

## **ADMINISTRATIVE PANEL DECISION**

**Khadi & Village Industries Commission v. Registration Private, Domains By Proxy, LLC / khaadi thedesigner, Khaadithedesigner**  
**Case No. D2022-2308**

### **1. The Parties**

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

The Respondent is Registration Private, Domains By Proxy, LLC, United States of America / khaadi thedesigner, Khaadithedesigner, India.

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

The disputed domain name <khaadithedesigner.com> 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 June 25, 2022. Thereafter, on June 27, 2022, the Center transmitted by email to the Registrar whereby a request for registrar verification in connection with the disputed domain name. On June 28, 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 28, 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 July 1, 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 July 1, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 21, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 22, 2022.

The Center appointed Ashwinie Kumar Bansal as the sole panelist in this matter on July 26, 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 formed by the Government of India under an Act of Parliament, “Khadi and Village Industries Commission Act of 1956”. The Complainant is an apex organization which has been established under the Ministry of Micro, Small and Medium Enterprises and its objectives are threefold: firstly, a social objective of providing employment in rural areas; secondly, an economic objective of producing saleable articles; and thirdly, a wider objective of creating self-reliance amongst people and building up a strong rural community spirit. Its head office is located in Mumbai with six other zonal offices within India and it also has offices in 28 states for implementation of its various programs.

The Complainant has been carrying out work related to the implementation of programs for development of Khadi and other Village Industries in the rural areas in coordination with other agencies. The programs offered by the Complainant are to promote products under the trademark KHADI (the “Trademark KHADI”). The Complainant is using the Trademark KHADI and also got the same registered with the Registry of Trademarks in India.

The Complainant has furnished evidence of several registrations of the Trademark KHADI and its variations in different jurisdictions, including International Registration No. 1272626 registered on December 2, 2014, and Indian Registration No. 2851524 registered on November 27, 2014.

The disputed domain name was registered on June 27, 2020. The disputed domain name resolves to an inactive website.

#### **5. Parties’ Contentions**

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

The Complainant in its Complaint has, *inter alia*, raised the following contentions:

The Complainant had adopted the Trademark KHADI on September 25, 1956 and it has been in operation continuously till date. By virtue of its adoption nearly six decades back and owing to its extensive use thereof, the Trademark KHADI has fetched itself a reputation and global association with the Complainant in the eyes of the consumers. The Complainant authorizes various retail sellers, organizations, societies, and institutions to sell products under the KHADI Trademark. In order to be listed as an authorized user of Trademark KHADI for the purposes of sales and promotions of KHADI certified products and services, each organization as a mandate has to apply for recognition through the Khadi Institutions Registration and Certification Sewa (KIRCS). The Complainant’s Trademark KHADI is prominently featured on all products sold by the Complainant in India and abroad.

The disputed domain name incorporates the Complainant’s Trademark KHADI, in which the Complainant has statutory as well as common law rights by virtue of long and continuous use and being the registered proprietor thereof in a number of jurisdictions. Hence, the Complainant contends that allowing a third party to use the Trademark KHADI would cause a great deal of confusion and deception amongst the Complainant’s patrons, members of trade, consumers, and public at large. The Respondent had registered the disputed domain name with a view to ride upon the goodwill of the Complainant’s well-known Trademark KHADI and pass off his goods/services as that of the Complainant. Owing to the fame and reputation associated with the Trademark KHADI, the first impression created in the minds of the consumers shall be

that the Respondent's website originates from, is associated with, or is sponsored by the Complainant.

The Complainant has also contended that KHADI is a well-known Trademark in a number of prior UDRP proceedings held before the Center. The disputed domain name wholly contains the Complainant's Trademark KHADI with a mere addition of a letter "a", and is therefore, confusingly similar to the Complainant's Trademark/trade name KHADI.

The Complainant contends that the disputed domain name incorporates the term "khaadi" *i.e.*, deliberate misspelling of and phonetically identical to the Complainant's Trademark KHADI.

There are about seven outlets that are directly owned by the Complainant out of a total of 8,050 sales outlets, the remaining outlets are owned by authorized/licensed outlets.

The Respondent has registered the domain name thereby misappropriating, illegally and without authority, the Complainant's Trademark which is exclusive property of the Complainant. The landing page of the website hosted on the disputed domain name shows "This site can't be reached". From the above, it is cogent that the disputed domain name is not operative in nature.

The Complainant contends that the disputed domain name has entirely encapsulated the Complainant's Trademark KHADI with a minor change, *i.e.*, with an addition of a letter "a" which does not compensate for the overwhelming identity of the disputed domain name with the Complainant's trademark in any manner. The Respondent has adopted and acquired the well-known Trademark KHADI of the Complainant in its entirety and has made a common, obvious, or intentional misspelling of the Complainant's Trademark KHADI which itself strikes towards the *mala fide* intention of the Respondent. Furthermore, the Complainant has contended that mere addition of the descriptive terms also do not serve to distinguish the disputed domain name from the Trademark KHADI. The *mala fide* of the Respondent is cogent from the fact that the Respondent has not posted any content on the disputed domain name and it is a dormant/inactive website. Therefore, the said adoption by the Respondent is evidently in bad faith.

The Complainant has submitted that the Respondent is not hosting any content on the website. There is also no demonstrable preparation to use or actual use of the disputed domain name in connection with any *bona fide* offering of goods or services. It is inconceivable that anyone having legitimate interest over a domain name would keep the domain name inactive even after a duration of almost two years. The non-use of the disputed domain name itself indicates that the Respondent has no interests, let alone legitimate interests, in the disputed domain name.

The Complainant further contends that the Respondent does not have any authority or license to use any of its trademarks in any way. Such unlicensed and unauthorized use of domain incorporating the Complainant's trademark is solely with a view to hoard the disputed domain name, to mislead and divert the consumers, and to tarnish the trademark of the Complainant.

The Complainant contends that the primary aim of the Respondent is to sell or transfer the disputed domain name to the Complainant or to any third party, for a valuable consideration. The fact that the Respondent has failed to host any content of the disputed domain name or use it for any *bona fide* offering of goods/services demonstrates that the Respondent has registered the disputed domain name in bad faith and with the *mala fide* intention to extract some commercial advantage from the Complainant. The said fact supports the conclusion that the Respondent registered the disputed domain name in bad faith. The fame and unique qualities of the KHADI trademarks, which was adopted and applied for by the Complainant well prior to the registration of the disputed domain name, make it extremely unlikely that the Respondent created the disputed domain name independently without any knowledge of the Complainant's trademark. Even constructive knowledge of a famous trademark like KHADI is sufficient to establish registration in bad faith.

## **B. Respondent**

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

## **6. Discussion and Findings**

As per paragraph 5(f) of the Rules, where a respondent does not submit a substantive response, in the absence of exceptional circumstances, the panel shall 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 substantive response. As per paragraph 14(b) of the Rules, where a party does not comply with any provision of the Rules, the Panel is to draw such inferences there from 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, which sets out the three elements that must be present for the proceeding to be brought against the Respondent, which the Complainant must prove to obtain a requested remedy. It provides as follows:

“Applicable Disputes. You are required to submit to a mandatory administrative proceeding in the event that a third party (a “complainant”) asserts to the applicable Provider, in compliance with the Rules of Procedure, that:

(i) your domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and

(ii) you have no rights or legitimate interests in respect of the domain name; and

(iii) your domain name has been registered and is being used in bad faith.

In the administrative proceeding, the complainant must prove that each of these three elements are present.”

The Panel will address all the three aspects of the Policy listed above hereunder:

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

The Complainant has furnished evidence of its rights in the Trademark KHADI through details of their registrations and common law rights have accrued to it due to long and substantial use of the Trademark KHADI not only in India, but also in certain other parts of the world. The Panel has considered and examined all the documents submitted by the Complainant in support of its claim that the Complainant has been using and has various registrations for the Trademark KHADI. There is no doubt that the Complainant has rights in the Trademark KHADI.

The WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.7 provides the view of panelists: “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 trademark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that trademark for purposes of UDRP standing.” The addition of suffixes “the” and “designer” does not make the Trademark KHADI unrecognizable in the disputed domain name.

The mere addition of suffixes “the” and “designer” does not prevent a finding of confusing similarity between the disputed domain name and the Complainant's Trademark. The Panel considers it useful to refer to [WIPO Overview 3.0](#), section 1.8: “Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element. The nature of such additional

term(s) may however bear on assessment of the second and third elements”.

The Respondent has incorporated the entire Trademark KHADI of the Complainant in the disputed domain name with a minor misspelling, *i.e.*, addition of the letter “a”. The addition of an extra letter “a” does not make the Trademark KHADI unrecognizable in the disputed domain name. [WIPO Overview 3.0](#), section 1.9 provides the view of panelists: “A domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element. This stems from the fact that the domain name contains sufficiently recognizable aspects of the relevant mark. Under the second and third elements, panels will normally find that employing a misspelling in this way signals an intention on the part of the respondent (typically corroborated by infringing website content) to confuse users seeking or expecting the complainant.”

The generic Top-Level-Domain (“gTLD”) “.com” is typically disregarded under the first element confusing similarity test. [WIPO Overview 3.0](#), section 1.11.1 states that the applicable gTLD in a domain name (*e.g.*, “.com”, “.club”, “.nyc”) is viewed as a standard registration requirement and as such may be disregarded under the first element confusing similarity test.

Therefore, the Panel finds that the Complainant has successfully established the first element of paragraph 4(a) of the Policy.

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

The Complaint is based on the Trademark KHADI and its variations registered in favor of the Complainant and, used in connection with goods sold and services offered by the Complainant and its authorized members. The Trademark KHADI in the Indian context and the freedom movement in India refers to hand-spun and hand-woven cloth.

The Respondent is in no way related to the Complainant nor is the Respondent an agent of the Complainant, nor does he in any way or manner carry out activities for or on behalf of the Complainant. The Trademark KHADI, in the above-mentioned background, indisputably vests in the Complainant as evidenced by various statutory registrations secured by the Complainant.

The Complainant runs a program under which it authorizes licenses or grants certificates to third parties to use the KHADI Trademarks in a prescribed manner. The Complainant has been using the Trademark for a long time since 1956. The Complainant has not authorized or permitted the Respondent to use the Trademark KHADI.

Paragraph 4(c) of the Policy lists circumstances, in particular but without limitation, which, if found by the Panel to be proved, may demonstrate the Respondent’s rights or legitimate interests in a disputed domain name for the purposes of paragraph 4(a)(ii) of the Policy. [WIPO Overview 3.0](#), section 2.1 states that: “While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of ‘proving a negative’, requiring information that is often primarily within the knowledge or control of the respondent. As such, 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 demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.”

The Respondent has failed to file a response to rebut the Complainant’s *prima facie* case or to explain his rights or legitimate interests. The Respondent has thus failed to demonstrate any rights or legitimate interests in the disputed domain name as per paragraph 4(c) of the Policy or otherwise.

[WIPO Overview 3.0](#), section 2.5 provides that, “Fundamentally, a respondent’s use of a domain name will not be considered ‘fair’ if it falsely suggests affiliation with the trademark owner; the correlation between a domain name and the complainant’s mark is often central to this inquiry.” The Complainant has neither authorized the Respondent to use its trademark nor is he a licensee which means that the Respondent has no rights or legitimate interests in the term KHADI.

Moreover, the Panel finds that the disputed domain name, incorporating the entirety of the Trademark KHADI, carries a risk of implied affiliation. See [WIPO Overview 3.0](#), section 2.5.1.

Further, the Panel notes that the Respondent has used the registrant name “khaadi the designer, Khaadithedesigner”, when registering the disputed domain name. However, there is no evidence before the Panel that the Respondent has any trademark rights associated with the disputed domain name or has actually been commonly known by the disputed domain name, apart from registration of the disputed domain name. Rather, it appears more likely than not that the registrant details are false and were merely chosen to mimic the disputed domain name in order to further support the false impression of association with the Complainant created by the confusingly similar disputed domain name. The Complainant contends that the Respondent is not commonly known by the disputed domain name, and the Respondent has not come forward with any evidence to the contrary.

In the absence of the Respondent’s response, and in light of the evidence submitted by the Complainant, the Panel finds that the Complainant has satisfied its burden to make out a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Panel is satisfied that the second element of the Policy has been met.

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

Paragraph 4(b) of the Policy identifies, in particular but without limitation, four circumstances which, if found by the Panel to be present, shall be evidence of the registration and use of the disputed domain name in bad faith. Each of the four circumstances in paragraph 4(b) of the Policy, if found, is evidence of “registration and use of a domain name in bad faith”. The Complainant is required to prove both that the disputed domain name was registered in bad faith and that it is being used in bad faith. Hence, circumstances at the time of registration and thereafter have to be considered by the Panel.

There is virtually no possibility that, owing to the well-known nature of the Complainant’s Trademark KHADI and the well-established reputation and goodwill associated to it, the Respondent was unaware of the Complainant’s existence or presence in the market. The Complainant’s Trademark KHADI has been found to be a well-known trademark. See [WIPO Overview 3.0](#), section 3.2.2.

The Complainant has produced evidence of registration of the Trademark KHADI since at least 2014, and contends that it has been using the mark extensively since 1956. The Respondent registered the disputed domain name on June 27, 2020, incorporating in it the Trademark KHADI of the Complainant, albeit with an almost imperceptible misspelling. The Complainant has not granted the Respondent permission or a license of any kind to use its Trademark KHADI and register the disputed domain name, and the Respondent has not come forward to explain its choice of disputed domain name. Such unauthorized registration by the Respondent suggests opportunistic bad faith in these circumstances.

Moreover, the fact that the disputed domain name does not resolve to an active website does not prevent a finding of bad faith. See [WIPO Overview 3.0](#), section 3.3. In this case the distinctiveness and reputation of the Trademark KHADI, the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good faith use, the concealment of the Respondent’s identity behind a privacy service and use of likely false underlying registrant details, and the implausibility of any good faith use to which the disputed domain name, comprising a typographical error of the Trademark KHADI, could be used, all support an inference of bad faith.

In view of the above, the Panel concludes that the third and last condition provided for by paragraph 4(a)(iii) of the Policy is met. The Panel therefore, finds that the disputed domain name has been registered and is being used by the Respondent 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 <khaadithedesigner.com> be transferred to the Complainant.

*/Ashwinie Kumar Bansal/*

**Ashwinie Kumar Bansal**

Sole Panelist

Date: August 5, 2022