

ADMINISTRATIVE PANEL DECISION

Patanjali Wellness Ltd. v. Privacy service provided by Withheld for Privacy ehf / Rakesh Raj
Case No. D2022-1830

1. The Parties

The Complainant is Patanjali Wellness Ltd., India, internally represented.

The Respondent is Privacy service provided by Withheld for Privacy ehf, Iceland / Rakesh Raj, India.

2. The Domain Name and Registrar

The disputed domain name <patanjaliwellness.com> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 20, 2022. On May 23, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 23, 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 May 24, 2022 providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint.

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 July 4, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 25, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 25, 2022.

The Center appointed Ashwinie Kumar Bansal as the sole panelist in this matter on August 23, 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 company formed and registered under Companies Act, 1956 having its registered office in India. The company manufactures cosmetics, ayurvedic medicine, personal care and food products.

The Complainant brings an integrated and complete health package and fusion of Naturopathy (the ancient Indian art of healing), Nature cure (drugless cure), Yoga (mind body balance), Panchkarma therapies (Body Detox) and multitude and relaxing therapies. The therapies are provided under the guidance of their experienced doctor and therapist in a hygienic, eco-friendly and luxurious environment not only in India but overseas as well.

The Complainant is the owner of Trademark PATANJALI WELLNESS which has been registered as Trademark number on June 21, 2021 by the Registrar of Trademarks in Mumbai.

The Respondent registered the disputed domain name <patanjaliwellness.com> on April 04, 2022. The disputed domain name resolves to an active website offering yoga and wellness services in the city of Haridwar in India.

5. Parties' Contentions

A. Complainant

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

The Complainant has registered the Trademark PATANJALI WELLNESS registered by the Trade Marks Registry, Mumbai on June 21, 2021; Trademark Number: 5012691.

The Respondent registered the disputed domain name, after the Complainant began using the Trademark PATANJALI WELLNESS in commerce.

The disputed domain name has been registered with NameCheap, Inc., and registrant details were not available to the public.¹ The use of registered Trademark PATANJALI WELLNESS by the Respondent for the disputed domain name <patanjaliwellness.com> is confusing as it causes the public to believe that Respondent is acting on behalf of or under the authority of the Complainant and violates the Complainant's Trademark rights. The Complainant has never given neither the Respondent nor his association/company any authority to operate the disputed domain name and has not given him any authority to operate, maintain or register a website incorporating the registered Trademark.

The Respondent is involved in defrauding the public by charging them money for making a fraudulent reservations at the PATANJALI WELLNESS and such fake advertisement are duly published on the above stated disputed domain name.

The Respondent has no association with the Complainant. The disputed domain name is identical and/or confusingly similar to the Trademark in which the Complainant has earlier rights and relates directly to the registered Trademark PATANJALI WELLNESS. Moreover, neither the Complainant nor its Board of Managers, have authorized the Respondent to use the confusingly similar and/or identical domain name.

The Respondent has no "rights or legitimate interest" in the disputed domain name because the Complainant has not granted any permission to the Respondent to use the disputed domain name. The Respondent's use of the disputed domain name has no connection with the *bona fide* offering of goods and services. Furthermore, no authority has been bestowed upon the Respondent either to govern the registered

¹ The Center sent an email to the Complainant providing them with the disclosed information regarding the underlying registrant and provided the Complainant time to amend the Complaint. However, the Complainant opted not to amend its Complaint.

Trademark or to act or speak on behalf of the Complainant.

The Respondent has not been commonly known by the disputed domain name. The disputed domain name of the Respondent is identical to the Complainant's registered Trademark PATANJALI WELLNESS. The disputed domain name is used just to confuse the public and to take the undue advantage of the goodwill of the registered Trademark PATANJALI WELLNESS. The Respondent is not making a legitimate non-commercial or fair use of the disputed domain name, without intent for commercial gain. It misleads and diverts the consumers and seeks to tarnish the Trademark PATANJALI WELLNESS.

The Complainant contends that the use of registered Trademark PATANJALI WELLNESS by the Respondent for the disputed domain name is in bad faith.

6. Discussion and Findings

As per paragraph 5(e) 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:

"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 Panel has considered and examined documents submitted by the Complainant in support of its Complaint. The Complainant has produced registration certificate granted by the Registrar of Trademarks, Government of India, in its favor in respect of the Trademark PATANJALI WELLNESS. The Complainant has registered PATANJALI WELLNESS as per certificate of registration granted by the Trade Mark Registry, Mumbai.

The WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[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 Respondent has incorporated the entire Trademark in the disputed domain name with a minor misspelling by dropping one of the two "L"s. The word "wellness" has been misspelt as "welness" in the

disputed domain name. The disputed domain name <patanjaliwellness.com> incorporates the Complainant's Trademark PATANJALI WELLNESS in its entirety after dropping one letter "L", whose subtraction does not prevent a finding of confusing similarity.

The Panel finds that the Complainant's Trademark is recognizable in the disputed domain name <patanjaliwellness.com>. The generic Top-Level Domain ".com" may be disregarded for the purposes of comparison under this element. Hence, the Complainant has successfully established the first element of paragraph 4(a) of the Policy.

B. Rights or Legitimate Interests

The onus lies on the Complainant for establishing that the Respondent has no rights or legitimate interests in the disputed domain name. Nevertheless, it is well settled that the Complainant needs only to make out a *prima facie* case, after which the burden of production shifts to the Respondent to rebut such *prima facie* case by demonstrating rights or legitimate interests in the disputed domain name.

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 provides the view of panels: "While the overall burden of proof in UDRP proceedings is on the Complainant, the 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 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 substantive response to rebut the Complainant's *prima facie* case or to explain its rights or legitimate interests. In these circumstances, the intention of the Respondent in registering the dispute domain name *prima facie* seems to be with the intention of benefiting out of the goodwill of the Complainant.

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. The Complainant has not authorized or permitted the Respondent to use its Trademark PATANJALI WELLNESS, which means in the circumstances of this case the Respondent has no rights or legitimate interests in the said trademark.

Considering 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 interest 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 a 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 must be considered by the Panel.

Noting the well-established reputation of the Complainant's Trademark PATANJALI and the use of the domain name referring to the Complainant's services, the Panel finds that the Respondent was aware of the Complainant's existence or presence in the market.

In addition, the Complainant has not granted the Respondent permission nor a license of any kind to use its Trademark PATANJALI WELLNESS and register the disputed domain name.

Furthermore, the Respondent has not given any response to the Complaint and has also failed to present credible evidence backed by rationale for registering the disputed domain name.

The website to which the disputed domain name resolves, presents a wellness center in Haridwar offering similar services as the Complainant's services. The Panel finds that the Respondent is aware of the Complainant's mark and intentionally attracts Internet users and customers looking for the Complainant's services online and then diverts the Internet traffic to the Respondent's online location. Misleading people and diverting Internet users comes under the circumstances described as bad faith registration and use within the scope of paragraph 4(b)(iv) of the Policy, which is 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 website.

In view of these facts, the disputed domain name is likely to cause confusion as to source, sponsorship, or affiliation, which constitutes bad faith registration and use under paragraph 4(b)(iv) of the Policy.

In these circumstances, the use of the disputed domain name by the Respondent leads to confusion amongst the public.

The act of registration of the disputed domain name by the Respondent containing the Complainant's Trademark PATANJALI WELLNESS without any authorization from the Complainant constitutes evidence of registration of the disputed domain name in bad faith. The unauthorized registration by the Respondent suggests opportunistic bad faith. The Respondent's true purpose in registering and using the disputed domain name, which incorporates the entire trademark of the Complainant is in the Panel's view, to capitalize on the reputation of the Trademark PATANJALI WELLNESS.

Finally, the Panel notes that the Respondent was the same respondent as in *Patanjali Ayurved Limited v. Rakesh Raj*, WIPO Case No. [D2022-2136](#) which is further evidence of bad faith as per paragraph 4(b)(ii) of the Policy.

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 <patanjaliwellness.com> be transferred to the Complainant.

/Ashwinie Kumar Bansal/

Ashwinie Kumar Bansal

Sole Panelist

Date: August 29, 2022