

ADMINISTRATIVE PANEL DECISION

Patanjali Ayurved Limited v. Durga Prasad
Case No. D2022-2135

1. The Parties

The Complainant is Patanjali Ayurved Limited, India, internally represented.

The Respondent is Durga Prasad, India.

2. The Domain Name and Registrar

The disputed domain name <patanjali-franchise.com> is registered with Hostinger, UAB (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 9, 2022. On June 13, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 14 and 29, 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 June 29, 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 amendment to the Complaint on June 30, 2022. In addition, the Center sent a request for modification on June 29, 2022, to which the Complainant replied on June 30, 2022.

The Center verified that the Complaint together with the amendment to 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 July 7, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 27, 2022. On June 30, 2022, the Center received email communications from an email address that, according to the registrar verification, corresponded to the technical contact of the disputed domain name.

The Center appointed Harini Narayanswamy as the sole panelist in this matter on August 8, 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

The Complainant is an Indian company that manufactures and sells herbal and ayurvedic products. The Complainant owns Indian registered trademark number 2254680 for the PATANJALI figurative mark, in class 5, registered on January 20, 2017. The mark has been used in commerce by the Complainant from January 13, 2006.

The disputed domain name was registered on January 17, 2022. The registration record for the disputed domain name shows the Respondent's name is Durga Prasad, who is located in India. The technical, administrative, and billing contact details identify a separate individual, also located in India. Accordingly to evidence in the Complaint, the disputed domain name previously resolved to a website with statements about the Complainant and its products, and later ceased resolving to an active website.

5. Parties' Contentions

A. Complainant

The Complainant contends that it is in the business of procuring, processing, manufacturing, and marketing herbal products including medicines, cosmetics and food products, beverages, personal and home care products, extracts, and many similar commodities. The Complainant states that the PATANJALI mark is a well-established mark in India and in other parts of the world. The Complainant has provided evidence of its trademark registration in India. The Complainant states that it has used the PATANJALI mark since 2006.

The Complainant alleges that it is the registered owner of the PATANJALI mark in several countries including Australia, Switzerland, European Union, Republic of Korea, Norway, New Zealand, Oman, Philippines, Russian Federation, Singapore, United Arab Emirates, and Mauritius. The Complainant submits that it has also filed trademark applications in several other countries such as Bangladesh, Nepal, Sri-Lanka, Bhutan, Thailand, Malaysia, Kuwait, Indonesia, United Arab Emirates, Canada, United States of America, and Australia where its trademark applications are pending registration. The Complainant has however not filed evidence of its trademarks, or applications, in these jurisdictions.

The Complainant states the disputed domain name is confusingly similar to its mark and it may cause the public to believe the Respondent is associated with the Complainant. The Complainant adds that the Respondent is not authorized to use its mark and has been given no permission to use the mark in the disputed domain name, therefore the use of the mark by the Respondent violates its rights.

The Complainant argues that the Respondent has no rights or legitimate interests in the disputed domain name. The Complainant submits that the Respondent's registration and use of the disputed domain name does not come under the safe-harbor provisions mentioned under paragraphs 4(c) of the Policy. The Complainant further states that the Respondent is not commonly known by the disputed domain name and makes no *bona fide* offering of goods or services using the disputed domain name. The Complainant argues that the Respondent uses the mark in the disputed domain name to derive undue advantage from use of the mark, which is likely to mislead consumers and tarnish its trademark. The Complainant states that the use of the PATANJALI mark by the Respondent is unauthorized, and such use of its mark is likely to confuse the public to believe that the Respondent is acting on behalf of the Complainant.

The Complainant argues that the Respondent has registered the disputed domain name in bad faith for the purpose of disrupting the Complainant's business. The Complainant further submits that the Respondent's use of the disputed domain name is likely to harm the Complainant's goodwill and is likely to confuse and mislead the public, as to the source, sponsorship, or endorsement of the Respondent's website and its information. The Complainant therefore requests for the transfer of the disputed domain name.

B. Respondent

The Respondent did not reply to the Complainant's contentions or file a response in these proceedings. On June 30, 2022, the Center received two single line emails from the technical contact of the disputed domain name. The first email is reproduced here verbatim: "Yes proceed and transfer the domain". The second email is reproduced here verbatim: "Hello sir, What should I do to transfer the domain".

The Center replied to the email requesting the Respondent to clarify its relationship with the sender of the emails in the context of the current proceedings; and requesting the sender of the emails to clarify his relationship with the named Respondent. No reply was received to the Center's email, either from the technical contact of the disputed domain name, or from the Respondent.

6. Discussion and Findings

To obtain the remedy of transfer of the disputed domain name, the Complainant has to establish three requirements set out under paragraph 4 (a) of the Policy. These are:

- (i) the disputed domain name is identical or confusingly similar to a trademark or a 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 requirement under paragraph 4(a) of the Policy requires the Complainant to establish the disputed domain name is confusingly similar to a trademark or a service mark in which it has rights.

The Complainant has provided a copy of the trademark registration certificate as evidence of its rights in the PATANJALI (figurative) mark. Evidence of ownership of a registered trademark meets the threshold requirement of demonstrating trademark rights, and this is the consistent consensus of UDRP panels. See section 1.2.1 WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"). On the basis of the evidence submitted, the Panel finds that the Complainant has established rights in the PATANJALI trademark.

A figurative mark would not typically affect a panel's assessment of standing or identity / confusing similarity, under the Policy. The comparison is essentially between the alpha-numeric domain name and the textual components of the relevant mark. See section 1.10 of [WIPO Overview 3.0](#); see also *Vifor (International) Ltd v. Oluwa Soft*, WIPO Case No. [D2021-0128](#).

A domain name that wholly incorporates a trademark in its entirety with an additional word is sufficient to find confusing similarity with the trademark for purposes of the Policy. The addition of a word or words to a known trademark does not prevent a finding of confusing similarity between the disputed domain name and the trademark. See [WIPO Overview 3.0](#), section 1.8.

The disputed domain name in the present case, consists of the PATANJALI trademark and the word "franchise", preceded by a hyphen. In prior cases, confusing similarity has been found where a disputed domain name consists of a known trademark along with the word "franchise". See for instance, *Loreal v. Contact Privacy Inc. Customer 0149511181 /Jerry Peter*, WIPO Case No. [D2018-1937](#), where it was found that the addition of the term "franchise" to the complainant's trademark did not prevent a finding of confusing similarity. Similarly, in *Makeup Art Cosmetics Inc., Estee Lauder Cosmetics Ltd. v. Buofu Nwafor*, WIPO Case No. [D2019-1099](#), the terms "cosmetic" and "franchise" did not prevent a finding of confusing similarity between the disputed domain name and the complainant's mark.

In the present case, the Panel accordingly finds the disputed domain name is confusingly similar to the PATANJALI trademark, as the disputed domain name incorporates the Complainant's trademark in its entirety and the word "franchise" does not prevent a finding of confusing similarity between the disputed domain name and the Complainant's mark. The Complainant has successfully established the first requirement under paragraph 4(a) of the Policy.

B. Rights or Legitimate Interests

The second element under paragraph 4(a) of the Policy requires the Complainant to make a *prima facie* case that the Respondent lacks rights and legitimate interests in the disputed domain name.

The Complainant has contended that the Respondent has no rights or legitimate interests in the disputed domain name. In support of its contention, the Complainant has submitted that the disputed domain is not used in connection with a *bona fide* offering of goods or services, and the Respondent is not commonly known by the disputed domain name and is not authorized to use the mark. The Complainant has asserted that the use of its mark by the Respondent is likely to confuse and mislead the public to believe that the Respondent is acting on behalf of the Complainant. The Respondent has not filed a response to rebut the Complainant's assertions.

The Panel notes that the technical contact of the disputed domain name has sent email communications dated June 30, 2022, to the Center, seeking information about the transfer the disputed domain name. The email seems to indicate that the technical contact of the disputed domain name was looking to transfer the disputed domain name to the Complainant, after being put on notice of the present dispute. Given that the Respondent has not contested or sent a response, the communication sent by the technical contact of the disputed domain name, does not support a finding that the Respondent has any rights or legitimate interests in the disputed domain name.

On the basis of these facts and circumstances, the Complainant is found to have successfully put forward a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name, which the Respondent has not rebutted. The Panel finds the Complainant has established the second element under paragraph 4 (a) of the Policy.

C. Registered and Used in Bad Faith

The third element under paragraph 4(a) of the Policy requires the Complainant to establish the disputed domain name has been registered in bad faith and is being used in bad faith by the Respondent.

The evidence and records show the Complainant's prior use of the PATANJALI mark from the year 2006. Given the Complainant's continuous use of the mark for over fifteen years, it is apparent that the mark was well-established when the Respondent registered the disputed domain name. The Respondent, who is located in India, ought to have known of the Complainant's rights in the mark at the time he registered the disputed domain name. Moreover, the disputed domain name previously resolved to a website with references to the Complainant and its products, which shows a clear knowledge of the Complainant and its trademark, as well as an intent to take advantage of such trademark by falsely suggesting affiliation or association with the Complainant.

It has been consistently held that the use of a well-known mark in a disputed domain name is likely to attract persons looking for the Complainant online and Internet users who come across the disputed domain name are likely to be misled to the Respondent's online location. Misleading people in such a manner and diverting Internet users who are looking for the Complainant online, comes under the circumstances described as bad faith registration and use within the scope of paragraph 4(b)(iv) of the Policy, which is 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 website.

Under the Policy, bad faith can be found when the Respondent registers a domain name to intentionally attract Internet users by creating a likelihood of confusion with another's trademark. The evidence, facts, and circumstances as discussed, all collectively show that the Respondent has registered the disputed domain name to target the Complainant's mark and has registered and used the disputed domain name in bad faith as described under paragraph 4(b)(iv) the Policy. The fact that the disputed domain name does not currently resolve to an active website does not prevent a finding of bad faith in these circumstances.

The Panel finds, for the reasons discussed, that the Complainant has successfully established the third element under paragraph 4(a) of the Policy that the disputed domain name was 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 <pantanjali-franchise.com> be transferred to the Complainant.

/Harini Narayanswamy/

Harini Narayanswamy

Sole Panelist

Date: August 22, 2022