

## **ADMINISTRATIVE PANEL DECISION**

Khadi and Village Industries Commission v. Domains By Proxy, LLC / Nanci Nette

Case No. D2022-0361

### **1. The Parties**

The Complainant is Khadi and Village Industries Commission, India, represented by Fidus Law Chambers, India.

The Respondent is Domains By Proxy, LLC, United States of America / Nanci Nette, United States of America.

### **2. The Domain Name and Registrar**

The disputed domain name <khadisilkonline.com> (the “Disputed Domain Name”) is registered with GoDaddy.com, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 2, 2022. On February 2, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On February 3, 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 February 12, 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 amended Complaint on February 14, 2022. In response to a notification by the Center that the Complaint was administratively deficient, the Complainant filed an amended Complaint on February 25, 2022.

The Center verified that the Complaint together with the amended 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 February 25, 2022. In accordance with the Rules, paragraph 5, the due date for Response was March 17, 2022. The Respondent did not submit any

response. Accordingly, the Center notified the Respondent's default on March 18, 2022.

The Center appointed Nick J. Gardner as the sole panelist in this matter on April 8, 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, Khadi & Village Industries Commission, is an Indian government organization under the Ministry of Micro, Small and Medium Enterprises (MSME). It is a statutory body created in the year 1957 under the Khadi and Village Commission Act of 1956. The Complainant promotes products under the term "Khadi" and has several word trademark registrations for KHADI in India and other jurisdictions – see for example Indian registration number 2851542 registered on November 27, 2014. These trademarks are referred to in this decision as the "KHADI trademarks".

The Respondent registered the Disputed Domain Name on October 12, 2020. It resolves to a website which contains what appear to be "pay per click" ("PPC") links to third party websites. The Panel infers those links are automatically generated by an underlying algorithm.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant states that it plays a vital role in the Indian economy and its overarching purpose is premised on socio-economic benefit for rural industry. Its operations are based on the three-fold objective of (i) providing employment in rural areas, which is its social objective; (ii) economic objective of producing saleable articles; and (iii) wider objective of creating self-reliance among people to build a strong rural community spirit. The Complainant states it provides large scale employment to rural people, particularly weaker sections and rural women and its efforts generates employment in about 248,000 villages in India.

The Complainant states its programs for the development of Khadi and other Village Industries in rural areas are done in coordination with other agencies. Its offices are located in twenty-eight states and it has six zonal offices. The Complainant also implements the "Prime Minister's Employment Generation Programs" for upliftment and improvement of artisans, weavers, and other small-scale village and rural industries. The Complainant states it has many programs to help rural industries and is involved in building-up reserve of raw materials for supply to producers and creates common service facilities for processing of raw materials and finished goods. The Complainant states that among its many initiatives, it has introduced several interest subsidy schemes for artisans, weavers and members of small-scale village and rural industries.

The Complainant states that it has extensively promoted the KHADI trademark through exhibitions, trade-fairs and has organized events, competitions and shows to promote the mark. The Complainant states that it has collaborated with leading brands such as LAKME, TITAN, and RAYMOND to promote the KHADI trademark. Collections of four designers were displayed during the Lakme Fashion Week, 14th edition and during Sustainable Fashion Day at Lakme Fashion Week on August 23, 2018 under the KHADI trademark. The Complainant has filed evidence of its extensive promotion of the KHADI mark through print and electronic media and evidence of its large following on social media platforms. The Complainant mentions that it operates a mobile phone application called "Khadi India", which helps users locate the nearest Khadi store. As the KHADI mark has been extensively promoted by the Complainant, it claims the mark has acquired significant goodwill, fame and reputation.

The Complainant states it certifies and authorizes retail sellers, organizations, societies, and institutions to sell products under the KHADI trademarks. The Complainant states that an authorized user status for selling goods or services under the KHADI trademark is obtained by submitting an application to the Khadi

Institutions Registration & Certification Sewa (KIRCS). The Complainant states it owns seven sales outlets and over 8,000 sales outlets sell KHADI licensed products. The Complainant asserts that its mark has been used since 1956 and “Khadi” is part of its trade name, corporate name, and trading style for over 60 years. Therefore, the use of the KHADI mark by an unauthorized party, is likely to lead to confusion and deception among its patrons, members of trade, consumers and the general public.

The Complainant argues that the Respondent has misappropriated its trademark and requests for the transfer of the Disputed Domain Name on the grounds that: (i) the Disputed Domain Name is identical or confusing similar to the trademark in which the Complainant has rights; (ii) the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name; (iii) the Disputed Domain Name has been registered and is being used in bad faith by the Respondent.

The Complainant also relies upon a number of previous UDRP cases where it has been the Complainant and its KHADI trademarks have been recognised and it has succeeded in its complaint. It also relies upon various trademark infringement proceedings it has brought successfully in India in respect of the KHADI trademarks.

## **B. Respondent**

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

## **6. Discussion and Findings**

### **Preliminary Matters**

The Panel notes that no communication has been received from the Respondent. However, given the Complaint and Written Notice were sent to the relevant addresses disclosed by the Registrar, then the Panel considers that this satisfies the requirement in paragraph 2(a) of the UDRP Rules to “employ reasonably available means calculated to achieve actual notice”. Accordingly, the Panel considers it is able to proceed to determine this Complaint and to draw inferences from the Respondent’s failure to file any Response. While the Respondent’s failure to file a Response does not automatically result in a decision in favor of the Complainant, the Panel may draw appropriate inferences from the Respondent’s default (see, e.g., *Verner Panton Design v. Fontana di Luce Corp*, WIPO Case No. [D2012-1909](#)).

The Panel also notes this is a case where one Respondent (“Domains By Proxy, LLC”) appears to be a privacy or proxy service.

The Panel in this case adopts the approach of most UDRP panels, as outlined in WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”) at section 4.4.5, as follows:

“Panel discretion

In all cases involving a privacy or proxy service and irrespective of the disclosure of any underlying registrant, the appointed panel retains discretion to determine the respondent against which the case should proceed.

Depending on the facts and circumstances of a particular case, e.g., where a timely disclosure is made, and there is no indication of a relationship beyond the provision of privacy or proxy registration services, a UDRP panel may find it appropriate to apply its discretion to record only the underlying registrant as the named respondent. On the other hand, e.g., where there is no clear disclosure, or there is some indication that the privacy or proxy provider is somehow related to the underlying registrant or use of the particular domain name, a UDRP panel may find it appropriate to record both the privacy or proxy service and any nominally underlying registrant as the named respondent.”

In the present case the Panel considers the substantive Respondent to be Nanci Nette and references to the Respondent are to that person.

### **Substantive Matters**

To succeed, in accordance with paragraph 4(a) of the Policy, the Complainant must satisfy the Panel that:

- (i) the Disputed Domain Name is identical with 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;
- (iii) the Disputed Domain Name has been registered and is being used in bad faith.

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

The Complainant has rights in the KHADI trademark. The Panel finds the Disputed Domain Name is confusingly similar to this trademark. Previous UDRP panels have consistently held that domain names are identical or confusingly similar to a trademark for purposes of the Policy “when the domain name includes the trademark, or a confusingly similar approximation, regardless of the other terms in the domain name” (*Wal-Mart Stores, Inc. v. Richard MacLeod d/b/a For Sale*, WIPO Case No. [D2000-0662](#)). It is established that, where a domain name incorporates the entirety of a mark, the disputed domain name is considered to be confusingly similar to the registered mark (WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.7).

It is also established that the addition of a term (such as here “silk” and “online”) to a domain name does not prevent a finding of confusing similarity between the domain name and the mark ([WIPO Overview 3.0](#), section 1.8).

It is also well established that the generic Top-Level Domain (“gTLD”), in this case “.com”, does not affect the Disputed Domain Name for the purpose of determining whether it is identical or confusingly similar. See, for example, *Rollerblade, Inc. v. Chris McCrady*, WIPO Case No. [D2000-0429](#).

Accordingly the Panel finds that the Disputed Domain Name is confusingly similar to the Complainant’s trademark, hence the first condition of paragraph 4(a) of the Policy has been fulfilled.

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

The Panel finds the KHADI trademark is, on the evidence before the Panel, a term in which the Complainant has developed a significant reputation. It is also a term which, as far as the Panel is aware, has no meaning in relation to the Complainant.

Paragraph 4(c) of the Policy provides a list of circumstances any of which is sufficient to demonstrate that a respondent has rights to or legitimate interests in a domain name:

- (i) before any notice to the respondent of the dispute, 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 respondent has been commonly known by the domain name, even if the respondent has acquired no trademark or service mark rights; or
- (iii) the respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

None of these apply in the present circumstances. The Complainant has not authorised, licensed, or permitted the Respondent to register or use the Disputed Domain Name or to use KHADI trademark. The Complainant has prior rights in the KHADI trademark which precede the Respondent's acquisition of the Disputed Domain Name. The Complainant has therefore established a *prima facie* case that the Respondent does not have any rights to or legitimate interests in the Disputed Domain Name and thereby the burden of production shifts to the Respondent to produce evidence demonstrating rights or legitimate interests in respect of the Disputed Domain Name (see, for example, *Do The Hustle, LLC v. Tropic Web*, WIPO Case No. [D2000-0624](#); *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#)). The Respondent has remained silent in the face of the Complainant's arguments. The Disputed Domain Name consists of the KHADI trademark along with the terms "silk" and "online", the term "silk" being descriptive of the Complainant's products and the term "online" arguably conveying the ability to find the Complainant's "silk" products on an online market place. The confusing similar Disputed Domain Name is used for a PPC website with links to competing services, capitalizing on the reputation and goodwill of the Complainant's trademark. None of the above supports a finding of rights or legitimate interests for the Respondent in the Disputed Domain Name.

The Panel finds that the Respondent has failed to produce any evidence to establish her rights to or legitimate interests in the Disputed Domain Name. Accordingly, the Panel finds that the second condition of paragraph 4(a) of the Policy has been fulfilled.

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

Under paragraph 4(b) of the Policy a non-exhaustive list of factors evidencing registration and use in bad faith comprises:

- (i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or
- (ii) you have 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 you have engaged in a pattern of such conduct; or
- (iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product or service on your website or location.

The Panel concludes that (iv) applies as the Disputed Domain Name is likely to attract traffic because of confusion with the Complainant's mark, and the Respondent derives commercial gain as a result. The website linked to the Disputed Domain Name comprises a series of PPC links to other third-party websites. The Panel infers that some consumers, once at this website will follow the provided links and "click through" to other sites which offer products some of which may compete with those of the Complainant. The Respondent presumably earns "click through" linking revenue as a result. The Panel infers the website is automatically generated. This does not however matter. It is well established that where a domain name is used to generate revenue in respect of "click through" traffic, and that traffic has been attracted because of the name's association with the Complainant, such use amounts to use in bad faith, see for example *Shangri-La International Hotel Management Limited v. NetIncome Ventures Inc.*, WIPO Case No. [D2006-1315](#); *Owens Corning v. NA*, WIPO Case No. [D2007-1143](#); *McDonald's Corporation v. ZusCom*, WIPO Case No. [D2007-1353](#); *Villeroy & Boch AG v. Mario Pingerna*, WIPO Case No. [D2007-1912](#); *Rolex Watch U.S.A., Inc. v. Vadim Krivitsky*, WIPO Case No. [D2008-0396](#).

See also [WIPO Overview 3.0](#), section 3.5: “Can third-party generated material “automatically” appearing on the website associated with a domain name form a basis for finding bad faith?”

Particularly with respect to “automatically” generated pay-per-click links, panels have held that a respondent cannot disclaim responsibility for content appearing on the website associated with its domain name (nor would such links *ipso facto* vest the respondent with rights or legitimate interests).

Neither the fact that such links are generated by a third party such as a registrar or auction platform (or their affiliate), nor the fact that the respondent itself may not have directly profited, would by itself prevent a finding of bad faith”.

Accordingly, the Panel finds that the Disputed Domain Name has been registered and is being used in bad faith and the third condition of paragraph 4(a) of the Policy has been fulfilled.

## **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 <khadisilkonline.com> be transferred to the Complainant.

*/Nick J. Gardner/*

**Nick J. Gardner**

Sole Panelist

Date: April 22, 2022