



## AWARD

### 1. The Parties

The Complainant is M/s Iovate Health Sciences International, Inc. 381 North Service Road West, Oakville, Ontario, Canada L6M 0114.

The Respondent is Mr. Dilpreet Singh, c/o Supplement Factory, Shop No. 66, Ground Floor, Good Earth City Centre Mall, Malibu Town, Sector 50, Gurgaon – 122 018, Haryana, India

### 2. The Domain Name and Registrar

The disputed domain name is <WWW.MUSCLETECH.IN>. The said domain name is registered with GoDaddy.com LLC, 14455, North Hayden Road, Suite 219, Scottsdale AZ, 85260, United States of America. The details of registration of the disputed domain name, as indicated in WHOIS (Annexure 10 to the Complaint) are as follows:

(a) Domain ID:	D41440000006412906 – AFIN
(b) Registrar:	GDaddy.com LLC
(c) Date of creation:	July 26, 2018
(d) Expiry date:	July 26, 2019

### 3. Procedural History

(a) A Complaint dated January 31, 2019 has been filed with the National Internet Exchange of India. The Complainant has made the registrar verification in connection with the domain name at issue. The print outs so received are attached with the Complaint as Annexure 1. It is confirmed that the Respondent is listed as the registrant and provided the contact details for the administrative, billing, and technical contact. The Exchange verified that the Complaint satisfied the formal requirements of the Indian

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Domain Name Dispute Resolution Policy (INDRP) (the "Policy") and the Rules framed thereunder.

(b) The Exchange appointed Dr. Vinod K. Agarwal, Advocate and former Law Secretary to the Government of India as the sole arbitrator in this matter. The arbitrator finds that he has been properly appointed. The Arbitrator has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Exchange.

(b) In accordance with the Policy and the Rules, an attempt was made to send a copy of the Complaint to the Respondent on the given address. However, the copy of the Complaint could not be served on the Respondent. Hence, the present proceedings have to be ex parte.

#### 4. Factual Background

From the Complaint and the various Annexure to it, the Arbitrator has found the following facts:

##### **Complainant's activities**

The Complainant is a company existing and incorporated under the laws of Canada. It was founded in the year 1995. According to the Complaint, the Complainant is engaged in the business of providing effective active nutrition products. The Complainant manufactures, markets and sells two types of nutrition products, namely, nutritional supplements and weight management products.

According to the Complaint, the products of the Complainant are sold in more than one hundred and thirty countries around the world, including India. In northern part of the United States of America these products are sold through retails, health clubs, gyms, health-food stores and through world-wide web. Outside of North America, the Complainant's products are sold through authorized local distributors and/or through authorized online retail stores.

Among the Complainant's most prominent brand of nutritional supplements is MUSCLETECH. These supplements were first introduced more than two decades ago in North America. Since then, the Complainant

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has used the mark MUSCLETECH in relation to nutritional supplements and related services.

### **Respondent's Identity and Activities**

The Respondent's activities are not known.

## **5. Parties Contentions**

### **A. Complainant**

The Complainant contends that each of the elements specified in the Policy are applicable to this dispute.

In relation to element (i), the Complainant contends that the Complainant is the registrant and proprietor of various domain name registrations at international and domestic levels incorporating the designation MUSCLETECH. The Complainant registered the domain name <www.muscletech.com> in the year 1997. In addition, the Complainant also owns several other domain names with the word "muscletech". Some such illustrations are as follows: <www.muscletech.cn> in Canada; <www.muscletech.us> in the United States; <www.muscletech.org>; <www.muscletech-supplements.com>; <www.muscletechcanada.com>; <www.mymuscletech.com>, etc.

The Complainant is, inter alia, owner of several trademark registrations for the designation MUSCLETECH in various countries of the world, including Canada, the European Union, the United Kingdom and the United States of America.

In India, the trademark "MUSCLETECH" was registered by the holding corporation of the Complainant, namely, Northern Innovations Holding Corp. under Registration No. 1502067 on 07<sup>th</sup> November 2006 in Class 5. (Copies of the registration certificates are attached to the Complaint as Annexure No. 8).

The Complainant contends that the disputed domain name contains the trademark of the Complainant, that is, MUSCLETECH. The addition of the generic word "in" in a domain name is insignificant. It does not lead to any distinctiveness or reduce the similarity to the trademark "MUSCLETECH" of the Complainant. It will not be perceived by the

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relevant public as a different, eligible to distinguish the Respondent or the services offered under the disputed domain name from the Complainant. Further that, it does not help in distinguishing the disputed domain name from the Complainant's trademark. On the contrary, the disputed domain name leads the public to believe that it relates to the services rendered by the Complainant.

Therefore, the disputed domain name is identical and/or confusingly similar to the registered trademark 'MUSCLETECH' of the Complainant.

In relation to element (ii), the Complainant contends that the Respondent (as an individual, business, or other organization) has not been commonly known by the mark "MUSCLETECH". The Respondent does not own any trademark registration as MUSCLETECH or a mark that incorporates the expression MUSCLETECH. The Respondent has no license or authorization or permission from the Complainant to either use the designation MUSCLETECH or to register the disputed domain name.

Further, the Respondent does not have any rights or legitimate interest in the domain name because although the domain name was registered about six months back, the Respondent has not commenced use of the domain and has not exhibited any preparatory steps for using the domain name in connection with a *bona fide* offering of goods and services. The Respondent registered the domain name for the sole purpose of creating confusion and misleading the general public.

Therefore, the Respondent has no legitimate right, justification or interest in the disputed domain name.

Regarding the element at (iii), the Complainant contends that the Respondent has registered the disputed domain name in bad faith and for its actual use in bad faith. The main object of registering the domain name <www.muscletech.in> by the Respondent is to mislead the customers of the Complainant and internet users and the general public. The Respondent is associated with an entity named Supplement Factory and is ostensibly selling nutritional supplements, the product which the Complainant sells under the trademark "MUSCLETECH. By registering the domain name the Respondent has prevented the Complainant from using the MUSCLETECH.IN domain name in connection with its business in India.

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Further that, absence of use and passive holding of a domain name constitutes bad faith. The Complainant has stated that the use of a domain name that appropriates a well-known trademark to promote competing or infringing products cannot be considered a "*bona fide offering of goods and services*".

In support of its contentions, the Complainant has relied on a number of decisions by different entities. They have been duly considered. However, it has not been considered necessary to make their references during the aforesaid discussion.

## **B. Respondent**

The Respondent did not submit any response. On the contrary, the Respondent informed has sent an e mail saying that "I do not wish to keep this domain name and would like to surrender it."

## **6. Discussion and Findings**

The Rules instructs this arbitrator as to the principles to be used in rendering its decision. It says that, "a panel shall decide a complaint on the basis of the statements and documents submitted by the parties in accordance with the Policy, the Arbitration and Conciliation Act, 1996, the Rules and any rules and principles of law that it deems applicable".

According to the Policy, the Complainant must prove that:

- (i) The Registrant's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights;
- (ii) The Registrant's has no rights or legitimate interests in respect of the domain name that is the subject of Complaint; and
- (iii) The Registrant's domain name has been registered or is being used in bad faith.

### **A. Identical or Confusingly Similar**

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The disputed domain name <MUSCLETECH.IN> was registered by the Respondent on July 26, 2018. The registration of the said disputed domain name is due to expire on July 26, 2019.

The Complainant is an owner of the registered trademark "MUSCLETECH". The Complainant is also the owner of a large number of domains with the trademark MUSCLETECH as stated above and referred to in the Complaint. Most of these domain names and the trademarks have been created by the Complainant much before the date of creation of the disputed domain name by the Respondent. The disputed domain name is <www.muscletech.in>. Thus, the disputed domain name is very much similar to the name and the trademark of the Complainant.

The Hon'ble Supreme Court of India has recently held that the domain name has become a business identifier. A domain name helps identify the subject of trade or service that an entity seeks to provide to its potential customers. Further that, there is a strong likelihood that a web browser looking for products of the Complainant in India or elsewhere would mistake the disputed domain name as of the Complainant.

Therefore, I hold that the domain name <www.muscletech.in> is phonetically, visually and conceptually identical or confusingly similar to the trademark of the Complainant.

#### *B. Rights or Legitimate Interests*

The Respondent may demonstrate its rights to or legitimate interest in the domain name by proving any of the following circumstances:

- (i) 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; or
- (ii) 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
- (iii) The Registrant is making a legitimate non-commercial or fair use of

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the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Respondent's response is not available in this case. There is no evidence to suggest that the Respondent has become known by the disputed domain name anywhere in the world. The name of the Registrant/Respondent is Mr. Dilpreet Singh, who is associated with an entity named Supplement Factory. Based on the evidence adduced by the Complainant, it is concluded that the above circumstances do not exist in this case and that the Respondent has no rights or legitimate interests in the disputed domain name.

Further, the Complainant has not consented, licensed or otherwise permitted the Respondent to use its name or trademark "MUSCLETECH" or to apply for or use the domain name incorporating said mark. The domain name bears no relationship with the Registrant. Further that, the Registrant has nothing to do remotely with the business of the Complainant.

I, therefore, find that the Respondent has no rights or legitimate interests in the domain name as per INDRP Policy, Paragraph 4(ii).

### C. *Registered and Used in Bad Faith*

Any of the following circumstances, in particular but without limitation, shall be considered evidence of the registration or use of the domain name in bad faith:

- (i) 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
- (ii) the Registrant's 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
- (iv) by using the domain name, the Registrant has intentionally

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attempted to attract the 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.

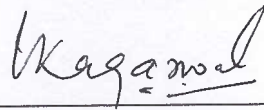
The contention of the Complainant is that the present case is covered by the circumstances mentioned herein above. There are circumstances indicating that the Respondent has intentionally attempted to attract, for commercial gain, internet users to its web site, by creating a likelihood of confusion with the Complainant's mark. It may also lead to deceiving and confusing the trade and the public.

The Respondent's registration of the domain name <www.muscletech.in> is likely to cause immense confusion and deception and lead the general public into believing that the said domain name enjoys endorsement or authorized by or is in association with and/or originates from the Complainant.

The foregoing circumstances lead to the presumption that the domain name in dispute was registered and used by the Respondent in bad faith.

## 7. Decision

In light of the foregoing findings, namely, that the domain name is confusingly similar to a mark in which the Complainant has rights, that the Respondent has no rights or legitimate interests in respect of the domain name, and that the domain name was registered in bad faith and is being used in bad faith, in accordance with the Policy and the Rules, the Arbitrator orders that the domain name <WWW.MUSCLETECH.IN> be transferred to the Complainant.



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Vinod K. Agarwal  
Sole Arbitrator  
Date: March 11, 2019