

## **ADMINISTRATIVE PANEL DECISION**

Khadi & Village Industries Commission v. tian jiao huang  
Case No. D2022-4539

### **1. The Parties**

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

The Respondent is tian jiao huang, China.

### **2. The Domain Name and Registrar**

The disputed domain name <chandankhadi.com> is registered with Gname.com Pte. Ltd. (the “Registrar”).

### **3. Procedural History**

The Complaint in English was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 29, 2022. On November 29, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 30, 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 November 30, 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 in English on December 6, 2022.

On November 30, 2022, the Center transmitted an email communication to the Parties in English and Chinese regarding the language of the proceeding. On December 8, 2022, the Complainant submitted its request that English be the language of the proceeding. The Respondent did not comment on the language of the proceeding.

On December 7, 2022, the Center sent a further email communication to the Complainant requesting an amendment regarding the Mutual Jurisdiction. The Complainant filed a further amended Complaint in English on December 8, 2022.

The Center verified that the Complaint together with the amended Complaints 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 in English and Chinese of the Complaint, and the proceeding commenced on December 14, 2022. In accordance with the Rules, paragraph 5, the due date for Response was January 3, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on January 5, 2023.

The Center appointed Sebastian M.W. Hughes as the sole panelist in this matter on January 19, 2023. 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**

##### **A. Complainant**

The Complainant is an Indian statutory body established in 1957 by an Act passed by the Indian Parliament in 1956. The Complainant has since its inception played an important role in generating rural employment by promoting artisans, weavers and small-scale village and rural industries.

The Complainant promotes products produced by more than 9 million artisans in approximately 248,000 villages in India under the word and device mark KHADI (the “Trade Mark”).

The Complainant has since its inception made extensive use of the Trade Mark in respect of a wide range of products, marketed and sold throughout India and worldwide.

The Trade Mark has particular cultural and political significance in India, having been launched in 1920 and popularised by Mahatma Gandhi, who characterised hand spun KHADI cloth as “the livery of freedom”.

The Complainant is the owner of numerous registrations for the Trade Mark in India and elsewhere, including International registration No. 1272626 (designating *inter alia* China), with a registration date of December 2, 2014.

The Trade Mark has been recognised as a well-known trade mark in a recent order of the High Court of Delhi at New Delhi; and also in multiple previous decisions issued by esteemed panelists under the Policy.

##### **B. Respondent**

The Respondent is apparently an individual resident in China.

##### **C. The Disputed Domain Name**

The disputed domain name was registered on February 11, 2021.

##### **D. Use of the Disputed Domain Name**

The disputed domain name was previously resolved to a dual English and Chinese language gambling website, including multiple (Chinese language) gambling related links (the “Website”).

As at the date of this Decision, it is no longer resolved to an active website.

## 5. Parties' Contentions

### A. Complainant

The Complainant contends that the disputed domain name is identical or confusingly similar to the Trade Mark; the Respondent has no rights or legitimate interests in respect of the disputed domain name; and the disputed domain name has been registered and is being used in bad faith.

### B. Respondent

The Respondent did not reply to the Complainant's contentions.

## 6. Discussion and Findings

### 6.1 Preliminary Issue: Language of the Proceeding

The language of the Registration Agreement for the disputed domain names is Chinese.

Pursuant to the Rules, paragraph 11, in the absence of an agreement between the parties, or unless specified otherwise in the registration agreement, the language of the administrative proceeding shall be the language of the registration agreement.

Paragraph 11(a) of the Rules allows the Panel to determine the language of the proceeding having regard to all the circumstances. In particular, it is established practice to take paragraphs 10(b) and (c) of the Rules into consideration for the purpose of determining the language of the proceeding, in order to ensure fairness to the parties and the maintenance of an inexpensive and expeditious avenue for resolving domain name disputes. Language requirements should not lead to undue burden being placed on the parties and undue delay to the proceeding (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.5.1).

The Complainant has requested that the language of the proceeding be English, mainly for the following reasons:

- (i) The Respondent is familiar with English, as the Website contains predominantly English language content, and the disputed domain name is comprised of Latin script;
- (ii) The Complainant is based in India and operates its business in English; and
- (iii) The translation of the Complaint and Annexures would result in significant and unwarranted additional costs and delay.

The Respondent did not make any submissions regarding the language of the proceeding, and did not file any response.

In exercising its discretion to use a language other than that of the registration agreement, the Panel has to exercise such discretion judicially in the spirit of fairness and justice to both Parties, taking into account all relevant circumstances of the case, including matters such as the Parties' ability to understand and use the proposed language, time, and costs.

The Panel is also mindful of the need to ensure the proceeding is conducted in a timely and cost effective manner.

In light in particular of the content of the Website, the Panel finds there is sufficient evidence that the Respondent is conversant in English.

In all the circumstances, the Panel therefore finds it is not foreseeable that the Respondent would be prejudiced, should English be adopted as the language of the proceeding.

Having considered all the matters above, the Panel determines under paragraph 11(a) of the Rules that the language of the proceeding shall be English.

## **6.2 Substantive Elements of the Policy**

The Complainant must prove each of the three elements in paragraph 4(a) of the Policy in order to prevail.

### **A. Identical or Confusingly Similar**

The Panel finds that the Complainant has rights in the Trade Mark acquired through use and registration.

The disputed domain name incorporates the entirety of the Trade Mark (see [WIPO Overview 3.0](#), section 1.7), prefaced by the word “chandan”, the Sanskrit name for Indian Sandalwood.

Where a relevant trade mark is recognisable within a disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) does not prevent a finding of confusing similarity under the first element (see [WIPO Overview 3.0](#), section 1.8).

The Panel therefore finds that the disputed domain name is confusingly similar to the Trade Mark.

### **B. Rights or Legitimate Interests**

Paragraph 4(c) of the Policy provides a list of non-exhaustive circumstances any of which is sufficient to demonstrate that a respondent has rights or legitimate interests in a disputed domain name:

- (i) before any notice to the respondent of the dispute, the respondent's use of, or demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services; or
- (ii) the respondent (as an individual, business, or other organization) has been commonly known by the disputed domain name even if the respondent has acquired no trade mark or service mark rights; or
- (iii) the respondent is making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trade mark or service mark at issue.

The Complainant has not authorised, licensed, or permitted the Respondent to register or use the disputed domain name or to use the Trade Mark. The Panel finds on the record that there is therefore a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name, and the burden is thus on the Respondent to produce evidence to rebut this presumption.

The Respondent has failed to show that he has acquired any trade mark rights in respect of the disputed domain name or that the disputed domain name has been used in connection with a *bona fide* offering of goods or services. To the contrary, the disputed domain name was previously resolved, for commercial gain, to the Website, a gambling website.

There has been no evidence adduced to show that the Respondent has been commonly known by the disputed domain name; and there has been no evidence adduced to show that the Respondent is making a legitimate noncommercial or fair use of the disputed domain name.

The Panel finds that the Respondent has failed to produce any evidence to rebut the Complainant's *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Panel

therefore finds that the Respondent lacks rights or legitimate interests in the disputed domain name.

### **C. Registered and Used in Bad Faith**

In addition to voluminous evidence demonstrating the promotion and use of the Trade Mark in India, the Complainant has filed with the Complaint evidence of its use of the Trade Mark on various social media websites which are not accessible to residents of China.

Regrettably, no specific evidence of use of the Trade Mark in China was filed with the Complaint.

The Panel notes however that the Complainant's International registration for the Trade Mark designates *inter alia* China.

There is also no doubt that the Trade Mark is a well-known and famous mark in India.

In accordance with section 4.8 of the [WIPO Overview 3.0](#), the Panel has conducted searches for the terms "chandankhadi" and "chandan khadi" comprised in the disputed domain name, using the Baidu (百度) online search engine which is widely used by consumers in China. The Panel considers that, in all the circumstances, and in light of the Respondent's default in this proceeding, it is appropriate for the Panel to undertake this limited factual research into matters of public record. The results of the searches include references to sandalwood soap produced in India and bearing the Trade Mark.

The Panel notes that the Website is a dual English and Chinese language website, which suggests that it was used by the Respondent to target English speaking consumers, as well as Chinese speaking consumers.

Noting the Panel's finding in Section 6.2B above that the Respondent has no rights or legitimate interests in the disputed domain name, and noting the composition of the disputed domain name being the Trade Mark and an Indian plant, in all the circumstances and for the reasons set out above, the Panel concludes that the disputed domain name has been registered and used in bad faith, and for commercial reasons, to target consumers in India (and elsewhere).

For all the foregoing reasons, the Panel concludes 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 <chandankhadi.com> be transferred to the Complainant.

*/Sebastian M.W. Hughes/*

**Sebastian M.W. Hughes**

Sole Panelist

Dated: February 4, 2023