

## **ADMINISTRATIVE PANEL DECISION**

Khadi & Village Industries Commission v. Asim Ansari, Meerutkhadicollection  
Case No. D2022-3545

### **1. The Parties**

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

The Respondent is Asim Ansari, Meerutkhadicollection, India.

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

The disputed domain name <khadishirt.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 (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 29, 2022. In accordance with the Rules, paragraph 5, the due date for Response was October 19, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 22, 2022.

The Center appointed Vinod K. Agarwal, as the sole panelist in this matter on November 18, 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 programs.

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 programs offered by the Complainant are to promote products under one of its trademarks, namely, KHADI. The main function of the Complainant is to promote products under the trademark KHADI. The Complainant owns several KHADI trademarks, such as Indian trademark registration no. 2851524, registered on November 27, 2014.

The disputed domain name was registered on February 8, 2018, and resolves to the registrar’s 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 the first element, the Complainant contends that the disputed domain name incorporated the Complainant’s trademark KHADI. The Complainant owns numerous trademark registrations for the word mark KHADI in various jurisdictions predating the registration of the disputed domain name. A consolidated list of all registered trademarks along with copies of the registration certificates are attached with the Complaint as Annexures F and G. 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 disputed domain name wholly incorporates the Complainant’s well-known trademark KHADI and is therefore confusingly similar. 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.

It is further submitted that mere addition of a descriptive term does not serve to distinguish the disputed domain name from the trademark KHADI. The disputed domain name consists of the trademark KHADI along with a descriptive term "shirt" and does not, in any manner, assist in differentiating from the Complainant's trademark. Rather the use of the terms "shirt" in association with the trademark KHADI can be construed as the product "shirt" is being offered by the Complainant. 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. Further, the generic Top-Level Domain ("gTLD") ".com" does not grant the disputed domain name distinctiveness regarding the trademark KHADI.

In relation to the second element, the Complainant contends that by virtue of continuous and exclusive use since September 25, 1956 as well as the promotion of the KHADI trademark by the Complainant, general public and members of trade now recognize and associate the goods and services under the KHADI trademarks with the Complainant. The Complainant's trademark KHADI has become highly distinctive of the goods and services of the Complainant on account of extensive use, viewership and promotion.

The Complainant contends that it is evident from the present facts that the Respondent merely parked the disputed domain name and has not hosted any content on the website since it's registration on February 8, 2018, *i.e.* more than three years. The disputed domain name has not been used in connection with any *bona fide* offering of goods or services by the Respondent. The non-use of the disputed domain name itself indicates that the Respondent has no interest, let alone legitimate interest, in the disputed domain name. The archive pages of the disputed domain name dating July 1, 2019, and December 6, 2021, obtained from the Wayback machine, substantiating the above are enclosed as Annexure T.

Paragraph 4(c) of the Policy provides a list of circumstances any of which is sufficient to demonstrate that the Respondent has rights or legitimate interests in the disputed domain name. None of the exemptions provided under paragraph 4(c) of the UDRP apply in the present circumstances. The Complainant has not authorized, licensed, or permitted the Respondent to register or use the disputed domain name. The Complainant has prior rights in the KHADI trademark which precedes the registration of the disputed domain name by the Respondent. Such unlicensed and unauthorized use of the disputed domain name incorporating the Complainant's trademark is solely with a view to misleadingly divert consumers, and to tarnish the trademark of the Complainant. The Respondent appears to be squatting on the disputed domain name. 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.

In relation to the third element, 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. The Respondent registered the disputed domain name for commercial and financial gain. 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 and used the disputed domain name in bad faith with the *mala fide* intention to extract some commercial and financial advantage from the Complainant.

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;
- (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 Panel finds that the Complainant has shown that it is the owner of several KHADI trademark registrations in several jurisdictions. The Complainant possesses a large number of other domain names with its trademark KHADI. The Complainant has registered most of these domain names and its trademarks much before the date of creation of the disputed domain name by the Respondent.

The disputed domain name includes the Complainant's trademark in its entirety, with the addition of the word "shirt", which does not prevent a finding of confusing similarity with the 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](#)"). The gTLD, in this case ".com", is typically not considered for purposes of the first element comparison test. See section 1.11 of [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 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 interests in the disputed domain name. Furthermore, in view of the fact that the Complainant has not licensed or otherwise permitted the Respondent to use its trademark or register any domain name incorporating their trademark, the Panel finds that the Respondent is trying to create an impression of an association with the Complainant.

The Panel finds that 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 website 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 website or location or of a product or service on its website or location.

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 is located. The Panel finds it highly likely that the Respondent had the Complainant's trademark in mind when registering the disputed domain name.

In addition, the evidence submitted by the Complainant leads the Panel to the conclusion that the disputed domain name was registered and used by the Respondent in bad faith. The disputed domain name was resolving to the registrar's parking page with pay-per-click ("PPC" links), which is evidence that the Respondent was attracting, for commercial gain, Internet users to its web site by creating a likelihood of confusion with the Complainant's mark as described under paragraph 4(b)(iv) of the Policy.

Therefore, 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.

### **7. Decision**

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

*/Vinod K. Agarwal/*

**Vinod K. Agarwal**

Sole Panelist

Date: November 14, 2022