

ADMINISTRATIVE PANEL DECISION

Khadi & Village Industries Commission v. Ravish Kapila
Case No. D2022-3816

1. The Parties

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

Respondent is Ravish Kapila, New Zealand.

2. The Domain Name and Registrar

The disputed domain name <khadimart.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 October 12, 2022. On October 12, 2022, 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 confirming that 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 Respondent of the Complaint, and the proceedings commenced on October 17, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 6, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on November 7, 2022.

The Center appointed Stephanie G. Hartung as the sole panelist in this matter on November 10, 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

Complainant is a legal entity organized under the laws of India whose purpose, *inter alia*, is the provision of employment in rural areas. The various development programs offered by Complainant are to promote a multitude of products under the trademark KHADI sold by Complainant as well as by authorized retail sellers and other institutions.

Complainant has provided evidence that it is the registered owner of various valid trademarks relating to its company name and brand KHADI, *inter alia*, but not limited to the following:

- Word/device mark KHADI, International Registration, registration number: 1272626, registration date: December 2, 2014;
- Word/device mark KHADI, Australian Registration, registration number: 1734013, registration date: December 2, 2014.

Respondent, according to the Whois information for the disputed domain name, is located in New Zealand and registered the disputed domain name on October 25, 2016. The disputed domain name resolves to a website apparently under the control of the Registrar, where it is offered for online sale.

Complainant requests that the disputed domain name be transferred to Complainant.

5. Parties' Contentions

A. Complainant

Complainant contends that, ever since its formation in 1957, it has been playing an important role in the Indian economy generating employment in about 250,000 villages throughout the country, and that Complainant's KHADI trademark by virtue of extensive use in more than 60 years has become exclusively and globally associated with Complainant in the eyes of consumers and is meanwhile considered well-known.

Complainant submits that the disputed domain name is confusingly similar to its KHADI trademark, as it wholly contains the latter, merely added by the generic term "mart" meaning "a place where things are bought and sold". Moreover, Complainant asserts that Respondent has no rights or legitimate interests in respect of the disputed domain name since (1) Complainant has not authorized or licensed Respondent to use any of Complainant's trademarks in any way, and (2) Respondent merely parked the disputed domain name and has not hosted any content under it for the past five years since the disputed domain name's registration on October 25, 2016, demonstrating that Respondent has no interest, let alone legitimate interest, therein. Finally, Complainant argues that Respondent has registered and is using the disputed domain name in bad faith since (1) the fame and unique qualities of Complainant's KHADI trademark, which was adopted and applied for by Complainant well prior to the registration of the disputed domain name, make it extremely unlikely that Respondent registered the disputed domain name independently and without any knowledge of Complainant's trademark, and (2) the fact that Respondent has failed to host any content under the disputed domain name or to use it for *e.g.* any *bona fide* offering of goods or services, but offers the disputed domain name instead for online sale, is a clear demonstration that the primary aim of Respondent is to sell or transfer the disputed domain name to Complainant or any third party, for valuable consideration.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

Under paragraph 4(a) of the Policy, Complainant carries the burden of proving:

- (i) that the disputed domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (ii) that Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) that the disputed domain name has been registered and is being used in bad faith.

Respondent's default in the case at hand does not automatically result in a decision in favor of Complainant, however, paragraph 5(f) of the Rules provides that if Respondent does not submit a response, in the absence of exceptional circumstances, the Panel shall decide the dispute solely based upon the Complaint. Further, according to paragraph 14(b) of the Rules, the Panel may draw such inferences from Respondent's failure to submit a Response as it considers appropriate.

A. Identical or Confusingly Similar

The Panel concludes that the disputed domain name is confusingly similar to the KHADI trademark in which Complainant has rights.

The disputed domain name incorporates Complainant's KHADI trademark in its entirety. Numerous UDRP panels have recognized that where a domain name incorporates a trademark in its entirety, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that trademark (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.7). Moreover, it has been held in many UDRP decisions and has become a consensus view among panelists (see [WIPO Overview 3.0](#), section 1.8), that the addition of other terms (whether e.g. descriptive or otherwise) would not prevent the finding of confusing similarity under the first element of the UDRP. Accordingly, the addition of the term "mart" is not in contrast to find confusing similarity arising from the incorporation of Complainant's entire KHADI trademark in the disputed domain name.

Therefore, Complainant has established the first element under the Policy as set forth by paragraph 4(a)(i).

B. Rights or Legitimate Interests

The Panel is further convinced on the basis of Complainant's undisputed contentions that Respondent has not made use of the disputed domain name in connection with a *bona fide* offering of goods or services, nor has Respondent been commonly known by the disputed domain name nor can it be found that Respondent has made a legitimate noncommercial or fair use thereof without intent for commercial gain.

Respondent has not been authorized to use Complainant's KHADI trademark, either as a domain name or in any other way. Also, there is no reason to believe that Respondent's name somehow corresponds with the disputed domain name and Respondent does not appear to have any trademark rights associated with the term "Khadi" on its own. Finally, Respondent so far obviously has neither used the disputed domain name for a *bona fide* offering of goods or services nor for a legitimate noncommercial or fair purpose, but rather to offer it for online sale at a price ranging from USD 1,000 to USD 3,499. UDRP panels have recognized that holding a domain name for resale can be *bona fide* and is not *per se* illegitimate under the UDRP (see [WIPO Overview 3.0](#), section 2.1), but have also found that the mere registration of such a domain name does not by itself automatically confer rights or legitimate interests (see [WIPO Overview 3.0](#), section 2.10.1). Moreover, given that the disputed domain name incorporates Complainant's well-known KHADI trademark in its entirety with the additional term of "mart", the disputed domain name carries, as such, a risk of implied affiliation with Complainant and said trademark, which is why offering the disputed domain name for online sale cannot constitute fair use and, thus, cannot confer rights or legitimate interests therein (see [WIPO Overview 3.0](#), section 2.5.1).

Accordingly, Complainant has established a *prima facie* case that Respondent has no rights or legitimate interests in respect of the disputed domain name. Having done so, the burden of production shifts to Respondent to come forward with appropriate evidence demonstrating such rights or legitimate interests (see [WIPO Overview 3.0](#), section 2.1). Given that Respondent has defaulted, it has not met that burden.

Therefore, the Panel finds that Complainant has also satisfied paragraph 4(a)(ii) and, thus, the second element of the Policy.

C. Registered and Used in Bad Faith

The Panel finally holds that the disputed domain name was registered and is being used by Respondent in bad faith.

The circumstances to this case, *e.g.* that the disputed domain name includes Complainant's well-known KHADI trademark in its entirety, together with the term "mart" pointing at Complainant's business of selling a multitude of products under the KHADI trademark, leave no serious doubts that Respondent was fully aware of Complainant's rights in said trademark when registering the disputed domain names and that the latter clearly is directed thereto. Moreover, the fact that the disputed domain name is used for no other purpose but to be offered on the Internet for online sale at a price ranging from USD 1,000 to USD 3,499 is, more likely than not, an indication that Respondent registered the disputed domain name primarily for the purpose of selling it to Complainant in excess of Respondent's documented out-of-pocket costs directly related to the disputed domain name. Such circumstances are evidence of registration and use of the disputed domain names in bad faith within the meaning of paragraph 4(b)(i) of the Policy.

Therefore, the Panel concludes that Complainant has also satisfied the third element under the Policy as set forth by paragraph 4(a)(iii).

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, <khadimart.com>, be transferred to Complainant.

/Stephanie G. Hartung/

Stephanie G. Hartung

Sole Panelist

Date: November 17, 2022