

ADMINISTRATIVE PANEL DECISION

Khadi & Village Industries Commission v. ROHIT RAO, Shri Radhey Herbal Gramodhyog Sansthan
Case No. D2022-3543

1. The Parties

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

The Respondent is ROHIT RAO, Shri Radhey Herbal Gramodhyog Sansthan, India.

2. The Domain Name and Registrar

The disputed domain name <khadirishi.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 September 26, 2022. On September 26, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 26, 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 (Registration Private, Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on September 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 amended Complaint on September 28, 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 September 30, 2022. In accordance with the Rules, paragraph 5, the due date for Response was October 20, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 21, 2022.

The Center appointed Vinod K. Agarwal as the sole panelist in this matter on October 26, 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

In the first instance it is clarified that the expression “khadi” is a word of Indian (Hindi) language and means “hand woven cloth”. The Complainant is a statutory body formed in April 1957 by the Government of India under the Act of Parliament, namely, Khadi and Village Industries Commission Act, 1956. As per the Act of Parliament of India the word “khadi” is also a part of name of the Complainant. The Head Office of the Complainant is in Mumbai (India) and it has six zonal offices in different parts of India, namely, Delhi, Bhopal, Bangalore, Kolkata, Mumbai, and Guwahati. Further, it has offices in 28 states of India for the implementation of its various programmes.

The Complainant is the apex organization established under the Ministry of Micro, Small, and Medium Enterprises (“MSME”). The objectives of the Complainant are three fold:

- (i) The social objective of providing employment in rural areas;
- (ii) The economic objective of producing saleable articles; and
- (iii) The wider objective of creating self-reliance amongst people and building up a strong rural community spirit.

Ever since its formation in the year 1957, the Complainant has been carrying on work related to the implementation of programs for the development of Khadi and other Village Industries (KVI) in the rural areas in coordination with other agencies. The programmes offered by the Complainant are to promote products under one of its trademarks, namely, KHADI. There are about seven sales outlets directly owned by the Complainant out of 8,050 sales outlets spread across the country. In its effort to meet the core objectives the Complainant has introduced several interest subsidies schemes for artisans, weavers and other members of small-scale village and rural industries.

The Complainant owns numerous registrations for the word mark KHADI including:

- Indian trademark KHADI No. 2851524, registered on November 27, 2014.
- International trademark KHADI (device) No. 2851524, registered on December 2, 2014, designating among others the European Union.

The disputed domain name was registered on February 18, 2022, and resolves to a parking page with Pay-Per-Click (PPC) links.

5. Parties’ Contentions

A. Complainant

The Complainant contends that each of the three elements specified in paragraph 4(a) of the Policy are applicable to the present dispute.

In relation to element (i), the Complainant contends that the Complaint is based on the trademark KHADI and its variations registered in favour of the Complainant and, used in connection with goods sold and services offered by the Complainant and its authorized members. The Complainant owns numerous registrations for the word mark KHADI. The said trademarks of the Complainant is registered in various jurisdictions for a very long time. A consolidated list of all registered trademarks along with copies of the registration certificates are attached with the Complaint as Annexure F. All of the registrations are currently valid and subsisting. The said trademarks are registered in different classes and the earliest valid registration dates back to the year 1975.

The Complainant adopted the trademark KHADI (which forms a part of its trade name, corporate name, and trading style) on September 25, 1956, and the same has been in use continuously till date. By virtue of its adoption more than sixty years ago, and extensive use thereof, the trademark KHADI has become exclusively and globally associated with the Complainant in the eyes of consumers. Therefore, use of this mark by any third party will lead to confusion and deception among the Complainant's patrons, members of trade, consumers and general public.

The disputed domain name wholly comprises the Complainant's well-known trademark KHADI and is therefore identical to the Complainant's trademark/trade name KHADI. By virtue of prior adoption, long and continuous use and extensive publicity and promotion, the trade name and trademark KHADI have acquired tremendous goodwill and enviable reputation worldwide amongst the consumers and public in general. Thus, they are associated by the business houses and public exclusively with the Complainant and their businesses, services, and products.

Further, the Respondent registered this disputed domain name several years after the adoption of the trademark KHADI by the Complainant. Furthermore, the trademark KHADI has not been used by anyone other than the Complainant or its authorized licensee or franchisee holders. The Respondent is not a licensee or franchisee of the Complainant and has adopted the identical trademark with a view to ride upon the goodwill associated with the Complainant's well-known trademark KHADI and pass off their goods/services as that of the Complainant.

It is further submitted that "rishi" is a term which means "a holy Hindu sage, saint, or inspired poet". Mere addition of such term, *i.e.*, "rishi" with the well-known trademark KHADI of the Complainant, does not serve to distinguish the disputed domain name from the trademark KHADI. Further, the generic Top-Level Domain ".com" does not grant the disputed domain name distinctiveness regarding the trademark KHADI.

The KHADI trademark is the dominant and recognizable portion of the disputed domain name. The adoption of a well-known trademark with any term, whether descriptive or not, would lead the consumers to believe that the disputed domain name belongs to or is associated with the Complainant owing to the widespread use, goodwill and reputation of the trademark.

In relation to element (ii), the Complainant contends that the Respondent merely parked the disputed domain name and has not hosted any content on the website since its registration on February 18, 2022. There is also no demonstrable preparation to use or actual use of the disputed domain name in connection with any *bona fide* offering of goods or services. Instead, the Respondent is making illegal profits by misdirecting the consumers to the PPC advertisements hosted on the domain name. It is inconceivable that anyone having legitimate interest over a domain name would keep the domain name inactive. The non-use of the disputed domain name for the long duration itself indicates that the Respondent has no interest, let alone legitimate interest, in the disputed domain name.

The Respondent registered this disputed domain name over six decades after the adoption of the mark KHADI by the Complainant. Furthermore, the trademark KHADI has not been used by anyone other than the Complainant or their licensees. It is obvious that it is the fame of the trademark that has motivated the Respondent to register the disputed domain name.

The Complainant has not authorized, permitted or licensed the Respondent to use any of its trademarks in any way. Such unlicensed and unauthorized use of the disputed domain name incorporating the Complainant's trademark is solely with a view to hoard the disputed domain name, misleadingly divert consumers, to tarnish the trademark of the Complainant.

The disputed domain name has not been used by the Respondent till date since its registration on February 18, 2022. The Respondent appears to be squatting on the said domain name, with no operational website.

In relation to element (iii), the Complainant contends that 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 Respondent registered the disputed domain name for commercial gain to try and get the Complainant to purchase the said disputed domain name for a substantial fee. The fact that the Respondent has failed to host any content of the disputed domain name or use it for any *bona fide* offering of goods or services demonstrates that the Respondent has registered the disputed domain name in bad faith and with the *mala fide* intention to extract some commercial advantage from the Complainant.

The landing page of the disputed domain name states, "khadirishi.com is parked free, courtesy of GoDaddy.com". It is clear from the above facts that the Respondent had registered the disputed domain name for the sole purpose of squatting on the same and evidently to resell it on premium for profits.

The said fact leads to the conclusion that the Respondent registered the disputed domain name in bad faith. The fame and unique qualities of the KHADI trademarks, which was adopted and applied for by the Complainant well prior to the registration of the disputed domain name, make it extremely unlikely that the Respondent created the disputed domain name independently without any knowledge of the Complainant's trademark. Even constructive knowledge of a famous trademark like KHADI is sufficient to establish registration in bad faith.

Additionally, the PPC advertisements appearing on the disputed domain name show the *mala fide* intentions of the Respondent's to monetize the disputed domain name and derive profits from passing off as the Complainant by taking unfair advantage of the Complainant's colossal fame and reputation.

Therefore, the registration and use of the disputed domain name by the Respondent was in bad faith and the requirement of paragraphs 4(a)(iii), 4(b) of the Policy read along with the Rules, paragraph 3(b)(ix)(3) has been established.

B. Respondent

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

6. Discussion and Findings

According to paragraph 4(a) of the Policy, the Complainant must prove that:

- (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 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

According to the information submitted by the Complainant, the Complainant is the owner of several KHADI trademark registrations in many jurisdictions. The Complainant possesses a large number of other domain

names with its trademark KHADI. The Complainant has created most of these domain names and registered its trademarks much before the date of creation of the disputed domain name by the Respondent.

The disputed domain name includes the trademark of the Complainant KHADI in its entirety, with the addition of the term “rishi” (which means “a holy Hindu sage, saint, or inspired poet” in Hindi). The addition of such term does not prevent a finding of confusing similarity with Complainant’s trademark (see section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”).

Therefore, the Panel finds that the disputed domain name is confusingly similar to the trademarks of the Complainant.

B. Rights or Legitimate Interests

According to paragraph 4(c) of the Policy, the Respondent may demonstrate its rights to or legitimate interest in the disputed domain name by proving any of the following circumstances:

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

There is no evidence to suggest that the Respondent has become known by the disputed domain name anywhere in the World. The Respondent is known by the name of Mr. Rohit Rao. The Complainant has not authorized the Respondent to use the name and their trademark KHADI.

The Panel finds that the Respondent has no rights or legitimate interest in the disputed domain name. Further, in view of the fact that the Complainant has not licensed or otherwise permitted the Respondent to use its trademark or to apply for or use the disputed domain name incorporating the trademark of the Complainant the Panel finds that the Respondent is seeking to create an impression of an association with the Complainant.

The Complainant has put forward a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name, which have not been rebutted by the Respondent.

Accordingly, the Panel finds that the above circumstances do not exist in this case and 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 states that any of the following circumstances, in particular but without limitation, shall be considered evidence of the registration or use of the domain name in bad faith:

- (i) Circumstances indicating that the Respondent has registered or acquired the disputed domain name primarily for the purpose of selling, renting, or otherwise transferring the disputed domain name registration to the Complainant who is the owner of the trademark or service mark or to a competitor of that the Complainant, for valuable consideration in excess of documented out-of-pocket costs directly related to the domain name; or

(ii) The Respondent has registered the disputed 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 it has engaged in a pattern of such conduct; or

(iii) The Respondent has registered the disputed domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) By using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its web site or other on-line location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's web site or location or of a product or service on its web site or location.

The Complainant contends that the disputed domain name was registered or acquired by the Respondent primarily for the purpose of carrying on some of the business competitive to the Complainant. The disputed domain name was registered long after the Complainant first registered and began using its KHADI trademark. Moreover, as discussed above the Complainant and its trademark are well known in India, where the Respondent resides. The Panel finds it highly likely that the Respondent had the Complainant's trademark in mind when registering the disputed domain name.

The disputed domain name resolves to a parking page with PPC links in relation to the Complainant's business. The Panel finds that the disputed domain name is being used to intentionally attempt to attract and divert Internet users, for commercial gain, through its use of PPC, with a view to trade upon or cash in on the name, fame, reputation, image, and goodwill acquired by the Complainant.

This and the other evidence submitted by the Complainant leads to the conclusion that the disputed domain name was registered and used by the Respondent in bad faith.

The Panel concludes that the registration of the disputed domain name amounts to the registration and use of the disputed domain name in "bad faith". Paragraph 4(a)(iii) of the Policy is satisfied.

In support of its contentions, the Complainant has relied on a number of UDRP cases involving the trademark KHADI and which have been decided in their favour, see for example *Khadi & Village Industries Commission v. Uttam Rao, Global Media Corp*, WIPO Case No. [D2020-2934](#), and *Khadi & Village Industries Commission v. Lakshmi Saya*, WIPO Case No. [D2021-4031](#). The aforesaid decisions are squarely applicable to the facts of the present case. The said cases have been duly taken into consideration.

7. Decision

In the light of the foregoing reasons, the Panel orders that the disputed domain name <khadirishi.com> be transferred to the Complainant.

/Vinod K. Agarwal/

Vinod K. Agarwal

Sole Panelist

Date: November 9, 2022