

ADMINISTRATIVE PANEL DECISION

Sky Gate Hospitality Private Limited v. Rahul
Case No. D2022-2290

1. The Parties

The Complainant is Sky Gate Hospitality Private Limited, India, represented by L&L Partners Law Offices, India.

The Respondent is Rahul, India.

2. The Domain Name and Registrar

The disputed domain name <biryaniby kilo.org> is registered with PDR Ltd. d/b/a PublicDomainRegistry.com (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on June 24, 2022. On June 24, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 25, 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 28, 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 amended Complaint on June 30, 2022.

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 July 6, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 26, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on August 3, 2022.

The Center appointed Ashwinie Kumar Bansal 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 a food company registered with the Ministry of Corporate Affairs of India.

The Complainant owns and operates the domain name <biryaniykilo.com> which was registered on February 5, 2015. The Complainant actively promotes, markets, and advertises its products and services through its website hosted on the said domain name. The brand BIRYANI BY KILO was founded in the year 2015 by the Complainant with the concept of offering a viable solution of freshly cooked Biryani, which could not have been commercialized by conventional processes.

The Complainant is using the Trademark BIRYANI BY KILO since 2015. It has registered the Trademarks BIRYANI BY KILO and BBK BIRYANI BY KILO by the Trademarks Registry, Mumbai in 2015 and 2017 respectively.

The Respondent registered the disputed domain name <biryaniykilo.org> on May 4, 2022. According to the evidence submitted by the Complainant, the disputed domain name has been used for a website offering franchises to sell "Biryani by Kilo" products.

5. Parties' Contentions

A. Complainant

The Complainant's relentless hard work and dedication towards providing quality goods and services has gained much noise and has been duly acknowledged by leading media houses who have, on numerous occasions, reported the growth, unique concept, funding, and popularity of the Complainant's brand. The Complainant and its brand have been awarded numerous accolades over the years, including the award for Best Business Brand by ET 5 Now in 2020 and featured as one of the Top 100 Startups watched in 2019 by Sutra HR.

The Complainant is cautiously protecting its intellectual property and other rights, interest, titles, goodwill and reputation in and around its brand. The Complainant is vested with common law rights in the registered Trademark. In addition to such strong common law rights, the Complainant has applied for registration of numerous other unique trademarks in various categories of business interest.

The Complainant protects and proactively enforces its Intellectual Property Rights through legal actions. Furthermore, on account of the Complainant's immense goodwill, reputation and popularity, several unscrupulous entities try to imitate the Complainant's business, by using its well-known brand and Trademarks *inter alia* BIRYANI BY KILO, BBK and its proprietary trade address, against which the Complainant has instituted suit proceedings and has also issued numerous cease and desist notices.

The Complainant came across an imposter website, which is hosted through the disputed domain name. Furthermore, the Complainant was shocked to know that the Respondent has adopted the Complainant's well-known brand, registered Trademarks and proprietary content and is using the same with ulterior motive to cheat unwary customers by offering the Complainant's franchise for INR 8 to 20 lakhs. The Respondent is using the Complainant's Trademark and well-known brand BIRYANI BY KILO as the most prominent and essential part of the disputed domain name.

The Complainant from the bare perusal of the Whois report, discovered that the disputed domain name has been registered by the Respondent on May 4, 2022. Further search conducted by the Complainant also revealed that the support contact number provided by the Respondent on the disputed website is not operative and the email address provided is also unfounded, which is also indicative of the bad faith of the

Respondent.

The flagrant and brazen use of the Complainant's registered Trademark, company details and proprietary content clearly shows the Respondent's *mala fide* and illicit intentions. Moreover, the Respondent is posing himself to be the Complainant despite being fully aware of the immense goodwill and reputation associated with the Complainant's well-known brand and Trademarks. Furthermore, the intention of the Respondent is to leverage the reputation of the Complainant's well-known brand and Trademarks with the ulterior motive of making unlawful gains.

It is evident that the Respondent's registration of the disputed domain name is dishonest and has been obtained with the *mala fide* intention to usurp the immense goodwill and reputation associated with the Complainant's brand BIRYANI BY KILO/BBK and hence, play a serious fraud on public at large.

It is apparent that the disputed domain name is identical to the Complainant's unique Trademark and well-known brand BIRYANI BY KILO. The Complainant is continuously and extensively using the Trademark BIRYANI BY KILO since the year 2015 and is also a registered proprietor of several BIRYANI BY KILO marks.

There is no credible or legitimate reason for the Respondent to adopt a domain name identical to the Complainant's well-known brand, domain name and registered Trademark.

B. Respondent

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

6. Discussion and Findings

It remains incumbent on the Complainant to make out its case in all respects under paragraph 4(a) of the Policy, which sets out the three elements that must be present for the proceeding to be brought against the Respondent, which the Complainant must prove to obtain a requested remedy. It provides as follows:

"Applicable Disputes. You are required to submit to a mandatory administrative proceeding in the event that a third party (a "Complainant") asserts to the applicable Provider, in compliance with the Rules of Procedure, that;

(i) your domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and

(ii) you have no rights or legitimate interests in respect of the domain name; and

(iii) your domain name has been registered and is being used in bad faith.

In the administrative proceeding, the Complainant must prove that each of these three elements are present."

The Panel will address all the three aspects of the Policy listed above hereunder:

A. Identical or Confusingly Similar

The Complainant has registered Trademark BIRYANI BY KILO and few variations in Class 30, 35 and 43. The Complainant has furnished evidence of registration of the Trademarks BIRYANI BY KILO and BBK BIRYANI BY KILO.

The Panel has considered and examined all the documents submitted by the Complainant in support of its claim. There is no doubt that the Complainant has rights in the Trademark BIRYANI BY KILO.

The Respondent has incorporated the entirety of the Trademark BIRYANI BY KILO in the disputed domain name, hence the Panel finds that the Trademark BIRYANI BY KILO of the Complainant is fully recognizable

in the disputed domain name. The WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.7 provides the view of Panelists: "While each case is judged on its own merits, in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant trademark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that trademark for purposes of UDRP standing."

Therefore, the Panel finds that the Complainant has successfully established the first element of paragraph 4(a) of the Policy.

B. Rights or Legitimate Interests

The Complaint is based on the Trademark BIRYANI BY KILO and its other variations registered in favor of the Complainant and, used in connection with goods sold and services offered by the Complainant and its authorized members.

The Respondent is in no way either related to or an agent of the Complainant. The Trademark BIRYANI BY KILO indisputably vests with the Complainant as evident from the various statutory registrations secured by the Complainant.

The Respondent has registered the disputed domain name consisting of the Trademark BIRYANI BY KILO of the Complainant. The Complainant has neither authorized nor permitted the Respondent to use the Trademark BIRYANI BY KILO.

Paragraph 4(c) of the Policy lists circumstances, in particular but without limitation, which, if found by the Panel to be proved, may demonstrate the Respondent's rights or legitimate interests in a disputed domain name for the purposes of paragraph 4(a)(ii) of the Policy. [WIPO Overview 3.0](#), section 2.1 "While 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 often impossible 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. If the Respondent fails to come forward with such relevant evidence, the Complainant is deemed to have satisfied the second element."

The Respondent has failed to file a substantive response or any evidence to rebut the Complainant's *prima facie* case or to explain his rights or legitimate interests. The Respondent has thus failed to demonstrate any rights or legitimate interests in the disputed domain name as per paragraph 4(c) of the Policy or otherwise. The Panel finds that the disputed domain name carries a risk of implied affiliation. See [WIPO Overview 3.0](#), section 2.5.1.

In the absence of the Respondent's response, and considering the evidence submitted by the Complainant, the Panel finds that the Complainant has satisfied its burden to make out a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Panel is satisfied that the second element of the Policy has been met. Administrative Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy identifies, in particular but without limitation, four circumstances which, if found by the Panel to be present, shall be evidence of the registration and use of the disputed domain name in bad faith. Each of the four circumstances in paragraph 4(b) of the Policy, if found, is evidence of "registration and use of a domain name in bad faith". The Complainant is required to prove both that the disputed domain name was registered in bad faith and that it is being used in bad faith. Hence, circumstances at the time of registration and thereafter must be considered by the Panel.

There is virtually no possibility that owing to the well-known nature of the Complainant's Trademark BIRYANI BY KILO in India (where the Respondent is located) and the well-established reputation and goodwill associated with it, the Respondent was unaware of the Complainant's existence or presence in the market.

The registered Trademark of the Complainant is a well-known mark and it is likely that Internet users would believe that there is some connection, affiliation or association between the Complainant and the Respondent, thereby extracting undue commercial and other gains to the Respondent, and further having the effect of damaging the goodwill, reputation and business interests of the Complainant.

[WIPO Overview 3.0](#), section 3.1.1 "If on the other hand circumstances indicate that the Respondent's intent in registering the disputed domain name was in fact to profit in some fashion from or otherwise exploit the Complainant's Trademark, Panels will find bad faith on the part of the Respondent. While Panel assessment remains fact-specific, generally speaking such circumstances, alone or together, include: (i) the Respondent's likely knowledge of the Complainant's rights, (ii) the distinctiveness of the Complainant's mark, (iii) a pattern of abusive registrations by the Respondent, (iv) website content targeting the Complainant's Trademark, e.g., through links to the Complainant's competitors, (v) threats to point or actually pointing the domain name to trademark-abusive content, (vi) threats to "sell to the highest bidder" or otherwise transfer the domain name to a third party, (vii) failure of a Respondent to present a credible evidence-backed rationale for registering the domain name, (viii) a Respondent's request for goods or services in exchange for the domain name, (ix) a Respondent's attempt to force the Complainant into an unwanted business arrangement, (x) a Respondent's past conduct or business dealings, or (xi) a Respondent's registration of additional domain names corresponding to the Complainant's mark subsequent to being put on notice of its potentially abusive activity."

The Complainant has produced evidence of registration of the Trademark BIRYANI BY KILO in its favor given, *inter alia*, by the Trade Marks Registry, Mumbai. The Respondent has registered the disputed domain name on May 4, 2022, incorporating in it the registered Trademark BIRYANI BY KILO. The Complainant has not granted any permission or license to the Respondent of any kind to use its Trademark BIRYANI BY KILO and register the disputed domain name. Such unauthorized registration by the Respondent suggests opportunistic bad faith. In view of these facts, noting also the composition of the disputed domain name, use of the Complainant's Trademark in the disputed domain name is likely to cause confusion as to source, sponsorship, or affiliation, which constitutes bad faith registration and use under paragraph 4(b)(iv) of the Policy. The Respondent's true purpose in registering and using the disputed domain name, which incorporates the entire Trademark of the Complainant, is in the Panel's view, to illegitimately capitalize on the reputation of the Complainant's Trademark.

In view of the above, the Panel concludes that the third and last condition provided for by paragraph 4(a)(iii) of the Policy is met. The Panel therefore, finds that the disputed domain name has been registered and is being used by the Respondent 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 <biryanibykilo.org> be transferred to the Complainant.

/Ashwinie Kumar Bansal/

Ashwinie Kumar Bansal

Sole Panelist

Date: August 25, 2022