send the hard copy by courier.

5. This vide Order dated 19/01/2017 noted that the Respondents had chosen to remain silent and not sent their Reply / SoD. This Tribunal also noted that the complainants had sent the soft copy of their POA but hard copy was still awaited. Hence, this Tribunal directed the Complainant to send the hard copy of their POA and also file their Evidence by way of Affidavit by dispatching a soft copy by email and hard copy by courier so that it reaches this Tribunal by 24/01/2017.

6. The Complainant sent the soft copy of the POA and Evidence by way of Affidavit vide their email dated 23/01/2017. This Tribunal also noted that the said email has not been marked to the Respondents which was against the rules of the .INDRP Arbitration Proceedings and the Arbitration and Conciliation Act, 1996. Hence, the complainants were directed to email the said communication to the Respondent ASAP, failing which

this Tribunal would not be able to look into the said email or take the hard copy on record. The direction was complied.

7. This Tribunal received the soft copy of the Evidence on 23/01/2017 and the hard copy was sent by their local courier company *La Poste*. The Complainants queerly sent their evidence to NIXI and the same reached this Tribunal on 13/02/2017 after two more Orders dated 30/01/2017 and 06/02/2017 and tracking the slow progress of the postal service. The *La Poste* took 18 days to reach NIXI and further 4 days this Tribunal, as the same was addressed to NIXI and not this Tribunal.

8. This Tribunal finally reserved its award vide its order dated 14/02/2016 clarifying that incase the respondents send their response /evidence in support thereof the same will be taken into consideration by this Tribunal at the time of making the award.

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CLAIM

9. The claim as put forward by the complainant is briefly as under:
- A. It is claimed that the Complainant is a family-owned pharmaceutical group of companies with roots going back to 1885, when it was founded by Albert Boehringer (1861-1939) in Ingelheim am Rhein.
- B. It is stated by relying on **Annex 2**, Boehringer (the Complainant) is a claimed as global research-driven pharmaceutical enterprise and has today about 142 affiliated companies world-wide with roughly 47,400 employees and its two main business areas are Human Pharmaceuticals and Animal Health. It is further claimed that in 2013, the Complainants net sales amounted to about EUR 14.1 billion.
- C. The Complainants have filed **Annex 3** by which they claim to be owner of several "BOEHRINGER INGELHEIM" trademark such as:



Trademark	Country	Registration number	Registration date
BOEHRINGER- INGELHEIM	International	221544	07.02.1959
BOEHRINGER INGELHEIM	International	228038	01.20.1960
BOEHRINGER INGELHEIM	International	568844	03.22.1991
BOEHRINGER	India	1158978	12.16.2002

D. It is further claimed that the Complainant is the owner of many "BOEHRINGER INGELHEIM" domain names. The Complainants rely upon Annex 4 to support their claim.

E. The Complainants are aggrieved by the Registration of the disputed domain name <BOEHRINGER-INGELHEIM.CO.IN> on July 13, 2016 by the Respondents and they submit that the domain name is identical and confusingly similar to Complainants trademarks.




F. It is further contested that the Respondent has no rights or legitimate interests in respect of the disputed domain. Reliance is placed by the Complainants to the WIPO case No. D2003-0455, *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, wherein it has been held that the Complainant is required to make out a prima facie case that the Registrant lacks rights or legitimate interests. Once such prima facie case is made, the Registrant carries the burden of demonstrating rights or legitimate interests in the domain name. If the Registrant fails to do so, the Complainant is deemed to have satisfied paragraph 4(a)(ii) of the UDRP.

G. The Complainant submits that the Respondent has no rights or legitimate interests in the disputed domain name and she has no relationship with the Complainant's business and is not authorized or licensed to use the trademark INGELVAC®.

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- H. By relying on Annexure 1 the complainant submits that the Respondent is "Elizabeth Rose" which shows that they are not known by the disputed domain name <BOEHRINGER-INGELHEIM.CO.IN>.
- I. The Claimants point out that the Respondent had been earlier involved in another INDRP proceedings w.r.t. the domain name *See INDRP/651 Repetto SAS vs Pfister Hotel <Repetto.co.in>*
- J. It is alleged by placing reliance on Annex 5 that the Respondent is involved in sale of domain name(s).
- K. The Claimants have placed in Annex 6 their cease and desist letter which was sent to the Respondent w.r.t. the disputed domain name.
- L. It is also alleged that the domain name was registered in bad faith and points to commercial links in relation to the Complainant.



- M.** It is also contended that the Respondent has put the disputed domain name on sale which establishes that the Respondent has registered the disputed domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name for valuable consideration.
- N.** The Complainants seek for transfer of disputed domain name to them.

ORDER

- 10.** This Tribunal has perused the complaint and the documents relied upon by the complainants which have not been rebutted by the Respondents despite opportunity(s) being given to them by this Tribunal. Hence, in view of the un-rebutted evidence of the Complainants this Tribunal holds that the respondents did not have any claim on the domain name www.boehringer-ingelheim.co.in hence this Tribunal directs the Registry to transfer the domain name www. boehringer-ingelheim.co.in to the complainants.

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11. The Complainants too are free to approach the Registry and get the same transferred in their name.
12. There is no order towards costs.
13. 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 both the parties for their records.

Signed this 22nd day of February, 2017.

NEW DELHI
22/02/2016



V. SHRIVASTAV
ARBITRATOR