

ADMINISTRATIVE PANEL DECISION

Atandra Energy Private Limited v. S. Thilagar, Sakthi Electrical Control
Case No. D2023-4065

1. The Parties

The Complainant is Atandra Energy Private Limited, India, represented by Altacit Global, India.

The Respondent is S. Thilagar, Sakthi Electrical Control, India.

2. The Domain Name and Registrar

The disputed domain name <krykard.com> is registered with BigRock Solutions Pvt. Ltd. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 28, 2023. On September 28, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 30, 2023, the Registrar transmitted by email to the Center its verification response confirming that the 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 the Respondent of the Complaint, and the proceedings commenced on October 18, 2023. In accordance with the Rules, paragraph 5, the due date for Response was November 7, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 13, 2023.

The Center appointed Harini Narayanswamy as the sole panelist in this matter on November 24, 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

The Complainant is an Indian Company registered in the year 2005, with its headquarters in Chennai, in the state of Tamilnadu. The Complainant is in the business of power and energy management and offers products and services under the trademark KRYKARD. The Complainant owns Indian trademark registration for the KRYKARD device mark, under class 9, bearing number 441942, dated August 20, 1985, valid till August 20, 2026. The Complainant owns several domain names bearing its mark, such as <krykard.in>, <krykard.co.in>, <krykard.info>, <krykard.net>, <krykard.org>, and <krykardcare.in>.

The Respondent who is located in Coimbatore in the state of Tamilnadu, registered the disputed domain name on December 10, 2014. The disputed domain name redirects users to the website “www.shaktistabilizer.in”. The website is ostensibly being used in connection with a business named “Shakthi Electrical Control”. The website offers products such as AC Drives and Control Panels, Oil Cooled Servo Stabilizers, Industrial Oil Cooled Servo Stabilizers, Air Cooled Servo Stabilizer, and Industrial Rectifiers. The website displays the name of the contact person as Tilaghar Shanmugam.

The Complainant had sent a cease and desist notice dated August 1, 2023 to the Respondent’s email address and physical address, which could not be located. The Complainant sent another notice dated August 25, 2023 to yet another address of the Respondent. The Complainant states there was no further communication with the Respondent.

5. Parties’ Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

The Complainant alleges that its trademark KRYKARD was coined by its predecessor from the names of two persons “Karnad” and “Krishnan”, who had developed the servo stabilizer. The Complainant states the mark was used by its predecessor M/s Alacritty Consultants Private Limited from the year 1983 and was registered in 1990. It was later assigned to the Complainant and was recorded on the trademark register.

The Complainant asserts that its trademark is distinctive in the area of power and energy management. Notably, the Complainant contends that it has installed 300,000 power conditioners and 100,000 portable and panel load managers. The Complainant states its vast client base includes HDFC Bank, ICICI Bank, Reliance Industries, Adani Total Gas, Axis Bank, Eaton Power, Jubilant Food, and Fanuc India.

The Complainant states it has received various awards such as the ICICI Bank Appreciation Award as Platinum Partner in 2018-19, Jubilant Food Works, Appreciation Award for Quality Excellence, 2017 Delhi, Jubilant Food Works, Appreciation Award for Quality Excellence 2018, Delhi, and Sapphire Foods Appreciation Award for Best Partnership 2019, Delhi. The Complainant contends that it has spent large amounts to promote its mark and has provided evidence of advertisements and publicity of its mark.

The Complainant has filed as evidence a statement certified by an auditor, showing figures for its sales turnover for the period from 2018-2019 to 2022-2023. The Complainant contends that its social media pages also displays its trademark KRYKARD.

The Complainant contends that its market survey has revealed that the Respondent has not used “Krykard” name in connection with its business or as part of its corporate name. The Complainant argues that the Respondent derives mileage from the use of its well-known mark in the disputed domain name, and requests for the transfer of the disputed domain name.

B. Respondent

The Respondent did not reply to the Complainant's contentions or take part in these proceedings.

6. Discussion and Findings

Preliminary Issue: Delay in Filing Complaint

Panels have widely recognized that mere delay between the registration of a domain name and the filing of a complaint neither bars a complainant from filing a case or from prevailing on the merits. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([WIPO Overview 3.0](#)), section 4.17.

The disputed domain name was registered in 2014, the Complainant has filed the present Complaint almost nine years after the registration of the disputed domain name. The delay of nine years is quite a long period, given that the Complainant claims that its mark is significant for its business. Delay however does not preclude an owner of a trademark from seeking remedy under the UDRP, as the remedy under the UDRP is primarily injunctive and not compensatory in nature. [WIPO Overview 3.0](#), section 4.17.

Nevertheless, based on the facts and circumstances of each case, panels have the discretion to determine whether delay has a bearing on the overall merits of the case, such as in *Walbro Engine Management, LLC v. Registration Private, Domains By Proxy, LLC/ Shahrokh Gabbaypour, Express Fuel Pumps*, WIPO Case No. [D2021-2409](#), where the delay of more than nine years was considered by the panel as tacit acceptance or acquiescence of the respondent's use of the complainant's mark. The panel in that case, quoted [WIPO Overview 3.0](#), section 4.17 and observed that "in specific cases, certain delays in filing a UDRP complaint may make it more difficult for a complainant to establish its case on the merits, particularly where the respondent can show detrimental reliance on delay." Notably the unauthorized use of the mark by the respondent in that case was found to be honest use by the panel.

If the facts of the case show there is dishonest use of the complainant's trademark by the respondent, then relief may not be denied to the trademark holder, notwithstanding the delay. In the present case, the Panel having reviewed the entire record, finds that the Respondent's use of the disputed domain name has not been bona fide or honest, which is discussed in the following sections. The Panel finds the delay in filing the Complaint, in the present case, does not adversely affect the Complainant's case.

Substantive Issues

The Complainant is required to establish three elements under paragraph 4 (a) of the Policy to obtain transfer of the disputed domain name, 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.

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. [WIPO Overview 3.0](#), section 1.7.

The Complainant has filed evidence of its Indian registered rights in the device mark KRYKARD, without any disclaimer. A trademark registration serves as *prima facie* evidence that the owner of the registered mark has the necessary rights for purposes of paragraph 4(a)(i) of the Policy, see [WIPO Overview 3.0](#), section 1.2.1. The Panel finds, based on the available record, that the Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy.

Assessment of identity or confusing similarity, primarily involves comparing the alpha-numeric domain name and the textual components of the relevant device mark. [WIPO Overview 3.0](#), section 1.10. The Panel finds the Complainant's device mark consists primarily of textual components. The Panel finds the entire textual components of the mark are reproduced within the disputed domain name. Accordingly, the disputed domain name is found to be identical to the mark for the purposes of paragraph 4(a)(i) the Policy.

Based on the available record, the Panel finds the Complainant has satisfied the requirements of paragraph 4(a)(i) of the Policy and the first element of the Policy has been established.

B. Rights or Legitimate Interests

The second element requires the Complainant to establish the Respondent lacks rights or legitimate interests in the disputed domain name. Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult task of "proving a negative", requiring information that is often 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 (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

The Respondent has not taken part in these proceedings or come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name, such as those enumerated in the Policy or otherwise. Having reviewed the available record, the Panel finds the Respondent is not known by the disputed domain name or a name corresponding to the disputed domain name. Based on the material on record, the Panel notes that the Respondent does not have any authorization or license to use the KRYKARD mark and has made unauthorized use of the Complainant's registered trademark in the disputed domain name.

The Respondent has used the disputed domain name to redirect Internet users to a website located at the domain name <shaktistablizer.in>. The website displays the business name "Shakti Electrical Control" and offers various products, which clearly shows that the website is being used for commercial purposes in the same area of commercial activity as that of the Complainant. The name of the contact person displayed on the website is Tilaghar Shanmugam. The name, business name and address details correspond with the Respondent's domain name registration records.

The Panel finds the website has not display any disclaimer or any information disclosing whether there is any connection (or the lack of it) with the owner of the trademark used in the disputed domain name. The disputed domain name is merely used for purposes of redirecting customers to the Respondent's website, that appears to be a competing business, which is neither legitimate, noncommercial or fair use of the disputed domain name. [WIPO Overview 3.0](#), section 2.5. The Panel finds that the disputed domain name is used by the Respondent in a dishonest manner to mislead customers looking for the Complainant and redirecting them by means of "bait and switch" to the Respondent's website, thereby causing consumer confusion and deception.

Panels have held that the use of a domain name for activities such as impersonation, passing off or bait and switch activity can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13. See for instance *Kampachi Worldwide Holdings. LP v. Registration Private, Domains by Proxy, LLC / Robin Coonen, Blue Ocean Mariculture*, WIPO Case No. [D2021-0371](#), where the use of the disputed domain name to redirect Internet users to the respondent's website by misleading users was found not to confer any rights or legitimate interests in favor of the respondent.

The Panel finds, based on the circumstances discussed, that the disputed domain name was registered and used with the dubious intent of attracting for commercial gain, Internet users to the Respondent's website by creating a likelihood of confusion with the Complainant's mark. Consistent with the views expressed by UDRP panels, it is found that the use of disputed domain name in the present case, to redirect unsuspecting consumers to the Respondent's website, is neither *bona fide* nor legitimate activity and does not support a finding of the Respondent having any rights or legitimate interests in the disputed domain name.

Based on the available record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant's *prima facie* showing.

The Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The third element under paragraph 4(a)(iii) of the Policy requires the Complainant to establish the disputed domain name has been registered and used in bad faith by the Respondent. The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy specifies circumstances, in particular, but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

Paragraph 4(b) of the Policy provides that bad faith registration and use can be found when:

- (i) circumstances indicate that [the Respondent] has registered or acquired the domain name primarily for purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant who is the owner of the trademark or service mark or to a competitor of that the Complainant, for valuable consideration in excess of [the Respondent's] documented out-of-pocket costs directly related to the domain name; or
- (ii) [the Respondent] has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that [the Respondent] has engaged in a pattern of such conduct; or
- (iii) [the Respondent] has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the disputed domain name, [the Respondent] has intentionally attempted 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 Respondent's website or location or of a product or service on [the Respondent's] website or location.

The Complainant has argued that the Respondent's use of the disputed domain name shows intent to free-ride and benefit from the Complainant's investment in the KRYKARD trademark. The Complainant has argued quoting section 3.1.4 of the [WIPO Overview 3.0](#), that "redirecting the domain name to the respondent's (or a competitor's) website" is evidence of bad faith registration and use, and has cited the case *Safelite Group, Inc. v. Will Reed*, WIPO Case No. [D2019-1081](#).

The Complainant has also argued that the Respondent ought to have been aware of the Complainant's mark at the time of registration of the disputed domain name and has targeted its mark. Having reviewed the record, the Panel agrees that the Respondent ought to have known of the mark for the reasons that the Respondent is located in Tamilnadu, which is the same state as the Complainant. Furthermore, the Respondent's business and product offerings on the website are in a similar area to the Complainant's business.

Having reviewed the record, the Panel notes that the trademark registration date is August 20, 1985, which is evidence of the Complainant's use of its mark for about three decades prior to the registration of the disputed domain name in 2014. The Panel also notes that the Complainant has provided evidence of extensive use of its mark such as figures showing its sales turnover under the mark, its promotion and advertisements of the mark and credible evidence that its mark has acquired industry recognition in its area of business. Given the fame and repute of the Complainant's mark, it can be inferred that the Respondent ought to have known of the mark and registered the disputed domain name in order to derive unfair gains from consumer confusion.

The use of the mark in the disputed domain name with an intent to target customers searching for the Complainant's mark online and redirecting such customers to the Respondent's website for competing services, indicates dishonest use of the mark. Panels have held that the use of a domain name for misleading customers, unauthorized account impersonation, passing off, or other types of fraud constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. The Panel finds based on the record, that the Respondent has used the unique and coined mark of the Complainant in the disputed domain name to redirect users to a business which directly competes with the Complainant's business.

Under the Policy, paragraph 4(b)(iv) has clearly stated that the use of the trademark in a disputed domain name for purposes of redirecting customers to a respondent's website or a competitor's website for commercial gain, is evidence of bad faith. Further, it is noted that the Respondent has provided no clarification or disclaimers regarding any association or the lack it with the owner of the trademark, which does not indicate honest use of the mark or the disputed domain name. In addition, the Respondent's failure to respond or partake in these proceedings and failure to provide a proper address, are additional factors that denote bad faith on the part of the Respondent.

For all the reasons discussed, the Panel finds the Respondent has registered and used the disputed domain name in bad faith. Based on the available record, the Panel finds that the Complainant has established the third element of the Policy.

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, <krykard.com>, be transferred to the Complainant.

/Harini Narayanswamy/

Harini Narayanswamy

Sole Panelist

Date: December 8, 2023