

## **ADMINISTRATIVE PANEL DECISION**

Khadi & Village Industries Commission v. Parkash Singh, Broadway Cargo Inc

Case No. D2022-4969

### **1. The Parties**

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

The Respondent is Parkash Singh, Broadway Cargo Inc, United States of America (“United States”).

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

The disputed domain name <khadikurta.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 December 23, 2022. On December 23, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 28, 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 December 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 January 2, 2023.

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 January 3, 2023. In accordance with the Rules, paragraph 5, the due date for Response was January 23, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on January 24, 2023.

The Center appointed Kaya Köklü as the sole panelist in this matter on January 26, 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 in April 1957 by the Government of India under an Act of Parliament, namely the “The Khadi and Village Industries Commission Act of 1956” (Annex C to the Complaint). The Complainant is an apex organization which has been established under the Indian Ministry of Micro, Small and Medium Enterprises. Since its formation, the Complainant has been carrying on work related to the implementation of various development programs in rural areas of India. The programs of the Complainant are to promote products (including clothing) under its trademark KHADI, which is registered on behalf of the Complainant in India (Annex G to the Complaint) and various other jurisdictions (Annex F to the Complaint). For instance, KHADI is protected as an International Trademark Registration No. 1272626, registered on December 2, 2014, and the Indian Trademark Registration No. 2851528, registered on November 27, 2014, both providing protection for a large number of goods and services. In 2022, the Delhi High Court as well as the Indian Trademark Authority declared the Complainant’s KHADI trademark as a well-known trademark (Annex Q to the Complaint).

The Respondent is reportedly an individual with a corporation located in the United States.

The disputed domain name was registered on December 26, 2021.

Visitors of the disputed domain name are redirected to a landing page with clothing related pay-per-click (“PPC”) links (Annex S to the Complaint).

#### **5. Parties’ Contentions**

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

The Complainant requests the transfer of the disputed domain name.

The Complainant is of the opinion that the disputed domain name is confusingly similar to its KHADI trademark.

It further argues that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

In addition, the Complainant is convinced that the Respondent has registered and is using the disputed domain name in bad faith.

##### **B. Respondent**

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

#### **6. Discussion and Findings**

According to paragraph 15(a) of the Rules, the Panel shall decide the Complaint in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

In accordance with paragraph 4(a) of the Policy, the Complainant must prove that each of the three following elements is satisfied:

- (i) the disputed domain name is identical or confusingly similar to a trademark 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.

Paragraph 4(a) of the Policy states that the Complainant bears the burden of proving that all these requirements are fulfilled, even if the Respondent has not replied to the Complainant's contentions. *Stanworth Development Limited v. E Net Marketing Ltd.*, WIPO Case No. [D2007-1228](#).

However, concerning the uncontested information provided by the Complainant, the Panel may, where relevant, accept the provided reasonable factual allegations in the Complaint as true. See section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

For the evaluation of this case, the Panel has taken note of the [WIPO Overview 3.0](#) and, where appropriate, will decide consistent with the consensus views stated therein.

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

To begin with, the Panel confirms that the Complainant has satisfied the threshold requirement of having relevant trademark rights. As evidenced in the Complaint, the Complainant is the owner of the KHADI trademark, which has been first registered in 2014 and in use for many years.

The Panel finds that the disputed domain name is confusingly similar to the Complainant's KHADI trademark. The disputed domain name fully comprises the KHADI trademark. As stated at section 1.8 of the [WIPO Overview 3.0](#), where a trademark is recognizable within the disputed domain name, the addition of other terms would generally not prevent a finding of confusing similarity. In the present case, the mere addition of the term "kurta" (which is a commonly known indication for a traditional clothing item in India and other Asian countries), in view of the Panel, does not serve to avoid a finding of confusing similarity between the disputed domain name and the Complainant's KHADI trademark.

In view of the above, the Panel is satisfied that the Complainant has met the requirements under paragraph 4(a)(i) of the Policy.

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

While the burden of proof remains with the Complainant, the Panel recognizes that this would often result in the impossible task of proving a negative, in particular as the evidence needed to show the Respondent's rights or legitimate interests is primarily within the knowledge of the Respondent. Therefore, the Panel agrees with prior UDRP panels that the Complainant is required to make out a *prima facie* case before the burden of production shifts to the Respondent to show that it has rights or legitimate interests in the disputed domain name to meet the requirements of paragraph 4(a)(ii) of the Policy. *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#).

With its Complaint, the Complainant has provided *prima facie* evidence that the Respondent has no rights or legitimate interests, particularly no license or the like to use the Complainant's KHADI trademark within the disputed domain name.

There is also no indication in the current record that the Respondent is commonly known by the disputed domain name (noting also that the disputed domain name apparently has not been actively used since its registration).

The Respondent has not submitted any evidence or arguments demonstrating such rights or legitimate interests, nor has it rebutted any of Complainant's contentions. There is no evidence that Respondent is

commonly known by the disputed domain name, nor that there are any circumstances or activities that would establish Respondent's rights or legitimate interests therein. Rather, the disputed domain name, which contains Complainant's mark in its entirety, resolves to a parking page featuring PPC links that are related to the goods offered by Complainant, and therefore that compete with or capitalize upon Complainant's goodwill and reputation. Such use cannot establish rights or legitimate interests. See [WIPO Overview 3.0](#), section 2.9.

In the absence of a response, the Respondent has also failed to demonstrate any of the nonexclusive circumstances evidencing rights or legitimate interests under the Policy, paragraph 4(c) or provide any other evidence of a right or legitimate interest in the disputed domain name. The Respondent particularly failed to demonstrate any basis for assessing a *bona fide* offering of goods or services.

In addition, the Panel notes that the nature of the disputed domain name carries a risk of implied affiliation or association, as stated in section 2.5.1 of the [WIPO Overview 3.0](#).

Consequently, the Panel finds that the Complainant has satisfied the requirements of paragraph 4(a)(ii) of the Policy.

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

In the Panel's view, the Respondent has registered and is using the disputed domain name in bad faith.

First, the Panel believes that the Respondent has registered the disputed domain name in bad faith. At the date of registration, the Complainant's KHADI trademark was already registered and widely used for many years.

With respect to the use of the disputed domain name in bad faith, it is noted that the disputed domain name is not used with an active content, except for redirecting Internet users to a landing page with PPC links. In line with the previous UDRP decisions (e.g., *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#)) and section 3.3 of the [WIPO Overview 3.0](#), the Panel believes that such non-use (at least in terms of original content being hosted) of a domain name does not prevent a finding of bad faith use.

Also, the Panel accepts the failure of the Respondent to submit a substantive response to the Complainant's contentions as an additional indication for bad faith use.

The Panel therefore concludes that the disputed domain name was registered and is being used in bad faith and that the Complainant consequently has satisfied the third element of the Policy, namely, paragraph 4(a)(iii) of the Policy.

### **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, <khadikurta.com>, be transferred to the Complainant.

*/Kaya Köklü/*

**Kaya Köklü**

Sole Panelist

Date: February 9, 2023