

ADMINISTRATIVE PANEL DECISION

Patanjali Ayurved Limited v. Name Cheap
Case No. D2022-2133

1. The Parties

The Complainant is Patanjali Ayurved Limited, India, represented internally.

The Respondent is “Name Cheap”, India.

2. The Domain Name and Registrar

The disputed domain name <patanjaliifranchise.org> is registered with Namecheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 9, 2022. On June 13, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 13, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on June 14, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amendment to the Complaint on June 15, 2022.

The Center verified that the Complaint together with the amendment to the Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on June 21, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 11, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 12, 2022.

The Center appointed Shwetasree Majumder as the sole panelist in this matter on July 18, 2022. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

4. Factual Background

The Complainant is a company incorporated and registered under the Indian Companies Act, 1956. The Complainant is the registered owner of the trademark PATANJALI in India (registration no. 2254680 dated December 22, 2011). Copy of the trademark registration certificate was submitted as Annex 3 to the Complaint.

The disputed domain name was registered on May 3, 2021. It resolves to a website which offers dealership, distributorship, agency, and franchise of PATANJALI products.

5. Parties' Contentions

A. Complainant

The Complainant states that it is dealing in procuring, processing, manufacturing, and marketing of herbal products including medicines, cosmetics and food products, beverages, personal and home care products, extracts, and other similar commodities under the trademark PATANJALI since the year 2006.

The Complainant claims to be the registered owner of the trademark PATANJALI in Australia, Switzerland, European Union, Republic of Korea, Norway, New Zealand, Oman, Philippines, Russian Federation, Singapore, United Arab Emirates, and Mauritius. In India, the Complainant's trademark PATANJALI is registered since December 22, 2011 under Indian registration number 2254680.

The Complainant contends that the disputed domain name wholly incorporates the trademark PATANJALI and is therefore identical or confusingly similar to its trademark, upon which it has prior established rights. The Complainant has not authorized the Respondent to operate the disputed domain name by using the mark PATANJALI or operate the corresponding website.

The Complainant argues that the Respondent has no rights or legitimate interests in the disputed domain name. The Complainant submits that the Respondent is not making a *bona fide* offering of goods or services. Respondent's use of the disputed domain name is taking undue advantage of the goodwill associated with the Complainant's trademark PATANJALI.

The Complainant contends that the Respondent has primarily registered and used the disputed domain name in bad faith for the purpose of disrupting the Complainant's business. The Complainant submits that the Respondent may use the disputed domain name to attract Internet users for personal gains by creating a likelihood of confusion as regards to the source, sponsorship, affiliation or endorsement of the Respondent's website.

B. Respondent

The Respondent did not reply to the Complainant's contentions.

6. Discussion and Findings

As per paragraph 5(e) of the Rules, where a Respondent does not submit a response, in the absence of exceptional circumstances, the panel may decide the dispute based upon the Complaint. The Panel does not find any exceptional circumstances in this case preventing it from determining the dispute based upon the Complaint, notwithstanding the failure of the Respondent to file a response. As per paragraph 14(b) of the Rules, where a party does not comply with any provision of the Rules, the panel may draw such inferences as it considers appropriate. It remains incumbent on the Complainant to make out its case in all respects under paragraph 4(a) of the Policy.

Under paragraph 4(a) of the Policy, the Complainant must prove each of the following three elements required under by a preponderance of evidence:

- i. the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- ii. the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- iii. the disputed domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires the Complainant to show that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

The Complainant is the registered proprietor of the trademark PATANJALI. The disputed domain name incorporates the Complainant's trademark PATANJALI in its entirety, along with the term "franchise" as a suffix. Referring to the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), sections 1.7 and 1.8, this Panel notes that where the relevant trademark is recognizable within the disputed domain name, the addition of other terms would not prevent a finding of confusing similarity under the first element. In the present case, the Complainant's trademark PATANJALI is clearly recognizable in the disputed domain name and therefore the addition of the term "franchise" does not prevent a finding of confusing similarity. (See *Hoffmann-La Roche AG v. Domain Admin, Privacy Protection Service INC d/b/a PrivacyProtect.org / Conan Corrigan*, WIPO Case No. [D2015-2316](#)).

The [WIPO Overview 3.0](#), section 1.7, provides the consensus view of UDRP panels: "While each case is judged on its own merits, in cases 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 for purposes of UDRP standing."

The generic Top-Level Domain ("gTLD") ".org" is generally disregarded for the purposes of comparison under this element.

In view of the above-mentioned findings, the Panel concludes that the disputed domain name is confusingly similar to the Complainant's trademark and that the requirement of paragraph 4(a)(i) of the Policy stands satisfied.

B. Rights or Legitimate Interests

The consensus view of the second element under paragraph 4(a) of the Policy requires the Complainant to establish on a *prima facie* basis that the Respondent lacks rights or legitimate interests in the disputed domain name. The Panel notes that the Complainant has already submitted evidence that it holds exclusive rights in the trademark PATANJALI by virtue of its registration in India. The Respondent's website invites applications for distributorship, dealership, and franchises for the Complainant's products under the trademark PATANJALI. Such use gives the wrong impression that it is affiliated with the Complainant (WIPO Overview section 2.5.1) is neither a *bona fide* offering of goods or services, nor a legitimate noncommercial or fair use in the present circumstances.

The view of previous UDRP panels on the burden of proof under paragraph 4(a)(ii) of the Policy has been summarized in section 2.1 of the [WIPO Overview 3.0](#), which states: "While the overall burden of proof in UDRP proceedings is on the complainant, [...] where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence to demonstrate its rights or legitimate interest in the domain name."

The Respondent has failed to file a response to rebut the Complainant's *prima facie* case or to advance any claim as to rights or legitimate interests in the disputed domain name (particularly, in accordance with paragraph 4(c) of the Policy). Accordingly, the Panel finds the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

In order to prevail, the Complainant must demonstrate that the disputed domain name has been registered and is being used in bad faith according to paragraph 4(a)(iii) of the Policy. Bad faith is understood to occur where a respondent takes unfair advantage of or otherwise abuses a complainant's mark (see section 3.1 of the [WIPO Overview 3.0](#)).

The website on the disputed domain name offers distributorship, dealership, and franchises for the Complainant's products under its trademark PATANJALI. The Complainant has not authorized the Respondent to use its trademark PATANJALI. Therefore, the Respondent's conduct satisfies the threshold of bad faith use set out at paragraph 4(b)(iv) of the Policy, in that, by using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's mark as to source, sponsorship, affiliation, or endorsement.

The Respondent's probable purpose in registering the disputed domain name, which incorporates the entire mark of the Complainant is, in the Panel's view, to capitalize on the reputation of the Complainant's mark. The Panel is satisfied that the Respondent knew, or in any event ought to have known, of the mark's existence.

The Panel therefore concludes that the disputed domain name was registered and is being used in bad faith.

Absent any formal response from the Respondent, little is known about it. The Respondent has not availed itself of the opportunity to present any case of good faith that it might have had, and, in view of the circumstances, the Panel cannot conceive of any. The Panel finds that on the balance of probabilities, the Respondent's conduct in registering and using the disputed domain name constitutes opportunistic bad faith under the Policy.

Accordingly, the Panel finds that the Complainant has satisfied the requirements of paragraph 4(a)(iii) of Policy.

7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain name, <patanjaliifranchise.org> be transferred to the Complainant.

/Shwetasree Majumder/

Shwetasree Majumder

Sole Panelist

Date: August 1, 2022