

ADMINISTRATIVE PANEL DECISION

Khadi & Village Industries Commission v. James manger
Case No. D2023-4505

1. The Parties

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

The Respondent is James manger, United States of America (“United States”).

2. The Domain Name and Registrar

The disputed domain name <khadi.one> is registered with Spaceship, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 30, 2023. On October 30, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 31, 2023, 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 (Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 1, 2023 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 November 6, 2023.

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 November 10, 2023. In accordance with the Rules, paragraph 5, the due date for Response was November 30, 2023. The Respondent sent email communications to the Center on November 1 and 6, 2023 and on December 9, 2023. On December 1, 2023, the Center notified the Parties that the Center will proceed to Panel Appointment.

The Center appointed Assen Alexiev as the sole panelist in this matter on December 8, 2023. 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 in April 1957 by the Government of India in accordance with the Khadi and Village Industries Commission Act of 1956, passed by the Indian Parliament. The Complainant implements governmental programs for the promotion of employment in rural areas and for the benefit of artisans, weavers and other members of small-scale village and rural industries. The Complainant also markets products produced through its programs under the trademark KHADI in India and in many other countries, and also authorizes various retail sellers, organizations, societies and institutions to sell products under the same trademark.

The Complainant is the owner of numerous trademark registrations protecting the sign “KHADI” (the “KHADI trademark”), including the following:

- the Indian trademark KHADI with registration No. 2851544, registered on November 27, 2014 for goods in International Class 26;
- the Indian trademark KHADI with registration No. 2851545, registered on November 27, 2014 for goods in International Class 27;
- the International trademark KHADI with registration No. 1272626, registered on December 2, 2014 for goods and services in International Classes 01, 03, 05, 16, 18, 20, 21, 23, 24, 25, 26, 27, 29, 30, 32 and 35;
- the Indian trademark KHADI INDIA and device with registration No. 4324970, registered on October 18, 2019 for goods in International Class 25;
- the United States trademark KHADI INDIA with registration No.7,159,906, applied for on February 26, 2021 and registered on September 12, 2023 for goods in International Class 16; and
- the United States trademark KHADI INDIA with registration No.7,159,907, applied for on February 26, 2021 and registered on September 12, 2023 for goods in International Class 30.

In 2022, the Indian Registrar of Trademarks entered the KHADI trademark under No.127 in the List of well-known trademarks in India with reference to textile and consumer products and services such as promoting research in production techniques, supplying raw material and tools to producers, quality control and marketing products¹.

The disputed domain name was registered on May 6, 2023². It is currently inactive. At the time of filing of the Complaint, it resolved to a parked website.

5. Parties' Contentions

A. Complainant

The Complainant states that the disputed domain name is identical to its KHADI trademark, because it wholly incorporates the trademark with no additional elements.

According to the Complainant, the Respondent has no rights or legitimate interests in respect of the disputed domain name, because the Complainant has not authorized it to use the KHADI trademark and the Respondent does not use it in connection with any bona fide offering of goods or services.

¹ https://www.ipindia.gov.in/IPIndiaAdmin/writereaddata/Portal/Images/pdf/List_of_Well-Known_Trade_Marks_as_of_10.10.2022.pdf

² On January 4, 2024, the Registrar indicated to the Center that due to technical issues, the domain name was canceled on December, 24, 2023, but subsequently reinstated by the Registrar on January 4, 2024.

The Complainant points out that the disputed domain name has been registered on May 6, 2023, which is decades after the Complainant started using the KHADI trademark as part of its trade name, corporate name, and trading style in 1956, as a result of which the KHADI trademark has become globally associated with the Complainant by consumers. According to the Complainant, any offering under the disputed domain name would violate the Complainant's rights in the KHADI trademark, and the unauthorized use of the disputed domain name incorporating the KHADI trademark would be solely for the purpose of misleading consumers and tarnishing the Complainant's trademark.

The Complainant contends that the disputed domain name was registered and is being used in bad faith. The Complainant adds that the fame and unique qualities of the KHADI trademark, which the Complainant adopted and applied for long before the registration of the disputed domain name, make it unlikely that the Respondent independently created the disputed domain name without any knowledge of the Complainant's trademark. Rather, according to the Complainant, the Respondent's primary objective is to sell or transfer the disputed domain name to the Complainant or to any third party, for valuable consideration, and the fact that the Respondent has failed to host any content of the disputed domain name or use it for a bona fide offering of goods or services demonstrates that the Respondent has registered the disputed domain name in bad faith in order to obtain some commercial advantage from the Complainant.

B. Respondent

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

With its informal letter of November 6, 2023, the Respondent stated:

*"This doesn't mean the khadi is your property,
Khadi is very generic word in term of cloths
And being to the trademark the trademark states various names in conjunction with khadi you don't have
precisely "khadi" on trademark
And being not on your industry nor the site has your primary market/Country.
If you need this domain you have to purchase at premium rate.
As our company only indulge in purchasing branded domains. Which nither violates any of the above terms
and conditions and trademarked (sic)".*

6. Discussion and Findings

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, (["WIPO Overview 3.0"](#)), section 1.7.

Based on the available record, the Panel finds that the Complainant has shown rights in respect of the KHADI trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the entirety of the KHADI word trademark and the distinctive "KHADI" element of the KHADI INDIA trademark is reproduced within the disputed domain name. Accordingly, the disputed domain name is identical or confusingly similar to the KHADI trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Based on the available record, the Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although 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 difficult 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 (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant’s prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

The Respondent states that “khadi” is a generic word for “cloth” but does not provide any details or evidence to support this assertion. At the same time, the KHADI trademark has been duly registered in many jurisdictions around the world for goods in International Classes 24 and 25, which include textiles and clothing, and the KHADI trademark has been declared to be well-known in India in respect of textiles and consumer products. In light of the foregoing, the Panel finds no basis for treating the word “khadi” as a dictionary word.

Even assuming for the sake of argument that the word “khadi” is a dictionary word, this alone is not sufficient to conclude that the Respondent has rights or legitimate interests in the disputed domain name. As discussed in section 2.10.1 of the [WIPO Overview 3.0](#), Panels have recognized that the mere registration of a domain name consisting of a dictionary word or phrase does not by itself automatically confer rights or legitimate interests on the respondent; panels have held that mere arguments that a domain name corresponds to a dictionary term or a phrase are not necessarily sufficient. In order to find rights or legitimate interests in a domain name based on its dictionary meaning, the domain name should be genuinely used, or at least demonstrably intended for such use, in connection with the relied-upon dictionary meaning and not to trade off third-party trademark rights. Here, the disputed domain name is inactive, and the Respondent has not used it, nor has it asserted that it has any plans to use it in connection with any claimed dictionary meaning.

Further, the disputed domain name is identical to the well-known KHADI trademark and thus carries a high risk of implied affiliation with the Complainant. See section 2.5.1 of the [WIPO Overview 3.0](#).

All of the foregoing taken together leads the Panel to conclude that there is nothing to rebut the prima facie case made by the Complainant that the Respondent has no rights or legitimate interests in the disputed domain name.

Therefore, based on the record before it, the Panel finds that the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

Panels 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. Having reviewed the available record, the Panel finds the non-use of the disputed domain name does not prevent a finding of bad faith in the circumstances of this proceeding. Although 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) and the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use. [WIPO Overview 3.0](#), section 3.3.

Having reviewed the available record, the Panel notes the distinctiveness and reputation of the Complainant's KHADI trademark, which has been used by the Complainant for decades in India and globally and has been declared as well-known in India, and the composition of the disputed domain name, which is identical to that trademark and thus carries a high risk of implied affiliation. Moreover, the Respondent has failed to provide any plausible arguments as to why its registration and current non-use of the disputed domain name should be regarded as carried out in good faith. In view of the above, the Panel is not aware of any use of the disputed domain name by the Respondent without the consent of the Complainant that would be legitimate and finds that in the circumstances of this case the passive holding of the disputed domain name does not prevent a finding of bad faith under the Policy.

Based on the available record, the Panel therefore finds that the Complainant has established the third element of the 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 <khadi.one> be transferred to the Complainant.

/Assen Alexiev/

Assen Alexiev

Sole Panelist

Date: January 5, 2024