

ADMINISTRATIVE PANEL DECISION

M/s Sukh Sagar v. Domain Manager, Domain Hosting Company
Case No. D2022-2487

1. The Parties

The Complainant is M/s Sukh Sagar, India, a partnership firm represented by its Partner Mr. Siddarth Poojari, represented by Holla Associates, India.

The Respondent is Mr. Dhanraj Poojari, United Arab Emirates (“UAE”).

2. The Domain Name and Registrar

The disputed domain name <sukhsagar.com> is registered with PDR Ltd. d/b/a PublicDomainRegistry.com (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 8, 2022. On July 8, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 11, 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 July 12, 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 13, 2022. In response to a notification by the Center that the Complaint to clarify the Complaint, the Complainant filed an amendment to the Complaint on July 30, 2022.

The Center verified that the Complaint, together with the amended Complaint and the amendment to 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 August 1, 2022. In accordance with the Rules, paragraph 5, the due date

for Response was August 21, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on August 25, 2022. The Respondent submitted an email on August 29, 2022, about related court proceedings in India.

The Center appointed Shwetaree Majumder as the sole panelist in this matter on September 5, 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.

The Center received an unsolicited Supplemental Filing from the Respondent on September 8, 2022. In response the Complainant filed a Supplemental Filing with the Center on September 9, 2022.

4. Factual Background

The Respondent and the partners of the Complainant firm are related and members of the same family. The Respondent is the son of one of the partners, namely Mr. Suresh Poojari.

The Complainant is the registered proprietor of the mark SUKH SAGAR in India, such as the registration No. 465792, registered on October 10, 1990. There are trademark registrations for the mark SUKH SAGAR in the name of the Respondent in other jurisdictions. However, neither party has disclosed details of such trademark registrations.

The disputed domain name was registered on May 3, 2001. The Respondent did not register the disputed domain name in its name, but came to own it by way of a successful UDRP complaint (*Sukhsagar Enterprises v. Sanskruti International*, WIPO Case No. [D2007-1409](#)) filed by the predecessors of the Complainant against a third party.

There is an ongoing legal proceeding between the Complainant and Respondent concerning the mark SUKH SAGAR. In the past, the Complainant has sent cease and desist notices to the Respondent. In response to a cease and desist notice dated May 29, 2021, issued by Mr. Suresh Poojari (a partner of the Complainant firm) to his son (Respondent), the Respondent has stated:

"Sukh Sagar is our family business and as your eldest son, you initiated me into the business in 1999. You did it not as a compulsion but as a choice. I have been appointed Director & Partner in the companies under and associated through the Sukh Sagar brand in no uncertain terms other than as a member of the Poojari family. I have worked tirelessly and wilfully to grow the brand as well as in stature globally. My contribution to the family business therefore unequivocally deems me with full right and privilege to use the trademarks of Sukh Sagar and Sukh Sagar International"

Complainant's cease and desist notice and the Respondent's response have been submitted with the Complaint as Annex 17 and 18 respectively.

The Complainant has filed a lawsuit for infringement of its mark SUKH SAGAR against the Respondent before the City Civil Court, Bangalore. Copy of the suit papers have been submitted as Annex 21 to the Complaint.

5. Parties' Contentions

A. Complainant

The Complainant states that in 1961 Mr. Suresh Subba Poojari started the business of sale of food, specifically, juices, north and south Indian dishes in Mumbai, under the trading style SUKH SAGAR. The Complainant states, that vide assignment agreements dated October 15, 2019, and November 19, 2019, (Annex 8 and 9), the mark SUKH SAGAR was assigned to the Complainant. The Complainant contends to be the absolute owner of the mark SUKH SAGAR and the disputed domain name.

The Complainant states that the Respondent, is the eldest son of Mr. Suresh Subba Poojari. Further, the Respondent was orally permitted to use the mark SUKH SAGAR for running a unit in Dubai. The Complainant states that the Respondent was managing the website at the disputed domain name, on behalf of Mr. Suresh Subba Poojari. The Complainant submits that the Respondent was removed from the post of director at the Complainant's firm. Hence, the Respondent is a total stranger and has no authority to use the disputed domain name. The Complainant argues that the Respondent is a cybersquatter and has no right or legitimate interest in the disputed domain name.

The Complainant contents that the Respondent has been projecting himself as the sole proprietor of mark SUKH SAGAR and through the website at the disputed domain name soliciting business. According to the Complainant, Respondent's actions amount to trademark infringement.

B. Respondent

The Respondent did not formally reply to the Complainant's contentions. However, the Center received an informal communication from the Respondent on August 29, 2022. In this communication, the Respondent admitted to the ongoing legal proceeding between the parties and informed that the matter is posted for hearing on September 20, 2022. Further, the Respondent has stated "As the matter is already before courts in India, in respect of the same claim made by the complainant herein, I believe that WIPO should wait until the order is passed in the Indian courts in respect of the same claim made by the complainant."

C. Respondent's Supplemental Filing

The Respondent claims to be the owner of the mark SUKH SAGAR in Qatar, Saudi Arabia, Canada, UAE, and United States of America. The Respondent claims that it was the Complainant itself who gave the credentials of the disputed domain name to him. The Respondent states that he was the partner and director of various family business bearing the mark SUKH SAGAR.

D. Complainant's Supplemental Filing

The Complainant has argued that Respondent Supplemental Filing should not be considered by the Panel, since the Respondent failed to file a formal response to the Complaint. The Complainant alleges that the Respondent illegally obtained registrations for mark SUKH SAGAR in Qatar, Saudi Arabia, Canada, UAE, and United States of America.

6. Discussion and Findings

As per paragraph 5(e) of the Rules, where a respondent does not submit a response, in the absence of exceptional circumstances, the panel may 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 response. As per paragraph 14(b) of the Rules, where a party does not comply with any provision of the Rules, the panel may draw such inferences as it considers appropriate. It remains incumbent upon the Complainant to make out its case in all respects under paragraph 4(a) of the Policy.

Under paragraph 4(a) of the Policy, the Complainant must prove each of the following three elements required under by a preponderance of evidence;

- i. the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- 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.

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires the Complainant to show that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

The requirements of paragraph 4(a) of the Policy are conjunctive. A consequence of this is that failure on the part of a complainant to demonstrate one element of the Policy will result in failure of the complaint in its entirety. Accordingly, in light of the Panel's finding below on registration and use in bad faith, it is unnecessary for the Panel to address the issue of the Complainant's rights in the mark SUKH SAGAR.

B. Rights or Legitimate Interests

Likewise, in light of the Panel's finding below it is unnecessary for the Panel to address the topic of the Respondent's rights or legitimate interests in the disputed domain name.

C. Registered and Used in Bad Faith

As the above factual recitation makes it clear that this is not a garden-variety cybersquatting case. In fact, it is not a cybersquatting case at all. The only arguable reason that Complainant is seeking relief in this forum is that the property at issue is a domain name. This Panel finds that it will be prudent for a court of competent jurisdiction in India, where the dispute *inter se* the parties are already pending to adjudicate the rights of the parties in the mark SUKH SAGAR. The Panel notes that the Complainant has already instituted a suit against the Respondent at the City Civil Court, Bangalore.

There are far wider issues which have been placed before the Panel in the present case. These issues, whether characterized as being of a commercial or a family law nature, are not suited for resolution under the Policy, which is designed to address clear cases of abusive cybersquatting (see, for example, the observations of the UDRP panels in *The Thread.com, LLC v. Jeffrey S. Poploff*, WIPO Case No. [D2000-1470](#), *Kurt Garmaker d/b/a "Repitition Miniature Schnauzers" v. Hilde Haakensen, Axcium Design*, WIPO Case No. [D2015-0993](#) and *IL Makiage Cosmetics (2013) Ltd. v. Mark Rumpler / Mordechai Rumpler / Domains By Proxy, LLC*, WIPO Case No. [D2015-2311](#)).

In these circumstances, the Complaint under the Policy must fail. In reaching that conclusion, the Panel takes no position on the merits of any wider dispute between the Parties. The Complainant remains free to seek remedies in other fora and the Panel notes for completeness that the present finding is confined to the Policy and that it does not seek to influence any such subsequent proceedings, should they be raised.

7. Decision

For the foregoing reasons, the Complaint is denied.

/Shwetasree Majumder/

Shwetasree Majumder

Sole Panelist

Date: September 19, 2022