

ADMINISTRATIVE PANEL DECISION

Wikimedia Foundation, Inc. v. dharna bhargava

Case No. D2022-1394

1. The Parties

The Complainant is Wikimedia Foundation, Inc., United States of America (“United States”), represented by Jones Day, United States.

The Respondent is dharna bhargava, India.

2. The Domain Name and Registrar

The disputed domain name <indianwikipedia.org> is registered with Name.com, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 19, 2022. On April 20, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 21, 2022, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that the 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 May 10, 2022. In accordance with the Rules, paragraph 5, the due date for Response was May 30, 2022. On May 13, 2022, the Respondent sent an email communication to the Center confirming that the disputed domain name belongs to him and stating that he did not want to sell it. On May 15, 2022, the Respondent sent another email communication to the Center confirming that he had received the Center’s notification of the Complaint and asking what the issue with the disputed domain name was.

On May 23, 2022, upon the Complainant's request, the proceeding was suspended until June 22, 2022. At the Complainant's requests, the suspension of the proceeding was further extended on two occasions to July 24, 2022 and to September 21, 2022. On September 22, 2022, the proceeding was reinstated. The due date for Response was September 29, 2022. On September 23, 2022, the Respondent sent an email communication to the Center informing that he had "deleted the domain". On October 10, 2022, the Center informed the Parties that it would proceed to panel appointment.

The Center appointed Kaya Köklü as the sole panelist in this matter on October 15, 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 non-profit charitable organization dedicated to encouraging the growth, development, and distribution of free multilingual educational content. It was founded in 2003 and today manages 13 free knowledge projects, including the widely known Wikipedia project, which is a free online encyclopedia compiled, edited and maintained by more than 146,000 active contributors worldwide (Annex 4 to the Complaint).

The Complainant is the owner of the WIKIPEDIA trademark, which is registered in a large number of jurisdictions worldwide (Annexes 6, 7, 8 and 9 to the Complaint). The Complainant is, among others, the registered owner of the International Trademark Registrations for WIKIPEDIA No. 907474, registered on September 20, 2006, covering protection for various goods and services in classes 9, 35, 38, 41 and 42 and No. 1224858, registered on March 27, 2014, covering protection for various goods and services in classes 9, 36, 38, 41 and 42; and Indian trademark registration No. 2071101 for WIKIPEDIA registered on December 20, 2010 covering protection for various goods and services in classes 9, 35, 38, 41 and 42

The Complainant also submits that it holds and operates a number of domain names comprising its WIKIPEDIA trademark, including <wikipedia.org> and <wikipedia.us>.

The Respondent is reportedly an individual located in India.

The disputed domain name was registered on August 19, 2021.

The screenshots, as provided by the Complainant, show that the disputed domain name resolved to a website in the English language, which is used for offering various profile and vCard templates. On the associated website, it is further literally indicated that "Indianwikipedia also known as the Wikipedia of India is a free, online encyclopedia written and maintained by a community of volunteer contributors through a model of open collaboration, using a wiki-based editing system" (Annex 11 to the Complaint).

5. Parties' Contentions

A. Complainant

The Complainant is of the opinion that the disputed domain name is confusingly similar to its WIKIPEDIA trademark.

Furthermore, the Complainant argues that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

Finally, it is argued that the Respondent has registered and is using the disputed domain name in bad faith.

B. Respondent

The Respondent did not formally reply to the Complainant's contentions. In its email communication to the Center of September 23, 2022, the Respondent made clear that he does not want to challenge this case. Literally, the Respondent stated: "Kindly close the ticket because I deleted the domain now you can use the domain." However, the Respondent did not expressly state that it would also be willing to transfer the disputed domain name to the Complainant.

6. Discussion and Findings

According to paragraph 15(a) of the Rules, the Panel shall decide the Complaint in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

In accordance with paragraph 4(a) of the Policy, the Complainant must prove that each of the three following elements is satisfied:

- (i) the disputed domain name is identical or confusingly similar to a trademark 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.

For the evaluation of this case, the Panel has taken note of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") and, where appropriate, will decide consistent with the consensus views stated therein.

A. Identical or Confusingly Similar

The Panel finds that the Complainant has registered trademark rights in the WIKIPEDIA mark by virtue of a large number of trademark registrations around the world, including trademark registrations covering protection in India, where the Respondent is reportedly located.

The Panel further finds that the disputed domain name is confusingly similar to the Complainant's registered WIKIPEDIA trademark, as it fully incorporates the WIKIPEDIA mark. As stated at section 1.8 of the [WIPO Overview 3.0](#), where the relevant trademark is recognizable within the disputed domain name, the additions of other terms would generally not prevent a finding of confusing similarity. The mere addition of the country indication "Indian", does not, in view of the Panel, serve to avoid a finding of confusing similarity between the disputed domain name and the Complainant's WIKIPEDIA trademark.

Accordingly, the Panel finds that the Complainant has satisfied the requirement under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Panel further finds that the Respondent has failed to demonstrate any rights or legitimate interests in the disputed domain name.

While the burden of proof on this element remains with the Complainant, previous UDRP panels have recognized that this would result in the often impossible task of proving a negative, in particular as the evidence in this regard is often primarily within the knowledge of the Respondent. Therefore, the Panel agrees with prior UDRP panels that the Complainant is required to make out a *prima facie* case before the burden of production shifts to the Respondent to show that it has rights or legitimate interests in the disputed domain name in order to meet the requirements of paragraph 4(a)(ii) of the Policy. See, *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#).

The Panel finds that the Complainant has satisfied this requirement, while the Respondent has failed to file any evidence or make any convincing argument to demonstrate rights or legitimate interests in the disputed domain name according to the Policy, paragraphs 4(a)(ii) and 4(c).

In its Complaint, the Complainant has provided uncontested *prima facie* evidence that the Respondent has no rights or legitimate interests to use the Complainant's trademark WIKIPEDIA in a confusingly similar way within the disputed domain name.

There is also no indication in the current record that the Respondent is commonly known by the disputed domain name. In the absence of a substantive response, the Respondent has particularly failed to demonstrate any of the other non-exclusive circumstances evidencing rights or legitimate interests under the Policy, paragraph 4(c) or other evidence of rights or legitimate interests in the disputed domain name.

The Panel further notes that the nature of the disputed domain name carries a risk of implied affiliation or association, as stated in section 2.5.1 of the [WIPO Overview 3.0](#). Moreover, the evidence provided by the Complainant shows that the disputed domain name resolved to a website seemingly impersonating the Complainant by featuring the Complainant's trademark, claiming to offer wiki-based encyclopedic content and presenting itself as the "Wikipedia of India". Noting the lack of any authorization by the Complainant and the disputed domain name's impersonating content, the Respondent's use of the disputed domain name does not amount to a *bona fide* offering of goods or services, further to section 2.8 of the [WIPO Overview 3.0](#). Rather, such use can never confer rights or legitimate interests upon a respondent, see section 2.13 of the [WIPO Overview 3.0](#).

As a conclusion, the Panel finds that the Complainant has also satisfied the requirements of paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

In the Panel's view, the Respondent has registered and is using the disputed domain name in bad faith.

The Panel is convinced that the Respondent must have had the Complainant's WIKIPEDIA trademark in mind when registering the disputed domain name.

It even appears that the Respondent has registered the disputed domain name solely for the purpose of creating an association with the Complainant. After having reviewed the Complainant's screenshots of the website linked to the disputed domain name (Annex 11 to the Complaint), the Panel is convinced that the Respondent has intentionally registered the disputed domain name in order to generate traffic to its own website. The Panel notes that the Respondent has not published any visible disclaimer on the website linked to the disputed domain name to explain that there is no existing relationship between the Respondent and the Complainant. Quite the opposite, as noted above, it is even explicitly indicated that there is an official link between the website associated to the disputed domain name and the Complainant by stating "Indianwikipedia also known as the Wikipedia of India" (Annex 11 to the Complaint). In view of the Panel, this is already sufficient evidence that the Respondent intentionally tries to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's WIKIPEDIA trademark as to the source, sponsorship, affiliation or endorsement of its website.

Taking also all further facts of the case into consideration, the Panel believes that this is a typical cybersquatting case, which the UDRP was designed to stop. Therefore, the Panel concludes that the disputed domain name was registered and is being used in bad faith and that the Complainant has also satisfied the third element of the Policy, namely, paragraph 4(a)(iii) 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 <indianwikipedia.org> be transferred to the Complainant.

/Kaya Köklü/

Kaya Köklü

Sole Panelist

Date: October 29, 2022