

ADMINISTRATIVE PANEL DECISION

Divya Yog Mandir Trust v. Sabita jabu jabu
Case No. D2023-0748

1. The Parties

The Complainant is Divya Yog Mandir Trust, India, internally represented.

The Respondent is Sabita jabu jabu, India.

2. The Domain Name and Registrar

The disputed domain name <yogpeethpatanjali.com> is registered with BigRock Solutions Pvt Ltd. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 18, 2023. On February 20, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 21, 2023, 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 February 22, 2023 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 amendment to the Complaint on February 24, 2023.

The Center verified that the Complaint, together with the amendment to the 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 March 3, 2023. In accordance with the Rules, paragraph 5, the due date for Response was March 23, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 3, 2023.

The Center appointed Vinod K. Agarwal, as a sole panelist in this matter on April 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 trust registered under the Indian Trust Act, 1882 having its registered office in India. The Complainant has introduced an integrated and complete health package. A fusion of, Naturopathy (the ancient Indian art of healing), Nature cure (drugless cure), Yoga (mind body balance), Panchkarma therapies (Body Detox) and multitude and relaxing therapies. The therapies are provided under the guidance of experienced doctor and therapist in a hygienic, eco-friendly and luxurious environment not only in India but also in overseas countries.

The Complainant also has various organizations under its jurisdiction and Patanjali Yogpeeth is one of them. Patanjali Yogpeeth is also a registered trust under Indian Trust Act 1882 which runs under the flagship of the Complainant. Patanjali Yogpeeth is one of the largest Yoga Institutes in India. The Institute has been set up for treatment and research in Yoga and Ayurveda.

The Complainant is also in the business of procuring, processing, manufacturing and marketing of herbal products including medicines, cosmetics and food products, beverages, personal and home care products, extracts and other 6 similar commodities.

The Complainant is the owner of the Indian trademark PATANJALI YOGPEETH, under the No. 1415919, registered in September 20, 2008 in the International Class 35.

The disputed domain name was registered on September 29, 2022 and resolves to a website marketing a Naturopathy Treatment Center in India.

5. Parties' Contentions

A. Complainant

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.

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

In relation to element (i), the Complainant contends that the Complaint is based on the trademark PATANJALI YOGPEETH (in capital letters) registered in favour of the Complainant and, used in connection with goods sold and services offered by the Complainant and its authorized members. The words "PATANJALI YOGPEETH" is the registered trademarks of the Complainant and the Complainant has been continuously using the trademark

PATANJALI YOGPEETH since 2006. The said trademarks of the Complainant is registered in various jurisdictions for a very long time. Copies of the registration certificates of the trademarks are attached with the Complaint as Annexure 3. The trademarks are of the Complainant registered in Classes 35, 41 and 42. All of the registrations are currently valid and subsisting.

The domain name <yogpeethpatanjali.com> wholly comprises the Complainant's well-known trademark PATANJALI YOGPEETH and is therefore identical to the Complainant's trademark. By virtue of prior adoption, long and continuous use and extensive publicity and promotion, the trade name and trademark PATANJALI YOGPEETH has 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.

The trademark PATANJALI YOGPEETH has not been used by anyone other than the Complainant or its authorized licensee or franchisee holders. The Complainant has stated that 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 PATANJALI YOGPEETH.

The PATANJALI YOGPEETH 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.

The Complainant has stated that the Respondent is involved in defrauding the innocent public by charging the money for giving the booking in the Patanjali Yogapeeth and such fake advertisements are duly published on the above stated domain.

In relation to element (ii), the Complainant contends that the Respondent has no "right or legitimate interest" in the domain name because the Complainant has not authorized, permitted or granted any license to the Respondent to use the impugned domain name. Such unlicensed and unauthorized use of domain incorporating the Complainant's trademark is solely with a view to hoard the domain name, misleadingly divert consumers and to tarnish the trademark of the Complainant. There is also no demonstrable preparation to use or actual use of the domain name in connection with any *bona fide* offering of goods or services.

The Respondent has no authority to misuse the registered trademark of the Complainant, namely, PATANJALI YOGPEETH. The Respondent has not been given the authority to act or speak on behalf of Complainant. The Respondent has not been known by the domain name. The Respondent is not making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain misleadingly to divert consumers or to tarnish the trademark or service mark of the Complainant. The Respondent is using the domain name to create a website which tarnished the trademark or service mark at issue since it includes malicious statements about the food products. Thus, the Respondent has no rights or legitimate interests in the domain name that is the subject of the Complaint.

In relation to element (iii), the Complainant has stated that the Respondent registered the impugned domain name primarily for the purpose of disrupting the business of the Complainant. Further that the Respondent has booked the impugned domain name with the ill intention just to harm the goodwill of the Complainant and to confuse the public at large. The Respondent may use the impugned domain name to attempt to attract Internet users for personal gain by creating a likelihood of confusion with the Complainants' trademark as to the source, sponsorship, affiliation or endorsement of the Respondent's website.

The domain containing the trademark PATANJALI YOGPEETH confuses the public as to the source of the information included on the website. That the Respondent has registered the disputed domain name for the purpose of disrupting the business of a Complainant. Further that, the Respondent is using the domain name in bad faith, and the Respondent's use of the domain name creates confusion as to the source of the information found on the website under the domain name.

Therefore, the registration and use of the disputed domain name by the Respondent was in bad faith and the requirement of paragraph 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

As has been stated above, 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

In the first instance it may be mentioned that in the Complaint two expressions/versions have been alternatively used, namely "YOGAPEETH PATANJALI" and "PATANJALI YOGAPEETH". In fact, there is no difference between the two expressions. They are similar or have identical meaning. Further that, according to the Registration Certificates submitted by the Complainant, the trademark is registered as PATANJALI YOGAPEETH.

According to the information submitted by the Complainant, the Complainant is the owner of PATANJALI YOGPEETH trademark registrations in certain jurisdictions. The said trademark was registered in November 20, 2006. The Complainant possesses a large number of other domain names with the word "YOGPEETH PATANJALI". 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 <yogpeethpatanjali.com> includes the trademark of the Complainant and is identical or confusingly similar to the trademark of the Complainant.

Therefore, the Panel finds that the disputed domain name <yogpeethpatanjali.com> is confusingly similar or identical 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 Sabita jabu jabu. The Complainant has not authorized the Respondent to use the name and their trademark.

It is evident that the Respondent can have no legitimate interest in the disputed domain name <yogpeethpatanjali.com>. 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 and that nobody would use the word PATANJALI YOGPEETH unless seeking to create an impression of an association with the Complainant.

Based on the evidence in the Complaint, 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 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 Complainant contends that the 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 is being used with the intent to deceive the members of the public deliberately and intentionally, with a view to

trade upon or encash on the name, fame, reputation, image and goodwill acquired by the Complainant.

The fame and unique qualities of the trademarks PATANJALI YOGPEETH, 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.

This and the other evidence submitted by the Complainant lead to the presumption that the disputed domain name <yogpeethpatanjali.com> was registered and used by the Respondent in bad faith.

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

7. Decision

In the light of the foregoing reasons, namely, that the disputed domain name is confusingly similar to the trademark in which the Complainant has a right, that the Respondent has no rights or legitimate interests in respect of the disputed domain name, and that the disputed domain name was registered in bad faith and is being used in bad faith, in accordance with paragraphs 4(i) of the Policy and Rule 15 of the Rules, the Panel orders that the disputed domain name <yogpeethpatanjali.com> be transferred to the Complainant.

/Vinod K. Agarwal/

Vinod K. Agarwal

Sole Panelist

Date: April 20, 2023