

ADMINISTRATIVE PANEL DECISION

Divya Yog Mandir Trust v. Amit Kumar
Case No. D2023-1871

1. The Parties

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

The Respondent is Amit Kumar, India.

2. The Domain Name and Registrar

The disputed domain name <patanjalidivyayoga.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 April 26, 2023. On April 27, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 28, 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 (Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 1, 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 May 3, 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 May 4, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 24, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on May 25, 2023.

The Center appointed Harini Narayanswamy as the sole panelist in this matter on June 2, 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 offers services in the area of alternative medicine therapies such as nature cure, naturopathy, and yoga under the trademark DIVYA YOGA. The Complainant holds trademark registration for the DIVYA YOGA mark from January 23, 2006 under Indian trademark registration number 1415907, for services under class 36.

The Respondent, Amit Kumar, registered the disputed domain name on May 27, 2022. The disputed domain name registration record indicates that the Respondent is located in the city of Kolkata in India. The Respondent has however provided an incomplete or false contact address in the registration record. The disputed domain name is not being put to any use and it does not resolve to a website.

5. Parties' Contentions

A. Complainant

The Complainant states that it has registered trademark rights and common law rights for the DIVYA YOGA mark which it has used since 2006. The Complainant alleges that due to its prior rights in the mark, its use in the disputed domain name would cause the public to believe that the Respondent is acting on behalf of the Complainant. The Complainant states that the Respondent has not been give any authorization to use its mark or to register the disputed domain name or use any similar name or mark. The Complainant states, the use of the DIVYA YOGA trademark in the disputed domain name by the Respondent therefore violates its rights.

The Complainant contends that its services includes offering therapies such as panchakarma and other relaxing therapies under the guidance of experienced doctors and therapists in a hygienic, eco-friendly, luxurious environment. The Complainant states it provides these services in India and overseas.

The Complainant argues that the Respondent seeks to disrupt its business and that its business includes procuring, processing, and manufacturing of herbal products including medicines, cosmetics, and food products, beverages, personal and home care products. The Complainant argues that it is the Respondent's intention to cause a likelihood of confusion with the Complainant's mark and that the Respondent seeks to harm the goodwill associated with the mark.

The Complainant request for the transfer of the disputed domain name on the grounds that it is confusingly similar to a trademark in which it has rights, the Respondent lacks rights or legitimate interests in the disputed domain name, and the disputed domain name has been registered and is being used in bad faith by the Respondent.

B. Respondent

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

6. Discussion and Findings

The Complainant is required to establish three elements under paragraph 4 (a) of the Policy to obtain transfer of the disputed domain name, these are:

- (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 lacks rights or legitimate interests in the disputed domain name; and
- (iii) The disputed domain name was registered and is being used in bad faith by the Respondent.

A. Identical or Confusingly Similar

The first element requires the Complainant to establish the disputed domain name is confusingly similar to a trademark or a service mark in which it has rights.

The Complainant has provided details of its trademark registration for the DIVYA YOGA mark. The Panel finds on the basis of the trademark registration that the Complainant has rights in the said mark.

The disputed domain name incorporates the DIVYA YOGA in its entirety. The Panel notes that the disputed domain name also has a third-party mark PATANJALI. It is well established that where the Complainant's trademark is recognizable within the disputed domain name, the addition of the third-party mark is insufficient in itself to prevent a finding of confusing similarity under the first element. See section 1.12 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"). See also *MasterCard International Incorporated v. Suresh Sellathurai*, WIPO Case No. [D2017-1251](#), *MasterCard International Incorporated v. Indy Web Productions*, WIPO Case No. [D2008-0198](#), and *Hoffmann-La -Roche Inc. v. Viagra Propecia Xenical & More Online Pharmacy*, WIPO Case No. [D2003-0793](#) (Holding that a domain name that contains the trademark of a third party, does not of itself, preclude a finding of confusing similarity).

The Panel finds that the disputed domain name is confusingly similar to the Complainant's DIVYA YOGA mark for the reasons discussed. The Complainant has fulfilled the requirements under the first element of the Policy.

B. Rights or Legitimate Interests

The second element under paragraph 4(a) of the Policy requires the Complainant to make a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent can rebut the Complainant's allegations with relevant submissions and supporting evidence to establish rights or legitimate interests in the disputed domain name. If the Respondent fails to do so, and the Complainant is found to have made a *prima facie* case, then the Complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy. See section 2.1 of the [WIPO Overview 3.0](#).

The Complainant has argued that the Respondent lacks rights or legitimate interests in respect of the disputed domain name for the reasons that: (i) the Respondent is not known by the name DIVYA YOGA or any similar name, (ii) the Respondent seeks to divert Internet users away from the Complainant's website with an intention of making commercial gain, (iii) The Respondent is not using the disputed domain name in connection with a *bona fide* offering of goods or shown any demonstrable preparations to do so, (iv) the registration and use of the disputed domain name does not come under the relevant provisions of the Policy, (v) the Respondent is not licensed or authorized by the Complainant to use its mark.

The Respondent has not replied or refuted any allegations made by the Complainant. In the absence of any submissions claiming rights or legitimate interests by the Respondent or any rebuttal of the Complainant's allegations by the Respondent, the Panel accepts the Complainant's contentions.

The Panel is of the view that the use of the two marks in the disputed domain name appears to be deliberate and intentional targeting of the Complainant's mark in order to attract Internet users, as discussed in the following section. It is reasonable to infer from the described circumstances, that the Respondent has registered the disputed domain name with an intention to derive unfair benefits, from the reputation associated with the Complainant's mark, which does not indicate the Respondent's rights or legitimate interests. In addition, the disputed domain name has not been put into any active use.

The Panel finds the Complainant has made a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. This satisfies the second element under paragraph 4 (a) of the Policy.

C. Registered and Used in Bad Faith

The third element requires the Complainant to establish the disputed domain name has been registered and is being used in bad faith by the Respondent.

The Panel finds that the Complainant has established its prior adoption and use of the DIVYA YOGA mark. The Complainant hosts a website from the domain name <divyayoga.com> and the website has numerous links such as “Pantanjali Wellness”, “Pantanjali Yogpeeth” and “Patanjali Ayurved Hospital”, which seems to imply there is a connection between the owners of the DIVYA YOGA mark and the PATANJALI mark. The use of the DIVYA YOGA mark along with the PATANJALI mark in the disputed domain name is persuasive evidence of the Respondent’s knowledge of the Complainant’s mark and its possible association with the PATANJALI mark. The Panel finds based on the discussed facts and circumstances, that the Respondent ought to have registered the disputed domain name with the knowledge of the Complainant’s prior rights in the mark and has specifically target the Complainant’s mark.

Registration of a domain name that is based on the awareness of a complainant’s trademark rights, and targeting it is recognized as bad faith registration under the Policy. See *Janet E Sidewater v. Worldwide Media Inc.*, WIPO Case No. [D2006-1281](#). Given the circumstances in the present case, the Panel finds, there is no reasonable explanation for the registration of the disputed domain name except that the Respondent seeks to cause a likelihood of confusion with the Complainant.

In view of the discussed circumstances and the preponderance of facts and material placed before the Panel, the reasonable conclusion that the Panel reaches is that, the Respondent has knowingly used the mark in the disputed domain name to mislead consumers. The mere registration of a domain name that is confusingly similar to a known mark by an unaffiliated entity can by itself create a presumption of bad faith. See section 3.1.4 of the [WIPO Overview 3.0](#).

Finally, although the disputed domain name is inactive, the non-use or passive holding of the disputed domain name is a basis to find bad faith use when the overall facts and circumstances show that a respondent seeks to violate a third party’s trademark rights. Inactivity or non-use connotes bad faith use of a disputed domain name, because the respondent is merely holding or squatting on the disputed domain name, with no apparent *bona fide* use for it. See section 3.3 of the [WIPO Overview 3.0](#), and *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#) (the initial case that laid down this proposition). Several subsequent cases endorse this line of reasoning, such as in *Polaroid Corporation v. Jay Strommen*, WIPO Case No. [D2005-1005](#), and *Virgin Enterprises Limited v. Cesar Alvarez*, WIPO Case No. [D2016-2140](#). In the present case, the Panel is persuaded that the overall circumstances strongly indicate that the Respondent’s passive holding of the disputed domain name is in bad faith for the reasons below.

The Respondent’s failure to respond or reply to the Complainant’s contentions, the Respondent’s use of privacy service to conceal his identity within the context of the case, the Respondent providing an incomplete contact address, the Respondent’s lack of rights or legitimate interests in the disputed domain name, the Respondent being located in India where the Complainant’s rights are known, are collectively indicative that the Respondent’s motives are not *bona fide* in registering the disputed domain name and holding it without use. The Panel finds for the reasons discussed that the Respondent has registered and used the disputed domain name in bad faith.

The Complainant is found to have satisfied the requirements under 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 <patanjalidivyayoga.com> be transferred to the Complainant without prejudice to the concerned third party's rights.¹

/Harini Narayanswamy/

Harini Narayanswamy

Sole Panelist

Date: June 16, 2023

¹ The Panel notes that the disputed domain name also has a third-party mark PATANJALI.