

ADMINISTRATIVE PANEL DECISION

**Khadi & Village Industries Commission v. VIRESH CONSUL, KENDRIYA
KHADI GRAMODYOG SANGH**
Case No. D2022-3815

1. The Parties

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

The Respondent is VIRESH CONSUL, KENDRIYA KHADI GRAMODYOG SANGH, India.

2. The Domain Name and Registrar

The disputed domain name <kendriyakhadi.org> 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 October 12, 2022. On the same day, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 13, 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 the same day, 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 October 18, 2022.

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 October 19, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 8, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 9, 2022.

The Center appointed Harini Narayanswamy as the sole panelist in this matter on November 11, 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 an Indian government organization under the Ministry of Micro, Small and Medium Enterprises and is an entity created under the Khadi and Village Commission Act of 1956. The Complainant uses the KHADI trademark for various products and owns several trademark registrations for the mark in India and other jurisdictions. The Complainant's purpose, *inter alia*, is the provision of employment in rural areas. The various development programs offered by the Complainant are to promote a multitude of products under the trademark KHADI sold by the Complainant as well as by authorized retail sellers and other institutions.

The KHADI word mark is registered in India under class 24, with the registration number 2851542 on November 27, 2014, the KHADI word mark is also registered with the same registration date, in India, under other classes such as: KHADI word mark under class 1 bearing the registration number 2851524, KHADI word mark number 2851525 under class 2, KHADI word mark 2851527 under class 4, KHADI word mark 2851528 under class 5, KHADI word mark 2851529 under class 6, KHADI word mark 2851530 under class 7, KHADI word mark 2851531 under class 8, KHADI word mark 2851532 under class 14. The date of filing of the KHADI word mark applications is November 27, 2014 and date of first use of the mark, is September 25, 1956, as per the registration details.

The international trademark registration for the KHADI word mark is registered under number 1272626, the date of registration is December 2, 2014. The Australian trademark registration number 1734013 is registered on December 2, 2014. The Complainant also owns KHADI device marks.

The Respondent registered the disputed domain name on February 3, 2020. The disputed domain name presently resolves to a parking page of the registrar and displays sponsored links.

5. Parties' Contentions

A. Complainant

The Complainant states that it plays a vital role in the Indian economy with the aim of providing socio-economic benefit to rural industry. It states that its activities are based on a three-fold objective which 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 it provides large scale employment to rural people, particularly weaker sections and rural women and its efforts generates employment in about 248,000 villages in India.

The Complainant states its programs for the development of Khadi and other village industries in rural areas are done in coordination with other agencies. It has offices that are located in twenty-eight states with six zonal offices. The Complainant also implements the "Prime Minister's Employment Generation Programs" for upliftment and improvement of artisans, weavers and small-scale village and rural industries. The Complainant states it has many programs to help rural industries such as building-up a reserve of raw materials for producers and creates common service facilities for processing of raw materials and finished goods. The Complainant alleges that among its other initiatives, it has introduced several interest subsidy plans for artisans, weavers and members of small-scale village and rural industries.

The Complainant states that it has extensively promoted the KHADI trademark through exhibitions, trade-fairs and events like competitions and shows to promote the mark. The Complainant states that it has collaborated with leading brands to promote the KHADI trademark. Collections of four design labels were

displayed during the Lakme Fashion Week 14th edition on August 23, 2018 under the KHADI trademark. The Complainant has filed evidence of its extensive promotion of the KHADI mark through print and electronic media and evidence of its large following on social media platforms. The Complainant mentions that it operates a mobile phone application called "Khadi India", which helps users locate the nearest Khadi store. As the KHADI mark has been extensively promoted by the Complainant, it claims the mark has acquired significant goodwill, fame and reputation.

The Complainant states that it also certifies and authorizes retail sellers, organizations, societies and institutions to sell products under the KHADI trademarks as licensed users of the mark. The Complainant states that an authorized user status for selling goods or services under the KHADI trademark can be obtained by submitting an application to the Khadi Institutions Registration & Certification Sewa (KIRCS).

The Complainant contends that it has over eight thousand sales outlets that sell KHADI licensed products but owns only seven sales outlets. The Complainant asserts that it has used the mark since 1956 and "Khadi" is part of its trade name, corporate name and trading style for over sixty years. Therefore, the use of the KHADI mark by an unauthorized party, is likely to lead to confusion and deception among its patrons, members of trade, consumers and the general public.

The Complainant requests for the transfer of the disputed domain name on the grounds that: (i) the disputed domain name is identical or confusingly similar to the trademark in which the Complainant has rights (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name (iii) the disputed domain name has been registered and is being used in bad faith by the Respondent.

B. Respondent

The Respondent has been notified of these proceedings. The Respondent did not file a response or reply to the Complainant's contentions.

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

The first element requires the Complainant to establish the disputed domain name is identical or confusingly similar to a trademark or a service mark in which it has rights. The Complainant has provided evidence of its registered trademarks and evidence of extensive use and promotion of the KHADI mark. Based on the evidence, it is found that the Complainant has established its rights in the KHADI mark.

The disputed domain name contains the KHADI mark preceded by the term "kendriya". The Complainant has argued that the disputed domain name is confusingly similar to the mark. The Panel finds that the KHADI trademark is clearly recognizable in the disputed domain name, while the term "kendriya" is an added term, which does not have any impact for the purposes of assessing confusing similarity. It is well established that where the relevant trademark is recognizable within the disputed domain name, merely adding words or terms to a trademark, does not prevent a finding of confusing similarity between the disputed domain name and the mark. See Section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

The Panel finds the disputed domain name is confusingly similar to the KHADI trademark. The Complainant has established the first element under paragraph 4(a) of the Policy.

B. Rights or Legitimate Interests

The second element under paragraph 4(a) of the Policy requires the Complainant to make a *prima facie* case that the Respondent lacks rights and legitimate interests in the disputed domain name. The Respondent can rebut the Complainant's allegations with relevant submissions and supporting evidence to establish rights or legitimate interest in the disputed domain name. If the Respondent fails to make relevant submissions with supporting evidence and rebut the Complainant's *prima facie* case, the Complainant is deemed to have satisfied the second element. See Section 2.1 [WIPO Overview 3.0](#).

The Complainant has stated that it has not given the Respondent any authorization or license to use its mark. The Complainant has argued that the Respondent has merely parked the disputed domain name and the landing page displays sponsored links, which in the circumstances of this case, is not a *bona fide* use. The Complainant has alleged that the Respondent's intention is to derive commercial gains by using the disputed domain name that contains its trademark and argued that the provisions under paragraph 4 (c) of the Policy are not applicable to the facts and circumstances of the present case.

The Panel finds from the material on record, that the Respondent does not seem to be affiliated with the Complainant. There is no evidence on record that the Respondent is a licensed user of the Complainant's mark. The Respondent nonetheless, has used the Complainant's trademark in the disputed domain name. In the Panel's view, the use of the Complainant's mark in the disputed domain name, under the circumstances, is likely to mislead the public and Internet users. This view has been upheld in several prior UDRP decisions, see for instance, *Pfizer Inc. v. Alex Schreiner/ Schreiner & Co.*, WIPO Case No. [D2004-0731](#).

The Panel acknowledges that the Complainant has submitted evidence that the Respondent has parked the disputed domain name and using it to display sponsored links. This was also independently verified by the Panel by looking up the disputed domain name online. It is widely accepted by prior panels, that using a disputed domain name that contains a well-known mark to host a parked page comprising sponsored links, is neither a *bona fide* offering of goods or services, nor use in a manner that is noncommercial or fair use, where such links compete with or capitalize on the reputation and goodwill of the Complainant's mark or otherwise mislead Internet users.

The Panel notes that the registration record shows the name of the registrant organization is "Kendriya Khadi Gramodyog Sangh". The Respondent has not taken part in these proceedings or provided any reasons for using of the KHADI mark in the disputed domain name. In the absence of any credible reason for the Respondent's registration of the disputed domain name bearing the KHADI mark and given the fact that the disputed domain name is parked and resolves to a page with sponsored links, the logical inference under the circumstances is that the Respondent, who is not an authorized user of the mark, has registered the disputed domain name to derive advantage from the Complainant's trademark. For all the reasons discussed, the Panel finds the Respondent lacks rights or legitimate interests in the disputed domain name.

The Panel finds the Complainant has made a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Complainant has fulfilled the second requirement under paragraph 4(a) of the Policy.

C. Registered and Used in Bad Faith

The third element requires the Complainant to establish the disputed domain name has been registered and is being used in bad faith by the Respondent.

The Complainant has argued that the Respondent is merely squatting on the disputed domain name, as the Respondent has not hosted any content since its registration and the landing page of the disputed domain

displays: “<kendriyakhadi.org> is parked free, courtesy of <GoDaddy.com>, Get This Domain”. Furthermore, the Panel finds that the landing page also displays sponsored links such as “International Payroll Companies”, “Elite Matrimonial Sites” and “Khadi”. The Complainant has argued that use of the disputed domain name which contains pay-per-click (“PPC”) links including the Complainant’s trademark supports a finding of bad faith when the Complainant has demonstrated that the KHADI mark is distinctive. Prior UDRP panels have found that the use of a domain name to host a parked page comprising PPC links does not represent a *bona fide* use where such links compete with or capitalize on the reputation and goodwill of the complainant’s mark or otherwise mislead Internet users.

The Complainant has established in these proceedings that the KHADI mark has been used extensively. The Panel also notes that the Complainant has prevailed in other cases, where the KHADI mark has been recognized as being a distinctive mark that is associated with the Complainant, such as *Khadi & Village Industries Commission v. Contact Privacy Inc. Customer 1245389705 / Raghav Somani, Headphone Zone Limited*, WIPO Case No. [D2020-2244](#) and *Khadi & Village Industries Commission v. Himanshu Kumar Goel, Medisu Health Solutions*, WIPO Case No. [D2020-2162](#).

The Panel finds the disputed domain name is likely to cause confusion among Internet users, and in particular, consumers who are looking for the Complainant online, may falsely believe that the disputed domain name is endorsed by the Complainant. The registration and use of the disputed domain name by the Respondent, therefore comes under the ambit of paragraph 4(b)(iv) of the Policy, which is to attempt to attract, for commercial gain, Internet users to the Respondent’s online location, by creating a likelihood of confusion with the Complainant’s mark as to the source, sponsorship, affiliation, or endorsement, which is recognized as bad faith registration and use of the disputed domain name under the Policy.

The Panel concludes on the basis of the evidence and the discussed circumstances, that the Respondent’s registration and use of the disputed domain name is made with an intention to derive unfair advantage of the Complainant’s mark. Namely, to attract Internet users by creating a likelihood of confusion with the Complainant’s trademark and to benefit from the misdirected Internet traffic, which is found to be bad faith registration and use of the disputed domain name. The conclusion of bad faith is further bolstered by the Respondent’s lack of response.

The Panel accordingly finds that the Complainant has satisfied the third element under paragraph 4(a) of the Policy, that the disputed domain name has been registered and is being used 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, <kendriyakhadi.org>, be transferred to the Complainant.

/Harini Narayanswamy/

Harini Narayanswamy

Sole Panelist

Date: November 25, 2022