

## **ADMINISTRATIVE PANEL DECISION**

Khadi & Village Industries Commission v. Raghu Sharma  
Case No. D2022-2782

### **1. The Parties**

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

The Respondent is Raghu Sharma, Canada.

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

The disputed domain name <khadifacemask.com> is registered with GoDaddy.com, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 28, 2022. On July 28, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 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 July 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 amended Complaint on July 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 August 5, 2022. In accordance with the Rules, paragraph 5, the due date for Response was August 25, 2022. The Response was filed with the Center on August 24, 2022.

The Center appointed Andrew D. S. Lothian as the sole panelist in this matter on September 9, 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 statutory body formed in April 1957 by the Indian Government in terms of the Khadi and Village Industries Commission Act 1956 (“the Act”). The Act provides that the Complainant’s functions are generally “to plan, promote, facilitate, organise, and assist in the establishment and development of khadi and village industries in the rural areas in coordination with other agencies engaged in rural development wherever necessary.” The Complainant carries out its functions in rural areas of India nationwide. According to section 2(d) of the Act, “Khadi” means “any cloth woven on handlooms in India from cotton, silk or woollen yarn handspun in India or from a mixture of any two or all of such yarns”.

The Complainant is the owner of a variety of KHADI registered trademarks, consisting of both device marks and word marks. For example, the Complainant is the owner of Indian Registered Trademark No. 2851524 in respect of the word mark KHADI, filed and registered on November 27, 2014 in Class 1. Said mark is the one of the foundational marks of International Registered Trademark No. 1272626, which is designated in respect of six countries and territories.

The Complainant authorizes officially recognized retail sellers and others to sell products under the KHADI trademarks. The Complainant also owns seven sales outlets directly in which authorized and licensed products are sold under said marks. Some 8,000 other outlets also sell such products. Each outlet displays the Complainant’s trademarks on store signage. The said products are also sold and showcased in exhibitions across the world, and are widely promoted through print and electronic media.

The disputed domain name was registered on May 19, 2020. According to a screenshot provided by the Complainant, the disputed domain name points to a parking page provided by the Registrar which states “This domain may be for sale. / We can verify that the domain is for sale over the phone, help you with the purchase process and answer any questions. / Contact us now. [telephone numbers provided]”.

On August 8, 2022, the Respondent wrote to the Complainant in response to the Complaint. Such communication largely followed the terms of the Response, for example, asserting that the term “kahdi” is a “generic term”. However, the Respondent also sought the sum of USD (or possibly CAD, the denomination is not specified) 588 “for my expenses and time related to this domain name”, failing which the Respondent would seek a finding of Reverse Domain Name Hijacking. The Respondent urged the Complainant to contact the Center immediately to withdraw the Complaint “so your filing fee is refunded”.

#### **5. Parties’ Contentions**

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

In summary, the Complainant contends as follows:

Identical or confusingly similar

The disputed domain name wholly contains the Complainant’s mark. This is itself sufficient to satisfy the first element. The mere addition of the term “facemask” does not serve to distinguish the disputed domain name from the Complainant’s mark. Such term may be construed as indicating that it is a product offered by the Complainant. The adoption of a well-known trademark with any term would lead consumers to believe that the disputed domain name belongs to or is associated with the trademark owner. The Top-Level Domain (“TLD”) “.com” is irrelevant and immaterial for purposes of assessing confusing similarity with the Complainant’s trademarks.

## Rights or legitimate interests

The Respondent has merely parked the disputed domain name and has not hosted any content on the website since its registration. There is no demonstrable preparation to use or actual use of the disputed domain name. The non-use of the disputed domain name indicates that the Respondent has no legitimate interest in the disputed domain name. It is inconceivable that anyone having a legitimate interest in a domain name would keep that domain name inactive for a duration of more than two years. The mere registration of a domain name does not establish rights or legitimate interests in that name. There must be a fair or noncommercial use or a *bona fide* offering of goods or services under the domain name to establish rights or legitimate interests. No such use exists here. The disputed domain name was registered over six decades after the adoption of the KHADI mark by the Complainant. The fame of the Complainant's mark motivated the Respondent to register the disputed domain name. The Respondent registered the disputed domain name for commercial gain to try to sell it to the Complainant for a substantial fee. None of the exemptions provided under paragraph 4(c) of the Policy apply in present circumstances.

## Registered and used in bad faith

The primary aim of the Respondent is to sell or transfer the disputed domain name to the Complainant or any third party for valuable consideration. The fact that the Respondent has made no use of the disputed domain name for a *bona fide* offering of goods and services demonstrates that it was registered with the bad faith intention to extract some commercial advantage from the Complainant. Inaction is within the concept of bad faith registration and use under the Policy. The landing page of the Respondent's website indicates that it may be for sale and provides contact information. It is clear that the Respondent registered the disputed domain name for the sole purpose of cybersquatting and to resell it at a premium.

The fame and unique qualities of the Complainant's KHADI trademarks, adopted and applied for well before the registration of the disputed domain name makes it extremely unlikely that the Respondent created the disputed domain name independently without any knowledge of the Complainant's trademark.

## **B. Respondent**

In summary, the Respondent contends as follows:

The Complaint should be denied.

The Respondent's homeland is India and it grew up there, living in Canada since 1983. The Respondent is a true Indian at heart and a devout follower of Mahatma Gandhi.

The Respondent originally registered the disputed domain name to distribute free khadi facemasks to those in need. The word khadi, derived from khaddar, is used daily and regularly by many around the world and is a natural, hand-spun cloth promoted by Mahatma Gandhi. The Respondent respects the Complainant's trademark but the disputed domain name was not registered in bad faith but rather in good faith by a supporter of Gandhi's promotion of khadi cloth. When the disputed domain name was registered, the Respondent was unaware of the Complainant's mark and would never think of infringing another's trademark.

The Complainant has engaged in Reverse Domain Name Hijacking, and the Panel should find accordingly.

## **6. Discussion and Findings**

To succeed, the Complainant must demonstrate that all of the elements listed in paragraph 4(a) of the Policy have been satisfied:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which

the Complainant has rights;

- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

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

The first part of the inquiry under the Policy usually falls into two parts. First, the Complainant must demonstrate that it has UDRP-relevant rights in a trademark, which may be registered or unregistered. Secondly, any such mark is compared to the disputed domain name in an assessment of identity or confusing similarity. The TLD (in this case, “.com”) is usually disregarded for the purposes of such comparison on the basis that it is required for technical reasons only. The comparison typically proceeds on a straightforward side-by-side basis, whereby if the disputed domain name is alphanumerically identical to the mark concerned, identity will generally be found, and whereas if the mark is otherwise recognizable in the disputed domain name, whether or not this is present with other words or terms, confusing similarity will usually be found.

In the present case, the Panel is satisfied that the Complainant has UDRP-relevant rights in its KHADI registered trademark as noted in the factual background section above. The Respondent argues that the term in the Complainant’s mark is a dictionary word (which is not relevant to the first element assessment under the Policy, although may be relevant to the second and third elements) but does not argue that the Complainant does not have trademark rights in such term. Indeed, the Respondent expressly acknowledges the Complainant’s mark (although denying prior knowledge thereof, again a matter not relevant to this element but potentially relevant to the second and third element assessments).

Turning to the comparison exercise, the Panel notes that the disputed domain name contains two elements, the first of which is the Complainant’s said mark, and the second of which is the word “facemask”. Accordingly, the mark is recognizable in the disputed domain name and the Panel therefore finds that the disputed domain name is confusingly similar thereto.

In all of these circumstances, the Panel finds that the Complainant has carried its burden with regard to paragraph 4(a)(i) of the Policy.

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

Paragraph 4(c) of the Policy lists several ways in which the Respondent may demonstrate rights or legitimate interests in the disputed domain name:

“Any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate your rights or legitimate interests to the domain name for purposes of paragraph 4(a)(ii):

- (i) before any notice to you of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or
- (ii) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or
- (iii) you are making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.”

The consensus of previous decisions under the Policy is that a complainant may establish this element by making out a *prima facie* case, not rebutted by the respondent, that the respondent has no rights or

legitimate interests in a domain name. In the present case, the Panel finds that the Complainant has established the requisite *prima facie* case based on its contentions on this topic as outlined above, notably that the mere registration of a domain name does not establish rights and legitimate interests, that the disputed domain name was registered over six decades after the Complainant's adoption of the KHADI mark, that the fame of the KHADI mark (as demonstrated by the media reports produced by the Complainant) motivated the Respondent to register the disputed domain name, that the disputed domain name is being offered for sale, and that none of the circumstances provided under paragraph 4(c) of the Policy appear to apply.

The burden of production therefore shifts to the Respondent to bring forward evidence of its rights and legitimate interests in the disputed domain name. The principal submission in the Respondent's case is that it registered the disputed domain name to distribute free khadi facemasks to those in need, asserting that "khadi" is a dictionary word. This is effectively a submission in terms of paragraph 4(c)(iii) of the Policy. The argument that "khadi" is descriptive and has no distinctive element was comprehensively dismissed in a previous case under the Policy involving the Complainant, namely *Khadi & Village Industries Commission v. Himanshu Kumar Goel, Medisu Health Solutions*, WIPO Case No. [D2020-2162](#). In that case, the domain name concerned was <justkhadi.com>, comprising the term "khadi" together with another word consisting of a neutral term (as in the present case). Likewise, as in the present case, the respondent resided in Canada. The panel described fully the Complainant's longstanding activities in connection with the KHADI mark, noting that said mark is exclusively associated with the Complainant, that all related rights vest in the Complainant, and that the respondent's contentions to the contrary (including the allegation of descriptiveness) would not have any effect on the merits of the complaint. Bearing those findings in mind, together with the long history of the Complainant's stewardship of the related industry and the longstanding nature of its KHADI mark, the Panel considers that any use of the disputed domain name as contended by the Respondent would be likely to carry a risk of implied affiliation with the Complainant's mark, and, on that basis, could not constitute fair use under the Policy.

Furthermore, the Respondent has presented absolutely no evidence in support of its contentions regarding the alleged proposed use of the disputed domain name. The fact that these submissions are the subject of mere unsupported assertion means that the Panel cannot accord them with any weight, particularly as they are contradicted by the present use of the disputed domain name in connection with a website inviting offers to purchase it. Such use appears to the Panel to take unfair advantage of the Complainant's rights in its KHADI mark, and cannot confer rights or legitimate interests upon the Respondent in the circumstances of this case. The Panel notes in passing that the relevant previous cases under the Policy cited by the Respondent can be contrasted with the present case on the basis that the respondents in those cases provided substantial evidence to support their claims regarding actual or intended use of the domain names concerned and did not rely on assertion alone.

The Panel therefore considers that the Respondent has failed to rebut the Complainant's *prima facie* case and accordingly finds that the Respondent has no rights or legitimate interests in the disputed domain name. The Complainant has therefore carried its burden with regard to paragraph 4(a)(ii) of the Policy.

### **C. Registered and Used in Bad Faith**

Paragraph 4(b) of the Policy provides four, non-exclusive, circumstances that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

"(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out of pocket costs directly related to the domain name; or

(ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your 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 your website or location or of a product or service on your website or location".

In order to make a finding of bad faith registration and use under the Policy, panels typically expect there to be a degree of targeting of the Complainant or its mark by the Respondent, and at the very least it must be reasonable to infer from the record that the Respondent had the Complainant or its trademark in mind when the disputed domain name was created. Here, the Panel finds it reasonable to make that inference. The Respondent notes that its homeland is India and that it was raised there, adding that the Respondent is a devout follower of Mahatma Gandhi. That being the case, the Panel finds that the Respondent's assertion that it was unaware of the Complainant and its rights, despite the Complainant's more than sixty year history in stewardship of the Khadi and Village Institutions and co-operatives under Indian statute law, and the Complainant's ownership and active exploitation of its Indian registered trademark in the term "khadi" for the better part of a decade, to be lacking in credibility.

As noted in the preceding section, the Respondent's assertions of an alleged intention to make free facemasks available to the public is accompanied by no supporting evidence whatsoever. To cite just one example of the kind of evidence which the Respondent might have put forward, it would have had to source the relevant cloth from one of the Complainant's licensed manufacturers or outlets, or in some other fashion, yet there is no evidence of any attempts on the Respondent's part to obtain the necessary materials nor any suggestion of how it would have created the facemasks concerned. On the other hand, there is unchallenged evidence that the disputed domain name is being offered for sale. The wording on the Respondent's associated website is slightly ambiguous, or one might say, carefully worded, using as it does the expression "may be for sale". Yet it clearly invites expressions of interest to be made by telephone. This casts a cloud over the Respondent's alleged *bona fides*, as it contradicts entirely the claimed fair use purpose for which the disputed domain name was registered. Even if the text on the Respondent's website was placed there by a third party, the Respondent could not disclaim responsibility (although it does not actively engage with the issue in its submissions at all). The Respondent is deemed to be aware of and responsible for the content published on the disputed domain name (see the discussion in section 3.5 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

Finally, the Panel turns to consider the statement made by the Respondent in correspondence with the Complainant's representatives, namely that it sought a sum of money "for my expenses and time related to this domain name", failing which it would seek a finding of Reverse Domain Name Hijacking. While panels under the Policy are mindful that negotiations of this nature can serve a legitimate useful purpose, in present circumstances where there is no evidence to support the Respondent's claimed noncommercial use (nor even of its claimed "expenses and time") and there is an apparent solicitation of offers to purchase the disputed domain name on the Respondent's website, the Panel finds that the Respondent's request for a sum of money underscores the Panel's principal finding that the Respondent's intent was merely to capitalize on the Complainant's rights (on this topic, see section 3.10 of the [WIPO Overview 3.0](#)).

In these circumstances, and in the absence of any indications to the contrary, the Panel finds on the balance of probabilities that there are circumstances indicating that the Respondent has registered the disputed domain name primarily for the purpose of selling it to the Complainant who is the owner of the trademark or to a competitor thereof, for valuable consideration in excess of its documented out of pocket costs directly related to the disputed domain name, conform to paragraph 4(b)(i) of the Policy.

The Panel therefore finds that the Complainant has carried its burden in terms of paragraph 4(a)(iii) of the Policy.

#### **D. Reverse Domain Name Hijacking**

The Respondent requested a finding of Reverse Domain Name Hijacking. The Complainant has been successful in this proceeding. The Panel finds there to be no indication of any bad faith on the Complainant's part in connection with the bringing of the Complaint. The Respondent's request that the Panel make a finding of Reverse Domain Name Hijacking is denied.

#### **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 <khadifacemask.com> be transferred to the Complainant.

*/Andrew D. S. Lothian/*

**Andrew D. S. Lothian**

Sole Panelist

Date: September 23, 2022