

## **ADMINISTRATIVE PANEL DECISION**

**Patanjali Ayurved Limited v. Deepak Sharma**  
**Case No. D2022-2137**

### **1. The Parties**

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

The Respondent is Deepak Sharma, India.

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

The disputed domain name <patnjali-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, 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 27, 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 July 14, 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 13, 2022. In accordance with the Rules, paragraph 5, the due date for Response was August 2, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 4, 2022.

The Center appointed Harini Narayanswamy as the sole panelist in this matter on August 11, 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 for PATANJALI figurative mark, bearing No. 2254680 in class 5 registered on December 22, 2011. The date of use of the mark in commerce is from January 13, 2006.

The disputed domain name was registered by the Respondent on January 9, 2022. The disputed domain name resolves to a website that has content in Hindi and provides information about the Complainant and displays pictures of the Complainant's PATANJALI products.

#### **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, the 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 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.

## 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 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 evidence of its registered trademarks rights for the figurative PATANJALI mark. The complainant's ownership of a registered trademark meets the threshold requirement of having trademark rights and this is the consensus view of UDRP panels. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.2.1. On the basis of the evidence submitted, the Panel finds that the Complainant has established rights in the PATANJALI trademark.

The disputed domain name contains Complainant's mark with the word "franchise", preceded by a hyphen. The Panel finds "pantjali" is a confusingly similar variant of the Complainant's mark, where two letters "a" and "n" are omitted from the mark. The overall impression of "pantjali" is however visually and phonetically similar to the mark. A domain name which consists of a misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element. See section 1.9 of the [WIPO Overview 3.0](#).

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 word "franchise" to the complainant's trademark by the respondent would confuse or mislead the public to believe that the disputed domain name is connected to the owner of the trademark to promote franchise services. Similarly, in *Makeup Art Cosmetics Inc., Estee Lauder Cosmetics Ltd. v. Buofu Nwafor*, WIPO Case No. [D2019-1099](#), the descriptive terms "cosmetic" and "franchise" were found to relate to the complainant's business and did not distinguish the disputed domain name from the complainant's mark.

The Panel finds the disputed domain name <pantjali-franchise.com> is confusingly similar to the PATANJALI trademark. 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 Panel finds that the Complainant has made a *prima facie* case that the Respondent lacks rights and legitimate interests in the disputed domain name for the reasons: (i) The Respondent is not known by the disputed domain name or any similar name; (ii) The Respondent is not affiliated with the Complainant and has not been given any authorization to use its mark or to display the Complainant's products on the Respondent's website or to provide information about the Complainant; (iii) The disputed domain name is not used in connection with a *bona fide* offering of goods or services; (iv) The Respondent has not filed a response or rebutted the Complainant's assertions.

The Complainant is found to have successfully 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 website to which the disputed domain name resolves, prominently displays pictures of the Complainant's products and has tried to imitate the Complainant's original website. The Respondent's website also displays content in Hindi about the Complainant and displays information for parties interested in obtaining franchise from the Complainant. A phone number has been provided for Internet users seeking information about franchising opportunities for the Complainant's products and a box has been provided seeking contact and other information from the user.

In prior cases, where a respondent displays pictures of the complainant's products and tries to imitate the complainant's original website, it has been generally found to be a clear indication of the respondent's awareness of the complainant rights in the mark. See for instance *Helen of Troy Limited and OXO International Ltd. v. Chen Yi Fan – Shanghai Vaneage. Ltd*, WIPO Case No. [D2013-1653](#), where it was found that displaying of complainant's products on the respondent's website without any disclaimer is clear evidence of knowledge of complainant's products and its trademarks. Such use of the disputed domain name shows that the respondent is trying to divert traffic intended for the complainant's official website, and it amounts to bad faith registration and use of the disputed domain name.

The Panel finds, for the reasons discussed, that the Respondent is aware of the Complainant's mark and intentionally attracts Internet users and customers looking for the Complainant's products online and then diverts the Internet traffic to the Respondent's online location. Misleading people 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.

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 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 <pantjali-franchise.com> be transferred to the Complainant.

*/Harini Narayanswamy/*

**Harini Narayanswamy**

Sole Panelist

Date: August 24, 2022