

## **ADMINISTRATIVE PANEL DECISION**

### **Khadi & Village Industries Commission v. Aayush Gupta, Bo International Case No. D2023-3570**

#### **1. The Parties**

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

The Respondent is Aayush Gupta, Bo International, India.

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

The disputed domain names <khadiearth.info> and <khadiearth.online> are registered with GoDaddy.com, LLC (the "Registrar").

#### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on August 24, 2023. On August 24, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On the same day, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondent (Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on August 25, 2023, 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 August 29, 2023.

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 September 1, 2023. In accordance with the Rules, paragraph 5, the due date for Response was September 21, 2023. The Respondent did not submit any response. However, an email communication was received by the Respondent on September 24, 2023, requesting another week to reply to proceeding.

The Center appointed Meera Chature Sankhari as the sole panelist in this matter on October 10, 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.

An extension was sought by the Respondent after expiry of the Response due date to submit its response. The Center declined the Respondent's request for an extension as the Response due date had already passed. The Respondent was instructed that its request will be brought for the Panel's attention and consideration.

#### **4. Factual Background**

The Complainant is a statutory body formed by the Government of India under an Act of Parliament, "The Khadi and Village Industries Commission Act of 1956". The Complainant adopted the trademark KHADI in 1956, as a part of its tradename, corporate name, and trading style and has been continuously using it since then. The Complainant authorizes retail sellers, organizations, societies, and institutions to sell KHADI certified products under the KHADI trademark. Such authorized users have to be recognized through the Khadi Institutions Registration & Certification Sewa (KIRCS). The Complainant's trademark KHADI is prominently featured on all products sold by the Complainant in India and abroad. For the promotions of the KHADI trademarks, the Complainant collaborates with various fashion houses, designers, and corporates, which help in showcasing the KHADI products. The Complainant's KHADI trademark and its products thereunder have continued to gather a lot of media attention and have been covered by renowned media houses and newspapers. By virtue of adoption of the trademark KHADI over sixty years ago, coupled with extensive use thereof, the Complainant has established common law rights in its mark.

The Complainant owns several registrations to the trademark KHADI and its variations (hereinafter "KHADI") in India. These include Registration Nos. 2851542 - 2851545, and 2851552, which are registered for a variety of goods and services. The Complainant also owns trademark registrations for KHADI marks in Bahrain, Mexico, Singapore, and the United Kingdom to name a few.

The Delhi High Court has declared the trademark KHADI as a well-known trademark. The Indian Trade Mark Registry has also notified the trademark KHADI as well-known. Several WIPO UDRP decisions have also upheld the Complainant's rights in KHADI trademark.

The Respondent registered the disputed domain names on April 22, 2023. Both disputed domain names land on identical pages where the domain names are parked. The Respondent is an individual based in India.

#### **5. Parties' Contentions**

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

The Complainant in its Complaint has, *inter alia*, contended the following:

- a) that the disputed domain names <khadiearth.info> and <khadiearth.online> are confusingly similar to the well-known trademark of the Complainant KHADI. The addition of the generic term "earth" in the disputed domain names does not serve to distinguish the disputed domain names from the trademark KHADI. The Complainant's KHADI trademarks are registered in India and various other jurisdictions.
- b) that the Respondent has merely parked the disputed domain names and there is no demonstrable preparation to use or actually use the disputed domain names in connection with any *bona fide* offering of goods or services. The Complainant further states that it has not licensed or otherwise authorized the Respondent to use any of its trademarks in any way and that such unauthorized use is solely with a view to diverting consumers and to tarnish the trademark of the Complainant.

- c) that the Respondent has registered the disputed domain names in bad faith, *inter alia*, for the following reasons:
- i) the primary aim of the Respondent is to sell or transfer the disputed domain names to the Complainant or any third party, for valuable consideration. The lack of any content on the disputed domain names demonstrates the Respondent's bad faith and the *mala fide* intention of extracting some commercial advantage from the Complainant.
  - ii) the Respondent is from India and hence must have knowledge of the reputation commanded by the Complainant within India and internationally and that registration of the disputed domain names despite such knowledge indicates bad faith.
  - iii) The mere registration of a domain name that is identical or confusingly similar to a famous or widely-known trademark by an unaffiliated entity can by itself lead to a presumption of bad faith, particularly when a domain name incorporates such a mark plus a descriptive term, which the disputed domain names do. The Complainant's mark KHADI is wholly incorporated in the disputed domain names.

The Complainant requests the transfer of both disputed domain names to the Complainant.

## **B. Respondent**

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

## **6. Discussion and Findings**

Preliminary Procedural Issue: Consolidation of Multiple Disputed Domain Names

The Complainant has requested for consolidation of both disputed domain names in the same Complaint as the Respondent for both domain names is same. The Complainant relies upon paragraph 3(c) of the Rules, which states, "[t]he complainant may relate to more than one domain name, provided that the domain names are registered by the same domain-name holder".

In the circumstances of the present case, the Panel finds it fair and equitable to both parties and procedurally efficient to allow the consolidation as requested by the Complainant pursuant to paragraph 10(e) of the Rules.

Preliminary Procedural Issue: Respondent's Request for Extension or Submission of a Late Response

The Panel notes that no specific arguments for omission to file a Response were submitted by the Respondent, nor did the Respondent make any further requests or submissions. In accordance with paragraph 10 of the Rules, the Panel will proceed to render the decision in this matter. (See also Sections 4.6 and 4.7 of the [WIPO Overview 3.0](#).)

According to paragraph 15(a) of the Rules, the Panel shall decide the Complaint in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

To transfer the disputed domain name from the Respondent, the Complainant must prove the following elements as per paragraph 4(a) of the Policy:

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

Paragraph 15(a) of the Rules instructs the Panel to decide a complaint “on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable”.

Further, since the Respondent has not submitted its response in the case at hand, this Panel finds it appropriate to “decide the dispute based upon the complaint” as per paragraph 5(f) of the Rules read with paragraphs 14(a) and 14(b) of the Rules.

Having considered the Complainant’s case and the evidence available, the Panel finds as follows.

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

The Complainant has successfully established the confusing similarity of the disputed domain names, ownership of the relevant trademark rights, and that the same are wholly incorporated and clearly recognizable within the disputed domain names.

Per section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), “where a domain name(s) incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name(s), the domain name(s) will normally be considered confusingly similar to that mark for purposes of UDRP standing”.

Regarding the addition of prefix “earth”, the Panel confirms that it does not prevent a finding of confusing similarity between the disputed domain names and the trademark KHADI. The Panel considers it useful to refer to [WIPO Overview 3.0](#), section 1.8: “Where the relevant trademark is recognizable within the disputed domain name(s), the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element. The nature of such additional term(s) may however bear on assessment of the second and third elements.”

Per section 1.11 of the [WIPO Overview 3.0](#), the applicable Top Level Domain (“TLD”) in a domain name (e.g., “.com”, “.club”, “.nyc”) is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test.

The Panel confirms that the Complainant has satisfied the first element contained in paragraph 4(a)(i) of the Policy.

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

The Complainant has established statutory as well as common law rights in and to its trademark KHADI. The Complainant has further affirmed that it has not granted any license or authorization to the Respondent to use its trademark KHADI and nor is it affiliated with the Respondent. There is no evidence before the Panel to suggest that the Respondent is commonly known by either of the disputed domain names.

The Panel finds that a *prima facie* case is made by the Complainant, pursuant to which, the burden shifts to the Respondent to come forward with an appropriate allegations and relevant evidence demonstrating rights or legitimate interests in the disputed domain names.

The Respondent has failed to demonstrate any rights or legitimate interests over the word “khadi” or the disputed domain names as per paragraph 4(c) of the Policy.

For these reasons, the Panel finds that the Complainant has established that the Respondent has no rights or legitimate interests in the disputed domain names (see *Deutsche Lufthansa AG v. Mustermann Max, Muster AG*, WIPO Case No. [D2015-1320](#); *Edmunds.com, Inc v. Triple E Holdings Limited*, WIPO Case No. [D2006-1095](#); *Legacy Health System v. Nijat Hassanov*, WIPO Case No. [D2008-1708](#)).

The Complainant is therefore deemed to have satisfied paragraph 4(a)(ii) of the Policy.

### C. Registered and Used in Bad Faith

The Complainant's trademark KHADI is recognized as a well-known mark by the Court as well as the Indian Trade Marks Registry.

The Panel also finds that the disputed domain names were registered in *bad faith* on the ground that it is inconceivable that the Respondent, who resides in India, could not have known of the Complainant's well-known trademark KHADI.

[WIPO Overview 3.0](#), section 3.1.4 states that "Panels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely known trademark by an unaffiliated entity can by itself create a presumption of bad faith".

The Panel finds that the Complainant has satisfied the third element of the Policy on this ground alone.

The Panel further holds that merely because the disputed domain names do not resolve to active websites cannot prevent a finding of bad faith. In this case, given the widely-reputed trademark KHADI, the failure of the Respondent to submit a response or to provide any evidence of actual or contemplated good faith use, the Respondent's concealment of its identity (noted to be in breach of its registration agreement), and the implausibility of any good faith use, to which the disputed domain names may be put, all support an inference of bad faith. See *The Gap, Inc. v. Deng Youqian*, WIPO Case No. [D2009-0113](#); *Caesar World, Inc. v. Forum LLC*, WIPO Case No. [D2005-0517](#).

For all the foregoing reasons, the Panel concludes that the disputed domain names have been registered in bad faith pursuant to paragraph 4(b)(iv) 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 names, <khadiearth.info> and <khadiearth.online> be transferred to the Complainant.

*/Meera Chature Sankhari/*

**Meera Chature Sankhari**

Sole Panelist

Date: October 27, 2023