

## **ADMINISTRATIVE PANEL DECISION**

Khadi and Village Industries Commission v. Contact Privacy Inc. Customer  
1247679435 / Domain Administrator, WCWS Internet  
Case No. D2022-0363

### **1. The Parties**

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

The Respondent is Contact Privacy Inc. Customer 1247679435, Canada / Domain Administrator, WCWS Internet, United States of America.

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

The disputed domain name <khadilinen.com> is registered with Google 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 2, 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 3, 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 amended Complaints on February 3, 2022 and February 7, 2022.

The Center verified that the Complaint together with the amended Complaints 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 8, 2022. In accordance with the Rules, paragraph 5, the due date for Response was February 28, 2022. Whilst the Respondent did not submit a formal response, the Center received emails from the Respondent on February 3 and February 4, 2022. On March 1, 2022, the Center informed the Parties that it would proceed to panel appointment.

The Center appointed Antony Gold as the sole panelist in this matter on March 9, 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 statutory body, located in India, whose objectives include providing employment in rural areas within India, including through the sale of articles produced as a result of its various initiatives. The Complainant generates employment in about 248,000 villages throughout India and, in addition to 6 zonal offices, has offices in 28 states for the implementation of its programmes.

The Complainant promotes products which have been manufactured through its initiatives under the trade mark KHADI and it has 8,050 sales outlets in India which sell authorized or licensed products. The Complainant's KHADI mark has been in continuous use since 1956 and the Complainant has secured many trade mark registrations for it, both in India and in other countries. These include, by way of example only, Indian Trade Mark, registration number 2851528, for KHADI, in class 5, registered on November 27, 2014.

The disputed domain name was registered on July 11, 2020. It does not resolve to an active website.

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

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

The Complainant says that the disputed domain name is identical or confusingly similar to a trade mark in which it has rights. It refers to its trade marks for KHADI, details of one of these marks having been set out above, and says that the addition of a generic term in the disputed domain name does not serve to distinguish it from the Complainant's mark but, rather, reinforces the perception of an association between them.

The Complainant says that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant has not authorized, licensed or permitted the Respondent to register or use the disputed domain name. There is no meaning associated with the term KHADI other than in relation to the Complainant and the sole purpose of the Respondent's registration has been to misappropriate the reputation associated with the Complainant's mark. The Respondent has not used the disputed domain name and therefore cannot be considered to have used it for any legitimate purpose. The Complainant has established a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name and the burden of proof shifts to the Respondent to show that it has.

Lastly, the Complainant says that the disputed domain name was registered and is being used in bad faith. In view of the well-known nature of the Complainant's KHADI trade marks, the Respondent was clearly aware of the Complainant's rights in them as at the date of registration of the disputed domain name. The disputed domain name has been registered in order that the Respondent may profit from the Complainant's reputation in its KHADI mark and mislead consumers into thinking that it is associated with the Complainant, which is a clear indication of bad faith. Registration of the disputed domain name to infringe the Complainant's trade marks, create initial interest confusion and potentially perpetrate fraud against consumers demonstrates the Respondent's illegitimate purpose in registering and using it. By its registration the Respondent has intentionally attempted to create confusion with the Complainant's trade marks as to the source, sponsorship, affiliation or endorsement of the disputed domain name.

## B. Respondent

The Respondent did not serve a formal reply to the Complaint. However, on February 3, 2022, the Center received an email communication from the Respondent stating “Who’s complaining and what is the issue?”. On February 4, 2022, in response to an explanatory email sent by the Center, the Respondent sent a further email to the Center stating; “I’ve no idea, what is this all about. I register that domain for my upcoming business selling LINEN towels”.

## 6. Discussion and Findings

Paragraph 4(a) of the Policy provides that the Complainant proves each of the following three elements in order to succeed in its Complaint:

- (i) the disputed domain name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights; and
- (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

The Complainant has provided details of its trade mark registrations it owns for KHADI, including the registration referenced above, which thereby establish its rights in this mark.

The Top-Level Domain, that is “.com” in the case of the disputed domain name, is typically disregarded when assessing confusing similarity as it is a technical requirement of registration. The disputed domain name comprises the entirety of the Complainant’s KHADI mark, without alteration, together with the word “linen”, being confusingly similar to the Complainant’s mark. As explained at section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), if a trade mark is recognizable within a domain name, the addition of other terms would not prevent a finding of confusing similarity under the first element.

The Complainant’s KHADI mark is clearly recognizable within the disputed domain name and the Panel therefore finds that it is confusingly similar to a trade mark in which the Complainant has rights.

### B. Rights or Legitimate Interests

The Policy sets out at paragraph 4(c) examples of circumstances, without limitation, by which a respondent may demonstrate rights or legitimate interests in a disputed domain name. These are, in summary: (i) if the respondent has been using the domain name in connection with a genuine offering of goods and services or has made demonstrable preparations to do so; (ii) if the respondent has been commonly known by the domain name; or (iii) if the respondent has been making a legitimate noncommercial or fair use of the domain name. If a complainant establishes a *prima facie* case that a respondent lacks rights or a legitimate interest in a domain name, the burden of production shifts to the respondent; see section 2.1 of the [WIPO Overview 3.0](#).

The Respondent’s email to the Center, dated February 4, 2022, asserts that the Respondent’s intention has been make use of the disputed domain name for the purpose of a planned business selling linen towels. As the Respondent has not made actual use of the disputed domain name, it is necessary to consider whether it has made demonstrable preparations to do so. Section 2.2 of the [WIPO Overview 3.0](#) provides examples of what might constitute satisfactory evidence from a respondent in this respect such as evidence relating to the formation of a respondent’s business, evidence of credible investment in website development or promotional materials and proof of a genuine business plan utilizing the domain name coupled with credible signs of its pursuit. Section 2.2 of [WIPO Overview 3.0](#) adds that: “while such indicia are assessed pragmatically in light of the case circumstances, clear contemporaneous evidence of *bona fide* pre-complaint preparations is required.”

No evidence of any type has been provided by the Respondent in support of its assertion that it registered the disputed domain name for the purpose of a business selling linen towels. Nor any explanation has been offered as to why, approximately twenty months after registration, the disputed domain name has still not been put to active and *bona fide* use. Moreover, the Respondent has not provided any explanation as to the circumstances in which it chose the name “Khadi” for its business, nor has it challenged or otherwise dealt with the Complainant’s assertion that it registered the disputed domain name with knowledge of the Complainant’s mark and that any use of it by the Respondent is likely to cause confusion to Internet users

In the absence of any detail or supporting evidence from the Respondent to support its assertions, addressing the issues set out above, the Panel does not accept that the Respondent has any genuine intention to use the disputed domain name in connection with a *bona fide* offering of goods and services. See, by way of example, *Chocolaterie Guylian, Naamloze Vennootschap (N.V.) v. Zeugma*, WIPO Case No. [D2010-2256](#).

The second circumstance set out at paragraph 4(c) of the Policy is also inapplicable as there is no evidence to indicate that the Respondent has been commonly known by the disputed domain name. Nor is the third circumstance applicable; non-use of the disputed domain name does not amount to a legitimate noncommercial or fair use of it.

The Complainant has made out a *prima facie* case that the Respondent does not have rights or legitimate interests in the disputed domain name and the burden of production accordingly shifts to the Respondent to show that it does. The brief and unsupported claim by the Respondent is insufficient to satisfy this burden and the Panel therefore finds that the Respondent has no rights or legitimate interests with respect to the disputed domain name.

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

The Complainant has provided evidence that as at the date of the registration of the disputed domain name, its KHADI mark was long-established and well-known, particularly in India. In view of the evidence of repute of the Complainant’s mark, and the omission of the Respondent to provide a credible explanation for its registration of the disputed domain name, the Panel concludes that the Respondent was aware of the Complainant’s mark as at the date of its registration of the disputed domain name. Moreover, the circumstances point to the Respondent’s underlying intention to have been to take advantage in some way of the Complainant’s repute in its mark. As explained at section 3.1.4 of the [WIPO Overview 3.0](#): “[p]anelists have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trade mark by an unaffiliated entity can by itself create a presumption of bad faith.” See also, by way of example, *Facebook, Inc. v. Eduard Vokhmin*, WIPO Case No. [D2021-3464](#). The Panel therefore finds the registration of the disputed domain name to have been in bad faith.

The inactive status of the disputed domain name is not a bar to a finding of bad faith. Section 3.3 of the [WIPO Overview 3.0](#) explains that: “From the inception of the UDRP, panelists have found that the non-use of a domain name (including a blank or ‘coming soon’ page) would not prevent a finding of bad faith under the doctrine of passive holding. While panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant’s mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent’s concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put”. See also *VOLKSWAGEN AG v. Danny de graaf*, WIPO Case No. [D2020-1940](#).

Applying these factors to the current circumstances; (i) the Complainant’s KHADI mark has been registered in multiple jurisdictions; (ii) whilst the Respondent sent two emails to the Center in response to the Complaint, it has not provided any credible evidence of actual or contemplated good-faith use by it of the

disputed domain name; (iii) the Respondent has sought to conceal its identity through use of a privacy service; and (iv) having regard to the confusing similarity of the disputed domain name to the Complainant's KHADI mark and the Complainant's extensive and long-established use of its KHADI mark to denote products which have been manufactured as a result of its various activities in India, it is not possible to conceive of any plausible good faith use to which the disputed domain name could be put by the Respondent.

For the above reasons, the Panel finds that the disputed domain name was both registered and is being used in bad faith.

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

*/Antony Gold/*

**Antony Gold**

Sole Panelist

Date: March 23, 2022