

ADMINISTRATIVE PANEL DECISION

Manhattan Review, Inc. v. Nishin Kolakaluri Case No. D2023-4940

1. The Parties

The Complainant is Manhattan Review, Inc., United States of America (“United States”), internally represented.

The Respondent is Nishin Kolakaluri, India.

2. The Domain Names and Registrar

The disputed domain names <manhattanreviewglobal.com> and <manrevglobal.com> 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 November 28, 2023. On November 28, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On December 5, 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 December 8, 2023. In accordance with the Rules, paragraph 5, the due date for Response was December 28, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on January 2, 2024.

The Center appointed Andrew D. S. Lothian as the sole panelist in this matter on January 4, 2024. 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.

On January 5, 2024, the Panel issued Procedural Order No. 1 to the Parties. This requested that the Complainant expand upon its submissions in section VI. B of the Complaint, notably (1) to provide further details of the Complainant's business activities and history, including the nature and extent of its use of the trademark MANHATTAN REVIEW from 1999 to 2023 (such evidence if the Complainant claims that an unregistered mark was in existence over some or all of that period to be provided in accordance with the guidance and range of factors set out in section 1.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)")); (2) to provide a copy of the franchise agreement under which the Respondent operated and the precise period during which the franchise agreement was in operation; (3) to provide a fuller explanation of what the Complainant means by "they went rogue", i.e., in what activities did the Respondent engage, together with more precise dates for these activities; (4) to provide details of how and when the franchise agreement was terminated (if it was), and the manner in which such termination was notified to the Respondent or its company; and (5) the extent to which, if at all, the Complainant was aware of the Respondent's use of the disputed domain name in the period during the operation of the franchise agreement or before its commencement.

The Complainant was requested to provide its response to the Procedural Order on or before January 12, 2024. The Respondent was invited to comment on the Complainant's submission (if any) on or before January 19, 2024. The decision due date was extended to February 2, 2024. The Complainant responded to the Procedural Order on January 5, 2024 and January 13, 2024. The Respondent did not respond to the Procedural Order.

4. Factual Background

The Complainant is a New York, United States, corporation. It is engaged in the provision of course study materials and educational services for testing preparation. The Complainant was incorporated on December 29, 1999 when its founder was a doctoral student. Over subsequent years, the Complainant's founder has operated the "Manhattan Review" brand via the Complainant and, with a minority partner ("the Minority Partner"), via a Delaware company named Manhattan Review LLC, incorporated on May 13, 2005, which became inactive on January 24, 2012.¹

The Complainant's founder and the Manhattan Review corporate entities received media coverage of their activities, namely, articles in The Times newspaper of October 6, 2005, Newsweek of March 6, 2006, and BusinessWeek of August 23, 2007 (the latter quoting the Minority Partner). The Complainant makes the uncontradicted assertion that following litigation between its founder and the Minority Partner, all rights in the MANHATTAN REVIEW trademark reverted to said founder and the Complainant. The Panel therefore treats the Complainant as the cancelled entity's successor in interest in respect of any relevant rights in the name "Manhattan Review".

The Complainant is the owner of United States Registered Trademark Number 7207815 in respect of the word mark MANHATTAN REVIEW, filed on August 20, 2014 and registered on October 31, 2023 in Classes 9 (claim of first use in commerce of August 20, 1999), 16 (claim of first use in commerce of January 1, 2001), 41 (claim of first use in commerce of August 20, 1999), and 42 (claim of first use in commerce of January 1, 2001). Said mark contains a disclaimer stating, "No claim is made to the exclusive right to use the following apart from the mark as shown: 'REVIEW'". The Complainant is also the owner of Indian Registered Trademark Number 4330767 for the mark MANHATTAN REVIEW, applied for on October 24, 2019, in Class 35 (claim of use dated January 26, 2000).

The disputed domain names were registered as follows: <manhattanreviewglobal.com> was registered on January 10, 2023 and <manrevglobal.com> was registered on January 11, 2023. The disputed domain name <manhattanreviewglobal.com> resolves to a website prominently displaying the MANHATTAN

¹ The Panel verified these details from the New York State Division of Corporations website, which disclosed the details of Manhattan Review LLC as a 'foreign limited liability company' of Delaware, United States, jurisdiction. On the topic of a panel conducting such independent research of publicly available sources, see section 4.8 of the [WIPO Overview 3.0](#).

REVIEW mark and providing education services. The disputed domain name <manrevglobal.com> does not resolve to any active website, however, there is an email address support@manrevglobal.com displayed on the website “www.manhattanreviewglobal.com”. The Respondent is an individual based in India. There is uncontradicted evidence before the Panel indicating that the Respondent is a minority shareholder in an Indian company named ck’s edvantage education Private Limited (hereinafter “the Respondent’s company”) along with an individual named Sunil Chunduru. The Respondent’s company previously had a business relationship with the Complainant and/or its predecessor in interest. The Panel does not know when the Respondent became a shareholder in said company but this does not matter for present purposes.

The history of the Parties’ business relationship, so far as identifiable from the record, is as follows: According to an email produced by the Complainant, Mr. Chunduru first contacted the Complainant on December 28, 2007 via its general email address using the domain name <manhattanreview.com>. In said email, Mr. Chunduru proposed to open “a Manhattan Review franchise in India”. He noted that he would be in a position to meet the Complainant’s representative for international markets in March 2008. The Complainant’s position, uncontradicted by the Respondent, is that a franchise agreement was then entered into between the Complainant (and/or its predecessor in interest) and the Respondent’s company, that payments were made by the Respondent’s company thereunder for a period of time, and that such payments had stopped by, at the latest, December 2012. That franchise agreement has not been produced in connection with the present case.

The Complainant produces a screenshot of a website at “www.indiamr.com” which it says is the Respondent’s company’s former website, noting that it has now switched to the disputed domain names. The website at “www.indiamr.com” references “the New York-based test preparation company”, describes itself as “Manhattan Review” or “Manhattan Review, India”, and references its operations in Hyderabad, India. The Complainant also produces a comparison between its own website at “www.manhattanreview.com” and a website associated with a domain name that is the subject of a related dispute, namely <manhattanreviewindia.com> which shows the same logo as that on the Complainant’s site. The Complainant makes the uncontradicted claim that it created this logo in 1999.

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.

Notably, the Complainant contends that the Respondent is connected to Mr. Chunduru and the Respondent’s company, and thus to the Complainant’s prior business relationship via the franchise agreement, that the Respondent has no legal rights to use the trademark MANHATTAN REVIEW, that the Respondent wishes to confuse customers by tricking them into believing that its operation is sanctioned by the Complainant, and that the Respondent has switched from <indiamr.com> to the disputed domain names, which highlights a purported connection to the Complainant.

B. Respondent

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

C. Complainant’s reply to Procedural Order No. 1

In summary, the Complainant responded as follows:

1. Further details of the Complainant’s business activities and its use of the MANHATTAN REVIEW trademark from 1999 to 2023.

The Complainant's business was originally conceived in August 1999 as a test preparation institute when its founder was a doctoral student. The Complainant was incorporated on December 30, 1999. The founder took on the Minority Partner and the "Manhattan Review" brand was operated by Manhattan Review LLC, a Delaware limited company from 2005 to 2011. Thereafter it was operated by a different LLC until 2014 when it was operated by the Complainant again. A dispute between the Minority Partner and the Complainant was resolved following litigation. The dispute in part related to a United States registered trademark on the Supplemental Register for MANHATTAN REVIEW, which was later cancelled. A settlement to the litigation confirmed the Complainant's founder as the owner of all rights in the MANHATTAN REVIEW trademark. The mark existed from 1999 and was prominent, garnering media attention in October 2005, June 2006, and August 2007, before any contact was received from the Respondent.

2. To provide a copy of the franchise agreement under which the Respondent operated and the precise period during which the franchise agreement was in operation.

The Respondent (as opposed to the Respondent's company) never held a franchise agreement with the Complainant or its predecessor in interest and should be treated as a standard domain name squatter. As a minority shareholder it also seems unlikely that the Respondent inherited any franchise rights, even if those existed, from the Respondent's company.

3. To provide a fuller explanation of what the Complainant means by "they went rogue", i.e., in what activities did the Respondent engage, together with more precise dates for these activities.

The Respondent's company stopped making agreed franchise fee payments but continued to use the Complainant's mark. Said company then filed for an Indian trademark for MANHATTAN REVIEW in December 2012, copying the Complainant's distinctive logo, whereupon the Complainant retained counsel and applied for its Indian trademark.

4. To provide details of how and when the franchise agreement was terminated (if it was), and the manner in which such termination was notified to the Respondent or its company.

The Respondent as an individual was never a franchisee and therefore should not be treated as such.

5. The extent to which, if at all, the Complainant was aware of the Respondent's use of the disputed domain names in the period during the operation of the franchise agreement or before its commencement.

The Respondent did not register the disputed domain names while the franchise agreement was in operation but in 2023. The Complainant became aware of the disputed domain names in the summer of 2023. The Complainant speculates that the two shareholders in the Respondent's company may have fallen out and each of them has started a website impersonating the Complainant.

6. Discussion and Findings

A. Identical or Confusingly Similar

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.

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1. Although the textual element "review" is disclaimed in the Complainant's mark, the scope of protection of said mark extends to the entirety of the mark as shown, namely both words together, being MANHATTAN REVIEW. The disclaimer does not extend to the entirety of the textual elements of the mark. [WIPO Overview 3.0](#), section 1.10.

Dealing first with the disputed domain name <manhattanreviewglobal.com>, the Panel finds that the entirety of the Complainant's mark, being both of the words MANHATTAN REVIEW taken together, is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Dealing next with the disputed domain name <manrevglobal.com>, the Panel finds the Complainant's mark is recognizable within the disputed domain name. The Complainant's mark consists of five syllables in total across two words, and two syllables out of these five are exactly reproduced as the first part of the disputed domain name. The syllables concerned form the first syllable of each of the words in the Complainant's mark and, as such, appear to the Panel to be intended as an abbreviation of each. Abbreviations of marks (if recognizably so) can be sufficient in appropriate cases to fulfil the relevant requirement of the first element of the Policy (see, for example, *Fenix International Limited c/o Walters Law Group v. Privacy Service Provided by Withheld for Privacy ehf / Nemanja Krecej, Rocket Science Group*, WIPO Case No. [D2022-1622](#)). Accordingly, this particular disputed domain name is also confusingly similar to the Complainant's mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms within the disputed domain names, here, the word "global" may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain names and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

The Panel also finds that the Complainant has established unregistered trademark rights in the mark MANHATTAN REVIEW, based upon, first, the length of trading under the name concerned dating from at least the Complainant's incorporation date in 1999, and secondly, the media coverage dating from between 2005 and 2007 which it has exhibited. The Complainant's MANHATTAN REVIEW mark featured in prominent publications with a substantial circulation and this accordingly shows a degree of actual public recognition. [WIPO Overview 3.0](#), section 1.3.

Based on the available record, the Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

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 names.

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.

Having reviewed 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 names. The Respondent has not rebutted the Complainant's prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain names such as those enumerated in the Policy or otherwise.

Despite the Respondent having failed to rebut the Complainant's case, there are two aspects of the Respondent's position that are worthy of closer examination by the Panel. First, there is the franchise agreement apparently entered into between the Complainant or its predecessor in interest and the Respondent's company. Secondly, there is the fact that the Respondent's company has apparently applied

for a registered trademark in the term MANHATTAN REVIEW in India. The Panel has not been provided with the current status of such application. The Complainant's position, in any event, is that the Respondent would not be able to claim rights and legitimate interests by these means because the franchise agreement was entered into, and (by implication) the trademark application was made, by the Respondent's company rather than the Respondent.

Turning first to the franchise agreement, the Panel considers that such a commercial arrangement may, in appropriate cases, confer a right or legitimate interest upon a respondent that is a franchisee with regard to a domain name which reflects the brand of the franchisor. Unless the matter is dealt with expressly in the agreement itself, such a right or legitimate interest could extend, in this Panel's view and in appropriate cases, to a minority shareholder of the franchisee who has registered a corresponding domain name in their own name in support of the franchisee's activities. This may occur more commonly in small companies where the demarcations between the company, its founders, directors, and majority or minority shareholders are not always precisely observed in connection with every business purpose or activity.

In many cases, rights or legitimate interests arising in connection with the franchise might be expressed and/or qualified by the precise terms of the franchise agreement itself, which the Panel has not seen in this particular case. Nevertheless, that does not matter for present purposes because the Panel accepts the Complainant's uncontradicted assertion that payments under the franchise agreement stopped a long time ago. It is reasonable to infer, in the absence of evidence or submissions to the contrary, that any rights or legitimate interests arising under the franchise agreement, even if they could have been imputed to the Respondent, would have fallen away. While the Complainant does not directly address the question of whether the franchise agreement has been formally terminated, it does not seem unreasonable to the Panel to infer that de facto termination has taken place. There is no evidence that the Complainant and the Respondent's company have had any commercial connection for a period that extends beyond a decade. Furthermore, there is no evidence before the Panel, for example, that the Respondent's company has attempted, or is still offering, to adhere to the franchise agreement.

The Complainant's position is that the Respondent most probably inherited no rights or legitimate interests which might have been conferred by the franchise agreement and in any event that the franchise agreement is no more. On the basis of the admittedly limited record before the Panel, it is inclined to agree. Had the Respondent considered that it nevertheless had rights or legitimate interests that could be imputed to it as minority shareholder of the Respondent's company, it could reasonably be expected to have set these out in an attempt to address and rebut the Complainant's prima facie case. It is notable that the Respondent has chosen not to engage with the matter at all. In all of these circumstances, the Panel considers it reasonable to infer that that the Respondent is not in a position to claim rights or legitimate interests in the disputed domain names by virtue of the franchise agreement.

Turning next to the trademark application allegedly made by the Respondent's company in December 2012, it should be noted that the existence of any such trademark, even if it had proceeded to registration, would not automatically confer rights or legitimate interests upon a respondent. Panels have generally declined to find respondent rights or legitimate interests in a domain name on the basis of a corresponding trademark registration where the overall circumstances demonstrate that such trademark was obtained to prevent the complainant's exercise of its rights (even if only in a particular jurisdiction). [WIPO Overview 3.0](#), section 2.12.2.

Here, the Panel is clear that the Complainant had been using its MANHATTAN REVIEW unregistered trademark in commerce from its incorporation in 1999 and had obtained a degree of public recognition of such mark between at least 2005 to 2007. The Panel takes the view that the Respondent's fellow shareholder's initial approach to the Complainant's predecessor in interest to seek a franchise arose more probably than not due to the Complainant's prominence in its particular field of activity and to the goodwill already established in the MANHATTAN REVIEW brand, from which said shareholder, and presumably the Respondent, wished to benefit via a suitable commercial arrangement. The Complainant makes the uncontradicted assertion that despite entering into a franchise agreement and making initial payments thereunder, the Respondent's company then ceased all cooperation and began attempting to usurp the

Complainant's prior rights. In the absence of any explanation from the Respondent, the Panel sees this as an attempt to prevent the Complainant's exercise of its rights in the jurisdiction concerned rather than the expression of the Respondent's own relevant rights or legitimate interests.

Based on the available record, the Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

This case presents somewhat differently from the typical case under the Policy involving prior business relations between a complainant and a respondent. In the typical case, the domain name concerned is usually registered at the outset of the parties' business discussions or at least during the currency of the commercial agreement between them with the intention that it be used in furtherance of certain mutual business purposes. In many such cases, it can be difficult for a complainant to show that such a domain name registration was probably motivated by bad faith, not only due to the passage of time but also because it can be difficult to impute a bad faith motivation to a person who appears to be engaging in prima facie good faith commercial activities.

Here, the disputed domain names were only registered by the Respondent a decade after the Respondent's company had ceased to make payments in terms of the franchise agreement. On the Complainant's uncontradicted submissions, after relations between the Parties broke down, the Respondent's company began to attempt to establish an independent intellectual property right in India featuring the Complainant's MANHATTAN REVIEW mark without the Complainant's permission. In this particular case, the Panel has not been presented with the outcome of that application by either of the Parties. In any event, if any such rights exist, it would be for the Respondent to explain what it has done in this context and how this activity supports an inference that the disputed domain names were registered in good faith over a decade later. The absence of a plausible explanation from the Respondent despite the opportunity both to file a Response to the Complaint and/or to respond to the Panel's Procedural Order is telling, and it is difficult if not impossible for the Panel to view the Respondent's actions in registering the disputed domain names as having any good faith motivation. In all of these circumstances, the Panel finds on the balance of probabilities that the disputed domain names were registered in bad faith.

Turning to the present use of the disputed domain names, one of these is effectively impersonating the Complainant and its brand in India while the other is passively held, albeit that it may be being used for business email, in circumstances where neither the Respondent nor the Respondent's company appear to have any right to present themselves as the Complainant or as its official representative in the country concerned. The Panel is again faced with a lack of explanation from the Respondent as to why it considers itself entitled to adopt this stance. The registration of the disputed domain names apparently comes a decade after the last financial transaction between the Complainant and the Respondent's company.

The Respondent's silence on this topic is remarkable. The disputed domain names reproduce the Complainant's brand and trademark in one case and an abbreviation thereof in the other, together with the word "global". As such, these both carry a risk of implied affiliation with the Complainant's mark and, indeed, it appears to be the Respondent's intention to provoke confusion among consumers, given the Complainant's uncontradicted evidence that the Respondent has also reproduced the Complainant's logo on the associated website of the active disputed domain name. The Panel therefore finds that the disputed domain names are also being used 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 names <manhattanreviewglobal.com> and <manrevglobal.com> be transferred to the Complainant.

/Andrew D. S. Lothian/

Andrew D. S. Lothian

Sole Panelist

Date: February 2, 2024