

ADMINISTRATIVE PANEL DECISION

Khadi & Village Industries Commission v. Pradip Makwana
Case No. D2022-4540

1. The Parties

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

The Respondent is Pradip Makwana, India.

2. The Domain Name and Registrar

The disputed domain name <khadimandir.com> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 29, 2022. On the same day, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. Also on November 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 (Privacy service provided by Withheld for Privacy ehf).

The Center sent an email communication to the Complainant on November 30, 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 also on November 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 December 1, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 25, 2022. The Response was filed by the Respondent with the Center on December 24, 2022. The Complainant has submitted an unsolicited

supplemental filing on January 10, 2023. The Respondent on January 10, 2023 requested that in the event that the Complainant's unsolicited supplemental filing was to be accepted, it should have an opportunity to submit a response to such filing. The Complainant's supplemental filing was not accepted by the Panel, given that it did not change the outcome of the decision nor provided new information.

The Center appointed Ashwinie Kumar Bansal as the sole panelist in this matter on January 6, 2023. 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 by the Government of India under an Act of Parliament, "The Khadi and Village Industries Commission Act of 1956". The Complainant is an apex organization which has been established under the Ministry of Micro, Small and Medium Enterprises and its objectives are threefold: firstly, a social objective of providing employment in rural areas; secondly, an economic objective of producing saleable articles; and thirdly, a wider objective of creating self-reliance amongst people and building up a strong rural community spirit. Its head office is situated in Mumbai with six other zonal offices within India and it also has offices in 28 states for implementation of its various programs.

The Complainant has been carrying out work related to the implementation of programs for development of Khadi and other Village Industries in the rural areas in coordination with other agencies. The programs offered by the Complainant are to promote products under the trademark KHADI (the "Trademark KHADI").

The Complainant has furnished evidence of several registrations of the Trademark KHADI and its variations in different jurisdictions, including International Registration No. 1272626 registered on December 2, 2014, and Indian Registration No. 2851528 registered on November 27, 2014.

The disputed domain name was registered on January 21, 2017.

5. Parties' Contentions

A. Complainant

The Complainant in its Complaint has, *inter alia*, raised the following contentions:

The Complainant had adopted the Trademark KHADI on September 25, 1956, and it has been in operation continuously to date. By virtue of its adoption nearly six decades back and owing to the Complainant's extensive use thereof, the Trademark KHADI has fetched itself a reputation and global association with the Complainant in the eyes of the consumers. The Complainant authorizes various retail sellers, organizations, societies, and institutions to sell products under the Trademark KHADI. In order to be listed as an authorized user of the Trademark KHADI for the purposes of sales and promotions of KHADI certified products and services, each organization has to apply for recognition through the Khadi Institutions Registration and Certification Sewa. There are about seven outlets that are directly owned by the Complainant out of a total of 8,050 outlets, the remaining outlets are owned by authorized/licensed outlets. The Complainant's Trademark KHADI is prominently featured on all products sold by the Complainant in India and abroad.

The Complainant's KHADI Trademark and its products thereunder have continued to gather a lot of media attention and have been covered by renowned media houses/newspapers.

The disputed domain name incorporates the Complainant's Trademark KHADI, in which the Complainant has statutory as well as common law rights by virtue of long and continuous use and being the registered proprietor thereof in several jurisdictions. Hence, the Complainant contends that allowing a third party to use

the Trademark KHADI would cause a great deal of confusion and deception amongst the Complainant's patrons, members of trade, consumers, and public at large. The Respondent had registered the disputed domain name with a view to ride upon the goodwill of the Complainant's well-known Trademark KHADI and pass off its goods/services as those of the Complainant. Owing to the fame and reputation associated with the Trademark KHADI, the first impression created in the minds of the consumers shall be that the Respondent's website originates from, is associated with, or is sponsored by the Complainant.

The Complainant has also contended that KHADI is a well-known Trademark, as acknowledged in several prior UDRP proceedings. The disputed domain name wholly contains the Complainant's Trademark KHADI with a mere suffix "mandir", and is therefore, confusingly similar to the Complainant's Trademark KHADI.

The Respondent has registered the disputed domain name thereby misappropriating, illegally and without authority, the Trademark KHADI which is the exclusive property of the Complainant.

The Respondent has adopted and acquired the well-known Trademark KHADI of the Complainant in its entirety with *mala fide* intention. Mere addition of the suffix "mandir" does not distinguish the disputed domain name from the Trademark KHADI.

The Complainant has contended that the disputed domain name was earlier being used to host a website which was misleading in nature. The former website hosted on the disputed domain name was being used to sell towels, bed sheets, jackets, kurtas, shawls, suits, fabrics, etc. under the name "Khadi Mandir". At present, the Respondent has merely parked the disputed domain name and has not hosted any content on the website. The Complainant contends that the Respondent's use of the Trademark "KHADI" on the earlier version of its webpages for offering and promoting identical goods would have led the website visitors to believe that the website and the products offered on the said website belongs to the Complainant, which is in-fact incorrect. Such usage of the registered and well-known Trademark KHADI of the Complainant, even on the content hosted on the disputed domain name further gives an inference that the disputed domain name belongs to the Complainant.

There is also no 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 using the disputed domain name in an unauthorized manner. The offerings of identical products under identical/ confusingly similar Trademark by the Respondent itself reflects that the Respondent has no legitimate interest in the disputed domain name and the same is registered in bad faith.

The Respondent has no connection or affiliation with the Complainant and has not been licenced or otherwise authorized by the Complainant to use or register any domain name incorporating any of the Complainant's trademarks. Such unlicensed and unauthorized use of the disputed domain name incorporating the Trademark KHADI is solely with a view to hoard the disputed domain name, to mislead and divert the consumers, and to tarnish the Trademark KHADI of the Complainant.

The Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name since it does not fall under any of the circumstances provided for under Paragraph 4(c) of the Policy. The disputed domain name was not being used by the Respondent for *bona fide* offering of goods, rather the Respondent was misleading the consumers and website visitors by offering identical products under the Trademark KHADI on the earlier version of website hosted on the disputed domain name and creating confusion in the market. At present, the Respondent appears to be squatting on the disputed domain name, with no operational website.

The Respondent registered the disputed domain name solely for misleading consumers. Since its registration, the Respondent has failed to use the disputed domain name for any legitimate purposes. Additionally, the wrongful and misleading content for offering and promoting the identical products appearing on the Respondent's earlier version of website demonstrates the Respondent's intention of commercial use of website to have unlawful gains. The disputed domain name website currently resolves to a pay-per-click ("PPC") landing page on which it hosts multiple hyperlinks to third-party websites. The pay-per-click- (PPC)

advertisements currently appearing on the disputed domain name shows 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. The Respondent registered the disputed domain name for commercial gain to try to create confusion/ association with the Complainant. Thus, the use of the disputed domain name by the Respondent does not qualify for fair use.

The fame and unique qualities of the Trademark KHADI, 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 KHADI. Even constructive knowledge of a famous trademark like the Trademark KHADI is sufficient to establish registration in bad faith.

The Complainant pleads that the disputed domain name <khadimandir.com> be transferred to the Complainant.

B. Respondent

The Respondent in its Response has, *inter alia*, submitted the following contentions:

The Respondent contends that the disputed domain name is not identical or confusingly similar to the Complainant's Trademark KHADI. The term "KHADI" is a cultural symbol, the origin of which can be traced back to the Swadeshi Movement, led by Mahatma Gandhi during the independence struggle. Khadi is hand-woven into a natural fibre made with cotton, silk, or woolen yarn. With the beginning of the Swadeshi Movement, foreign goods were shunned and Khadi provided an alternative to the British textiles besides providing livelihood to people. People were encouraged to wear it as a symbol of heritage. It has contributed immensely in providing an identity to Indian goods in the international market. The Respondent contends that due to the generic meaning and geographical importance of the term "KHADI" and cultural usage and traditional practices of Khadi clothes, mere inclusion of the term "KHADI" in the disputed domain name does not violate the Complainant's trademark rights. The Respondent further contends that the term "mandir" is a generic term which means a "Hindu Temple". Therefore, the disputed domain name is having combination of two generic terms according to the Respondent's geographical presence and tradition and cultural usage, so it does not violate the Complainant's trademark rights.

The Respondent contends that he is an Indian Citizen by birth belonging to scheduled caste "Hindu Vankar" which belongs to weaving and cloth trading communities of Western India particularly of Gujarat and the four major woven fabrics produced by these communities are cotton, silk, khadi and linen. These communities exist since centuries and therefore, the Respondent inherits the ancestral rights to produce and to sell the Khadi and to use the word "KHADI".

The Respondent contends that there is no harm or loss to the Complainant's reputation or activities by registration of the disputed domain name by the Respondent. The Complainant is a statutory body established by an Act of Parliament, 'Khadi and Village Industries Commission Act of 1956', having socio economic objectives and plans, promotes, organizes and implements programs for the development of Khadi and other village industries in rural areas nationwide. It is established for the welfare of the certain class or group of people of India and not for doing industrial business and gaining commercial profits.

The Respondent denies hosting the website on the disputed domain name, as mentioned by the Complainant, which was used to sell towels, bed sheets, Jackets, kurtas, shawls, suits, fabrics etc. under the name "Khadi Mandir". The Respondent never hosted website on the disputed domain name and never offered or promoted any products. Annexure U with the Complaint itself shows that the alleged website offering products infringing the Complainant's rights was active till April 18, 2016. After that the previous owner might have cancelled the registration of the disputed domain name and hence it was available to all for registration. The Respondent registered the domain name only on January 21, 2017 from the available domains from the registrar "Crazy Domains". At the time when the Respondent registered the disputed name, no website was active on it therefore the Respondent should not be held responsible for someone

else's website. The allegation made by the Complainant of hosting the website offering products infringing the Complainant's trademark rights and making illegal profits by using the disputed domain name in an unauthorized manner in past is totally false and misleading.

The Respondent contends that by registering the disputed domain name in no manner has disrupted the business or activities of the Complainant. The Respondent has merely registered the disputed domain name and has not hosted any website or web pages on the disputed domain name and at present, the disputed domain name is parked on the free domain parking service provider's platform for no reason. If the Respondent has to take monetary benefits from the disputed domain name, he would have parked it on paid parking service provider's platform. It has been around 5 years and still it is non-hosted domain name which clearly shows that the Respondent has no *mala fide* intention behind registering the disputed domain name.

The Respondent is not in the business of selling or renting the products in any manner connected to the Complainant's trademark rights. The Respondent does not sell, advertise or showcase the products or services offered by the Complainant. Further, the Respondent does not mention anywhere on the landing page of the disputed domain name that he is related to or authorized or an agent of the Complainant. Therefore, no *mala fide* intention to confuse the visitors of the disputed domain name.

The Respondent contends that the disputed domain name has been registered for some future purpose. The Respondent is aged 44 years and after approximately 15 years, during retirement period, plans to form a non-profit organization having objectives similar to the Complainant but with the view of future applications of Khadi. At current digital growth and use, the disputed domain name may not be available that time, so the Respondent tried to reserve it for future use. The Respondent submits that it may not produce Khadi products but will run programs for advanced usage and applications of Khadi and its organization will provide all kinds of help to the users and consumers. That is the main reason the Respondent chose "Mandir" as another word which means "Hindu Temple" – a place which welcomes anyone and everyone without any discrimination by gender, caste, class, or group.

The Respondent contends that it has registered the disputed domain name in good faith since the Respondent did not know the term "KHADI" is a trademark until the present administrative proceeding was initiated. The Respondent submits that it respects the Complainant's rights over the Trademark KHADI and further agrees to follow the procedure and take necessary steps and permissions from the concerned authorities including the Complainant according to the law whenever the Respondent forms non-profit organization and start the activities and programs related to the Complainant's Trademark KHADI and its products and services and put the disputed domain name in actual use. The Respondent denies the transfer of the disputed domain name to the Complainant.

6. Discussion and Findings

The Complainant is required 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 furnished evidence of its rights in the Trademark KHADI through details of their registrations and common law rights accrued to it due to long and substantial use of the Trademark KHADI not only in India, but also in certain other jurisdictions. The Panel has considered and examined all the documents submitted by the Complainant in support of its claim that the Complainant has been using and has various registrations for the Trademark KHADI. There is no doubt that the Complainant has rights in the Trademark KHADI.

The Respondent has submitted that the disputed domain name is having a combination of two terms and mere inclusion of the term “KHADI” in the disputed domain name does not violate the Complainant’s trademark rights. This contention of the Respondent has no force under the first element of the Policy because the disputed domain name incorporates the entire Trademark KHADI of the Complainant. The WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.7 provides the consensus 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.”

The mere addition of the suffix “mandir” does not prevent a finding of confusing similarity between the disputed domain name and the Complainant’s Trademark KHADI. The Panel considers it useful to refer to [WIPO Overview 3.0](#), section 1.8: “Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element. The nature of such additional term(s) may however bear on assessment of the second and third elements.”

[WIPO Overview 3.0](#), section 1.11.1 states that the applicable Top-Level Domain (“TLD”) in a domain name (e.g., “.com”, “.club”, “.nyc”) is viewed as a standard registration requirement and as such may be disregarded under the first element confusing similarity test.

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 KHADI registered in favor of the Complainant and used in connection with goods sold and services offered by the Complainant and its authorized members. The Trademark KHADI in the Indian context refers to hand-spun and hand-woven cloth.

Paragraph 4(c) of the Policy lists circumstances, 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. The Respondent has filed the response and opposed the Complaint on various grounds but he has failed to demonstrate any rights or legitimate interests in the disputed domain name.

The Respondent has contended that the inclusion of the term “KHADI” does not violate the right of the Complainant since “KHADI” is a term having cultural, historical and geographical significance for the country of India. The Respondent has relied upon the integral role that Khadi fabric played in the Swadeshi Movement during the independence struggle of India and the individuality provided by Khadi to the Indian goods in the international markets. However, there is no merit in this contention of the Respondent because

the Trademark KHADI has been registered in favour of the Complainant in accordance with law, and, more importantly, the disputed domain name is not being used regarding the cultural, historical and geographical significance as contended by the Respondent.

The Respondent has relied upon the definition of the term "KHADI" provided by Section 2(d) of Khadi and Village Industries Commission Act, 1956 to contend that the disputed domain name is a term and could be used by him. The contention of the Respondent is without any force, as the disputed domain name is not being used. Merely registering a domain name comprised of dictionary word or phrase does not by itself automatically confer rights or legitimate interests on the Respondent. .

The Complainant has contended that the Respondent is not an authorized entity of the Complainant and hence, is not entitled to use the trademark KHADI in its domain name.

The Respondent has further contended that it has an inherited ancestral right to produce and sell Khadi as well as use the word "Khadi" because it belongs the weaving and cloth trading communities of Western India called Hindu Vangar which have been involved in the production of woven fabrics like Khadi, is not tenable. However, this does not constitute a credible evidence-backed rationale for registering the disputed domain name since the Respondent has failed to provide any proof of demonstrable present or future affiliation with such Khadi woven fabrics, and the use of the disputed domain name in such manner. Hence, this contention of the Respondent is without any force.

The Respondent is in no way related to the Complainant; neither is the Respondent an agent of the Complainant, nor does it in any way or manner carry out activities for or on behalf of the Complainant. The Trademark KHADI indisputably vests in the Complainant as evidenced by various statutory registrations secured by the Complainant. The Complainant runs a program under which it authorizes licenses or grants certificates to third parties to use the Trademark KHADI in a prescribed manner. The Complainant has been using the Trademark KHADI since 1956. The Complainant has not authorized or permitted the Respondent to use the Trademark KHADI.

The Respondent admittedly has neither utilized the disputed domain name nor hosted any content on the site, however the same currently resolves to a parked page hosting pay-per-click advertisement. The use of a domain name to host a parked page comprising PPC links does not represent a *bona fide* offering where such links compete with or capitalize on the reputation and goodwill of a Complainant's mark or otherwise mislead Internet users. See [WIPO Overview 3.0](#), section 2.9. In this case, the disputed domain name resolves to such parked pages, including a link advertising goods similar to those associated with the Complainant.

There is no evidence before the Panel that the Respondent has any trademark rights associated with the disputed domain name or has actually been commonly known by the disputed domain name, apart from registration of the disputed domain name. Therefore, the Respondent has failed to demonstrate any rights or legitimate interests in the disputed domain name as per paragraph 4(c) of the Policy or otherwise.

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 Respondent has not rebutted the Complainant's *prima facie* case. The Panel is satisfied that the second element of the Policy has been met.

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. 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 have to be considered by the Panel.

The Respondent has contended that the Complainant is a statutory body established by an Act of the Parliament and not an industrial business aiming to gain commercial profits therefore the registration of the disputed domain name by the Respondent does not harm the reputation of or activities undertaken by the Complainant. However, this contention of the Respondent does not have any merit since it fails to take into consideration the rights of the Complainant in the Trademark KHADI.

The Respondent has further submitted that a lack of *mala fide* intention is demonstrated from the fact that at present the Respondent is not using the disputed domain name to host any website or sell any identical products. However, the Respondent has failed to exhibit any positive efforts made on its part to avoid the pay-per-click advertisements currently being hosted on the disputed domain name. See [WIPO Overview 3.0](#), section 3.5. The use of the disputed domain name to host pay-per-click advertisements is proof of commercial use of the domain name.

The Respondent has mentioned its future plans for the disputed domain name of starting a Non-Profit Organization which will have objectives similar to that of the Complainant and will work on the advanced usages and applications of Khadi. The Respondent has also failed to show any concrete steps undertaken by it to further its plans despite the passage of five years since registration of the disputed domain name. The fact that these submissions are mere unsupported assertions means that the Panel cannot accord them with any weight as to reach a finding in favor of the Respondent.

Further, the Respondent's argument that it was unaware of the existence of the Trademark KHADI is without any merit. [WIPO Overview 3.0](#), section 3.2.2 states "Noting the near instantaneous and global reach of the Internet and search engines, and particularly in circumstances where the complainant's mark is widely known (including in its sector) or highly specific and a respondent cannot credibly claim to have been unaware of the mark (particularly in the case of domainers), panels have been prepared to infer that the respondent knew, or have found that the respondent should have known, that its registration would be identical or confusingly similar to a complainant's mark". The Complainant's Trademark KHADI has been found to be a well-known trademark, particularly in India, where the Respondent seems to be located. On the balance of probabilities, the Panel considers that there is virtually no possibility, noting *inter alia* the well-known nature of the Complainant's Trademark KHADI and the well-established reputation and goodwill associated with it that the Respondent was unaware of the existence of the Complainant and/or its Trademark KHADI.

The Complainant has produced evidence of registration of the Trademark KHADI since at least 2014 and contends that it has been using the mark extensively since 1956. The Respondent registered the disputed domain name on January 21, 2017, incorporating in its entirety the Trademark KHADI of the Complainant. The Complainant has not granted the Respondent permission or a license of any kind to use its Trademark KHADI and register the disputed domain name. Such unauthorized registration by the Respondent suggests opportunistic bad faith in these circumstances.

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 <khadimandir.com> be transferred to the Complainant.

/Ashwinie Kumar Bansal/

Ashwinie Kumar Bansal

Sole Panelist

Date: January 16, 2023