

ADMINISTRATIVE PANEL DECISION

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

Case No. D2022-1200

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 (“United States”) / Nanci Nette, United States.

2. The Domain Name and Registrar

The disputed domain name <khadirishikesh.com> (the “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 April 6, 2022. On April 6, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On April 7, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name, which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on April 11, 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 April 12, 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 April 13, 2022. In accordance with the Rules, paragraph 5, the due date for Response was May 3, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 10, 2022.

The Center appointed Gregor Vos as the sole panelist in this matter on May 20, 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 villages throughout India and has six zonal offices and offices in 28 states for the implementation of its programs.

The Complainant is the owner of *inter alia* the following trademark registration (hereinafter referred to as: the "Trademark"):

- International registration No. 1272626 for KHADI registered on December 2, 2014, with designation of *inter alia* the European Union, China and India.

The Domain Name was registered on January 8, 2016, and resolves to a pay-per-click ("PPC") page with links of a commercial nature.

5. Parties' Contentions

A. Complainant

With the Complaint, the Complainant seeks that the Domain Name is transferred to the Complainant. The Complaint is based on the following factual and legal grounds: the Domain Name is identical or confusingly similar to the Trademark of the Complainant, the Respondent has no rights or legitimate interests in the Domain Name, and the Domain Name has been registered and is being used in bad faith.

Firstly, according to the Complainant, the Domain Name is identical or confusingly similar to its well-known Trademark. The Domain Name reproduces the Trademark in its entirety with the addition of the geographical term "rishikesh". Further, the addition of the generic Top-Level Domain ("gTLD") ".com" does not grant the disputed Domain Name distinctiveness. Therefore, by registering the Domain Name, the Respondent has created a confusing similarity with the Complainant's Trademarks in that it could mislead Internet users into thinking that it is in some way associated with the Complainant.

Secondly, according to the Complainant, the Respondent has no rights or legitimate interests in the Domain Name. The Respondent has never received any form of authorization from the Complainant to use the Trademark and has not hosted any content on the website linked to the Domain Name since its registration.

Finally, according to the Complainant, the Respondent has registered and is using the Domain Name in bad faith. In light of the well-known character of the Complainant's Trademark, the Respondent most likely registered the Domain Name with knowledge of the Complainant and its Trademark. Also, according to the Complainant, by registering and using the Domain Name the Respondent intentionally attempts to attract, for commercial gain, Internet users to its website. Finally, the primary aim of the Respondent would be to sell or transfer the Domain Name to the Complainant or any third party for valuable consideration.

B. Respondent

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

6. Discussion and Findings

In view of the lack of a response filed by the Respondent as required under paragraph 5 of the Rules, this proceeding has proceeded by way of default. Hence, under paragraphs 5(f), 14(a) and 15(a) of the Rules, the Panel is directed to decide this administrative proceeding on the basis of the Complainant's undisputed factual presentations.

For the Complainant to succeed, it must prove, within the meaning of paragraph 4(a) of the Policy and on the balance of probabilities that:

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

Only if all three elements have been fulfilled, the Panel is able to grant the remedy requested by the Complainant. The Panel will deal with each of the requirements in turn.

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires the Complainant to show that the Domain Name is (i) identical or confusingly similar to a trademark or service mark, (ii) in which the Complainant has rights.

With respect to having rights pursuant to paragraph 4(a)(i) of the Policy, it is noted that the Complainant is registered as the owner of the trademark KHADI. Consequently, the Panel finds that the Complainant has proven that it has rights in the Trademark.

With regard to the assessment of identity or confusing similarity of the Domain Name with the Trademark, it is generally accepted that this test involves a reasoned but relatively straightforward comparison between the Complainant's Trademark and the Domain Name (see section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"). 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 (see section 1.7 of the [WIPO Overview 3.0](#)).

In the present case, the Trademark is clearly recognizable within the Domain Name. The addition of the generic Top-Level Domain ("gTLD") ".com" and the addition of the geographical term "rishikesh" (a city in India) do not prevent a finding of confusing similarity with the Trademark (see sections 1.7 and 1.11 of the [WIPO Overview 3.0](#)). Consequently, the Panel finds that the requirement under paragraph 4(a)(i) of the Policy has been satisfied.

B. Rights or Legitimate Interests

The second requirement the Complainant must prove is that the Respondent has no rights or legitimate interests in the Domain Name. The *onus* of proving this requirement, like each element, falls on the Complainant. Given the difficulty in proving a negative, however, it is usually sufficient for a complainant to make out a *prima facie* case that a respondent lacks rights or legitimate interests. If a complainant does establish a *prima facie* case, the burden of production shifts to the respondent (see, e.g. [WIPO Overview 3.0](#), section 2.1; *Sanofi v. Cimpress Schweiz GmbH*, WIPO Case No. [D2017-0522](#)).

Paragraph 4(c) of the Policy lists three non-limitative examples of instances in which a respondent may establish rights or legitimate interests in the disputed domain name.

The Complainant has substantiated that none of these circumstances apply in this case. By defaulting, the Respondent has failed to rebut the *prima facie* case established by the Complainant. Furthermore, based on the record before it, the Panel does not see an indication that any of the circumstances of paragraph 4(c) of the Policy is present. The Domain Name is constructed of the Complainant's Trademark in its entirety, and at the time of filing of the Complaint resolved to a PPC" page with links of a commercial nature, evidencing the Respondent's intent to capitalize on the misdirection caused by the confusingly similar Domain Name.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in respect of the Domain Name. Paragraph 4(a)(ii) is thereby fulfilled.

C. Registered and Used in Bad Faith

Under paragraph 4(a)(iii) of the Policy, a complainant must show that the disputed domain name has been registered and is being used in bad faith. Paragraph 4(b) of the Policy lists four non-limitative circumstances which may be considered as evidence of registration and use in bad faith of a domain name.

In the present case, the Trademark is registered by the Complainant and has been used for many years. The Complainant's rights to the Trademark predate the registration date of the Domain Name. In light of the reputation of the Trademark evidenced by the record before it, the Panel agrees with the Complainant that it is not conceivable that the Respondent chose the Domain Name without knowledge of the Complainant's activities and its Trademark. The reputation of the Trademark of the Complainant has been confirmed by earlier UDRP panels (see *e.g. Khadi & Village Industries Commission v. Registration Private, Domains By Proxy, LLC / Dalveer Singh, Param Systems*, WIPO Case No. [D2021-3260](#); *Khadi and Village Industries Commission v. Domains By Proxy, LLC / Nanci Nette*, WIPO Case No. [D2022-0361](#)).

Also, the Panel found that the Respondent lacks any rights to or legitimate interests in the Domain Name and finds that the Respondent is taking unfair advantage of the Domain Name by having diverted Internet users to a PPC site that includes links of a commercial nature. Therefore, the Panel finds from the present circumstances that 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 Trademark as to the source, sponsorship, affiliation or endorsement (see *e.g. "Dr. Martens" International Trading GmbH / "Dr. Maertens" Marketing GmbH v. Joan Mitchell*, WIPO Case No. [D2018-0226](#)).

In light of the reputation of the Trademark, the lack of any rights or legitimate interest in the Domain Name by the Respondent, and in the absence of any conceivable good faith use of the Domain Name, the Panel finds from the present circumstances that the Respondent has intentionally sought to take unfair advantage of or otherwise abuse the Trademark. This is reinforced by the reputation of the Complainant's Trademark, as referenced above.

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 Domain Name <khadirishikesh.com> be transferred to the Complainant.

/Gregor Vos/

Gregor Vos

Sole Panelist

Date: June 3, 2022