

ADMINISTRATIVE PANEL DECISION

Khadi & Village Industries Commission v. Jitender Thirwani
Case No. D2024-1629

1. The Parties

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

The Respondent is Jitender Thirwani, India.

2. The Domain Name and Registrar

The disputed domain name <khadibharat.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 April 18, 2024. On April 18, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 18, 2024, 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 (Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 19, 2024 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 22, 2024.

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 24, 2024. In accordance with the Rules, paragraph 5, the due date for Response was May 14, 2024. The Respondent sent an email communication to the Center on May 4, 2024. The proceeding was suspended on May 10, 2024 and reinstated on June 10, 2024. The new due date for the Response was June 14, 2024. The Respondent did not submit a formal response. Accordingly, the Center notified the Commencement of Panel Appointment Process on June 19, 2024.

The Center appointed Harini Narayanswamy as the sole panelist in this matter on June 26, 2024. 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 created by the government of India under the Khadi and Village Commission Act of 1956. The Complainant's purpose, inter alia, is the provision of employment in rural areas. Various development programs offered by the Complainant promote a multitude of products under the trademark KHADI sold by the Complainant as well as by authorized retail sellers and other institutions.

The Complainant owns several trademark registrations for the KHADI mark in India and other jurisdictions. The Complainant's Indian trademark registrations include KHADI word mark under class 24, with registration number 2851542 registration date November 27, 2014. KHADI word mark is also registered with the same registration date under other classes such as KHADI word mark under class 1 with registration number 2851524 and KHADI word mark under class 2 with registration number 2851525.

The Respondent registered the disputed domain name on December 22, 2023. At the time the present Complaint was filed, the disputed domain name resolved to a Registrar parked page with pay-per-click ("PCC") links.

5. Parties' Contentions

A. Complainant

The Complainant contends that it aims to provide socio-economic benefit to rural industry in India and has a three-fold objective. These are: (i) Social objective of providing employment in rural areas (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 that it provides large scale employment to rural weaker sections and rural women and its efforts generates employment in about 2,48,000 villages in India.

The Complainant contends that its programs for the development of Khadi and other village Industries in rural areas are done in coordination with other agencies and also implements the "Prime Minister's Employment Generation Programs" for upliftment of artisans, weavers and small- scale village and rural industries. The Complainant states it has many programs to help rural industries such as supply of raw materials for producers and common facilities to process raw materials and interest subsidy plans.

The Complainant states that the KHADI trademark has acquired significant goodwill due to its extensive promotion at exhibitions and trade-fairs and collaboration with leading brands. For instance, the collections of four design labels were displayed during the Lakme Fashion Week ,14th edition on August 23, 2018 under the KHADI mark. The Complainant has filed evidence of its promotions through print and electronic media and its large following on social media platforms. The Complainant states that its mobile phone application "Khadi India" helps users locate the nearest Khadi store.

The Complainant states that it certifies and authorizes retail sellers, organizations, societies and institutions to sell products under the KHADI trademarks as licensed users of the mark. Notably, the Complainant states that an authorized user status of the KHADI trademark can be obtained by submitting an application to the Khadi Institutions Registration & Certification Sewa (KIRCS). The Complainant states that it has over eight thousand sales outlets that sell KHADI licensed products and owns seven sales outlets.

The Complainant asserts that it has used the mark since 1956 and “Khadi” is part of its trade name, corporate name for over sixty years. The use of the KHADI mark by an unauthorized party is therefore likely to mislead its patrons, consumers and the general public. The Complainant states that it has satisfied each of the elements required under the Policy, and requests for the transfer of the disputed domain name.

B. Respondent

The Respondent did not file a formal response in these proceedings. An informal email communication was sent to the Center by the Respondent on May 4, 2024. The Respondent states in the email that he registered the disputed domain name with no malicious intent but merely because it was available. The Respondent adds that he intends to use the dispute domain name in future. The Respondent acknowledges that the disputed domain name “has a reference” to the Complainant’s registered trademark. In his exact words:

“I do agree only after looking into the documents shared by the complainant that the domain has a reference to the registered trademarks. However, while at time of registering the domain name, the intent was to look into the availability of a suitable name with no malicious intent.”

The Respondent denies that he has registered the disputed domain name in bad faith for the reasons that he has not reached out to the Complainant, the owner of the trademark, to sell the disputed domain name. He further argues that the disputed domain name has not been offered for sale by him to any third party or to the public at large. The Respondent alleges that that since he has registered the disputed domain name for future use, he argues that it is rightful activity. The Respondent further adds that the disputed domain name has not been used to misrepresent or to harm the Complainant.

Finally, the Respondent indicates in the email, that he intends to explore settlement of the dispute. The Complainant suspended the proceedings based on the Respondent’s intention to settle the dispute. The communications on record shows that the Respondent however did not come forward to settle, despite multiple reminders sent by the Complainant. There were no further communications from the Respondent.

6. Discussion and Findings

The Policy under paragraph 4 (a) requires the complainant to establish three elements to obtain the remedy of transfer of the disputed domain name under the Policy, these are:

- (i) The disputed domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and
- (ii) The respondent lacks rights or legitimate interests in the disputed domain name; and
- (iii) The disputed domain name was registered and is being used in bad faith by the respondent.

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.

The Complainant has provided evidence of its numerous registered trademarks for the KHADI mark. Based on the evidence on record, the Complainant has established its rights in respect of the KHADI trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The disputed domain name contains the KHADI mark along with a geographic term “bharat”, which is the Hindi term / name for India. The Panel finds that the KHADI trademark is recognizable in the disputed domain name, and the additional term “bharat”, does not impact the assessment of confusing similarity. It is

well established that where the trademark is recognizable in the disputed domain name, additional terms, words or geographic terms do not prevent a finding of confusing similarity between the disputed domain name and the mark. [WIPO Overview 3.0](#), section 1.8.

This finding is consistent with several UDRP cases that have found disputed domain names that contain additional geographic terms, such a country name along with a trademark would not prevent finding of confusing similarity. See *Moelis & Company Group LP v. Domain Manager, Moelis Australia Holdings Pty. Ltd.*, WIPO Case No. [D2017-1427](#) (<moelisaustralia.com>) and *Champion Products Europe Limited v. Client Care, Web Commerce Communications Limited*, WIPO Case No. [D2023-0043](#) (<championhungary.com>).

The Panel accordingly finds that the first element of the Policy has been established, that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights.

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 Respondent is not known by the disputed domain name or demonstrated any legitimate reason for the registration of the disputed domain name. The disputed domain name resolves to a Registrar parking page with various PPC links from which the Respondent most probably derives commercial revenue, therefore, under the overall circumstances of the case, the question of the disputed domain name being used for bona fide purposes or for noncommercial fair use purposes does not arise.

Based on the available record, the Panel finds that the Respondent has admitted in his email communication of May 4, 2024, that the disputed domain name has reference to the Complainant’s registered marks. It is therefore clear that the disputed domain name registered by the Respondent carries an implied affiliation to the Complainant’s mark. The disputed domain name is therefore likely to confuse and mislead Internet users regarding its sponsorship or affiliation.

The Panel notes that the Respondent lacks permission, authorization or license to use the mark or variants of the mark, as there is no evidence of any authorization or license that has been obtained by the Respondent from the Complainant. The Respondent has therefore made unauthorized use of the Complainant’s registered trademark in the disputed domain name. The Respondent’s unauthorized use of the Complainant’s mark, under the circumstances is not indicative of the Respondent rights or legitimate interests in the disputed domain name.

For the reasons discussed, 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 provided any relevant submissions or evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

The Panel finds the second element of the Policy has been established by the Complainant.

C. Registered and Used in Bad Faith

The third element under paragraph 4(a)(iii) of the Policy requires the Complainant to establish the disputed domain name has been registered and used in bad faith by the Respondent. The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy specifies circumstances, in particular, but without limitation, 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 also 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.

- (i) Circumstances indicate that the respondent has registered or acquired the domain name primarily for 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 respondent's documented out-of-pocket costs directly related to the domain name; or
- (ii) The respondent has 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 the respondent has engaged in a pattern of such conduct; or
- (iii) The respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) By using the disputed domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to the respondent's 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 the respondent's website or location or of a product or service on the respondent's website or location.

The Complainant has argued that the registration and use of the disputed domain name shows the Respondent's intent to benefit from the reputation associated with its mark. The Respondent has denied bad faith on his part as the disputed domain name has not been offered for sale. The Respondent has however not offered any justification for registration of the disputed domain name that contains the Complainant's mark or provided any persuasive evidence to support his assertions.

The material on record show that the Respondent has not used the disputed domain name for legitimate purposes but has merely used it for a Registrar parking website that contains various PPC links. The Respondent has also mentioned intent for future use, without providing any evidence.

The Panel finds that the Respondent's use of the disputed domain name incorporating the Complainant's distinctive and well-known KHADI trademark is intended to attract and mislead Internet users when searching for the Complainant and to direct them to third party links from which the Respondent most likely derives commercial revenue. Although the PPC links may be generated by a third party, the Respondent cannot disclaim responsibility for them. [WIPO Overview 3.0](#), section 3.5. This is particularly the case where the trademark in question is well-known and the facts and circumstances show that the respondent has shown no legitimate use for the disputed domain name.

Further, it has been consistently found by UDRP panels that registration of a confusingly similar domain name to a widely known or reputed trademark by someone who is not affiliated with the owner of the trademark and has not shown good reason for registration of the disputed domain name or its legitimate use, can by itself create a presumption of bad faith. [WIPO Overview 3.0](#), section 3.1.4.

The Panel finds for the reasons discussed, that the Complainant has established the third element of the Policy that the disputed domain name has been registered in bad faith and is being used in bad faith.

The Complainant has satisfied all three of the elements required under the Policy for a transfer of the disputed domain name.

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 <khadibharat.com> be transferred to the Complainant.

/Harini Narayanswamy/

Harini Narayanswamy

Sole Panelist

Date: July 10, 2024