

## **ADMINISTRATIVE PANEL DECISION**

Divya Yog Mandir Trust v. Pankaj Jamatra  
Case No. D2023-2847

### **1. The Parties**

The Complainant is Divya Yog Mandir Trust, India, self-represented.

The Respondent is Pankaj Jamatra, India.

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

The disputed domain name <yoggramdivyayoga.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 July 2, 2023. On July 4, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 5, 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 July 17, 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 July 18, 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 July 31, 2023. In accordance with the Rules, paragraph 5, the due date for Response was August 20, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 21, 2023.

The Center appointed Maninder Singh as the sole panelist in this matter on August 29, 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, Divya Yoga Mandir Trust, is a Trust registered under The Indian Trust Act. The Complainant has registered the Indian trademark DIVYA YOGA, number 1415907, on January 23, 2006. The Complainant is 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 similar commodities. It also offers various therapies such as Naturopathy, Nature cure, Yoga, Panchkarma therapies, and other relaxing therapies in India and various other countries.
- The disputed domain name was registered on July 28, 2022. The disputed domain name resolves to a website, which is also offering similar services as are offered by the Complainant.

#### **5. Parties' Contentions**

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

- The Complainant claims that is a registered Trust under The Indian Trust Act, having its registered office in Uttarakhand, India.
- The Complainant avers that it brings an integrated and complete health package, which is 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 Complainant claims that the therapies offered by it are provided under the guidance of its experienced doctors and therapists in a hygienic, eco-friendly and luxurious environment not only in India but also overseas.
- The Complainant claims to have registered the mark DIVYA YOGA in India, which is a well established brand in India. The Complainant claims to have all other intellectual property rights associated with the use of the mark DIVYA YOG. The Complainant claims that it has been continuously using the mark DIVYA YOGA since 2006.

Contentions of the Complainant regarding the disputed domain name being identical or confusingly similar to the Trademark or Service Mark of the Complainant:

- The Complainant contends that the registrant of the disputed domain name has registered the disputed domain name, after the Complainant began using the DIVYA YOG mark in commerce. The date of registration for the disputed domain name is July 28, 2022.
- The Complainant contends that registration of the disputed domain name violates the Complainant's trademark rights in the mark DIVYA YOG. The disputed domain name registered by the Respondent is very similar to the domain name of the Complainant.
- The Complainant contends that the use of word DIVYA YOG for the disputed domain name is confusing as it causes the public to believe that the Respondent is acting on behalf of or under the authority of the Complainant.
- The Complainant further contends that the disputed domain name is identical and/or confusingly similar to the mark in which the Complainant has earlier rights and relates directly to the registered trademark DIVYA YOG.
- The Complainant contends that it has satisfied Policy, paragraph 4(a)(i) and Rules, paragraph 3(b)(viii) and 3(b)(ix)(1) that the domain is identical and/or confusingly similar to a service mark in which the Complainant has rights.

Contentions regarding the Respondent having no rights or legitimate interests in the disputed domain name:

- The Complainant contends that the Respondent has no “rights or legitimate interest” in the disputed domain name because the Complainant has not granted any permission to the Respondent to use the disputed domain name.
- The Complainant contends that the Respondent does not meet any of the situations enumerated in paragraph 4(c) of the policy. The Complainant contends that:
  - (a) The Respondent’s use of the disputed domain name has no connection with a *bona fide* offering of goods and services. The Respondent has not been given the authority to act or speak on behalf of the Complainant whose name is confusingly similar.
  - (b) The Respondent has not been “commonly known by” the disputed domain name. The disputed domain name is identical to the name of the Complainant.
  - (c) The Respondent is not making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain misleadingly to divert consumers or to tarnish the trademark or service mark at issue.
- The Complainant contends that it has not authorized the Respondent to use the confusingly similar domain name.
- The Complainant contends that it has never given either the Respondent or his association/company any authority to operate the disputed domain name by using the name “divya yog” or any similar name and even have not given the Respondent any authority to operate, maintain or register a website by using the similar name of the registered mark DIVYA YOG of the Complainant.
- The Complainant contends that it has satisfied Policy, paragraph 4(a)(ii) and Rules, paragraph 3(b)(ix)(2) that the Respondent has no rights or legitimate interests in the disputed domain name that is the subject of the Complaint.

Contentions regarding bad faith registration and use of the disputed domain name by the Respondent

- The Complainant contends that the Respondent has registered the disputed domain name primarily for the purpose of disrupting the business of the Complainant.
- The Complainant contends that the Respondent has registered the disputed domain name with the ill intention to harm the goodwill of the Complainant and to confuse the public at large.
- The Complainant further contends that the Respondent may use the disputed domain name to attempt to attract Internet users for personal gain by creating a likelihood of confusion with the Complainant’s mark as to the source, sponsorship, affiliation or endorsement of the Respondent’s website.
- The Complainant contends that it has satisfied Policy, paragraph 4(a)(iii), 4(b) and Rules, paragraph 3(b)(ix)(3) that the Respondent has registered the disputed domain name for the purpose of disrupting the business of a competitor, the Respondent is using the disputed 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 disputed domain name.

## **B. Respondent**

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

## **6. Discussion and Findings**

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

- The Panel finds that the Complainant has trademark rights in the mark DIVYA YOG, by virtue of its trademark registration in India. The Panel is also satisfied that the disputed domain name is confusingly similar to the Complainant’s DIVYA YOGA trademark. The addition of letters “yoggram”,

- which is nothing but a combination of two words “yog” and “gram” in Hindi language, does not prevent a finding of confusing similarity between the disputed domain name and the Complainant’s trademark.
- The Panel has considered the documents submitted by the Complainant in support of its claim that the Complainant has been using and has trademark registration for the mark DIVYA YOGA. There does not appear to be any doubt that the Complainant is the owner of trademark DIVYA YOGA. The Complainant’s rights in the trademark DIVYA YOGA predate the Respondent’s registration of the disputed domain name at issue. The Respondent registered the disputed domain name only on July 28, 2022.
  - The Panel finds it useful to refer to the decision in the case of *AREVA v. St. James Robyn Limoges*, WIPO Case No. [D2010-1017](#), holding that: “In numerous UDRP decisions, panels have found that the fact that a domain name incorporates a complainant’s registered mark in its entirety is sufficient to establish confusing similarity for the purpose of the first element of paragraph 4(a) of the Policy.”
  - The Complainant has therefore succeeded in establishing the first element of the test in paragraph 4(a) of the Policy

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

- The second element requires the Complainant to make a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name.
- The Panel observes that the Complainant has made out a case proving its rights in the trademark DIVYA YOGA. The Panel has no doubt that the disputed domain name incorporates the Complainant’s trademark DIVYA YOGA by adding words “yog” and “gram” to it. The Panel is of the view that such an attempt on the part of the Respondent is to create confusion and to cash on/ride over the name, goodwill and reputation of the Complainant.
- The Panel observes that the Complainant has made a *prima facie* case that the Respondent lacks rights or legitimate interests and therefore, the burden of production shifts to the Respondent, requiring it to provide evidence or plausible assertions demonstrating rights or legitimate interests in the disputed domain name. The Panel observes that the Respondent has, admittedly failed to submit any response to the specific contentions made by the Complainant in this regard. - In the facts and circumstances of the present case, the Panel accepts and agrees that the Respondent has not proved any *bona fide* use of the disputed domain name as he has failed to submit any appropriate and proper response to the contentions made by the Complainant.
- The Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.

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

- Under the third element the Complainant is required to establish that the disputed domain name has been registered and is being used in bad faith by the Respondent.
- The Panel observes that the disputed domain name is confusingly similar to the Complainant’s trademark DIVYA YOGA.
- The Panel observes that there is virtually no possibility that the Respondent was unaware of the Complainant’s trademark, its existence or presence in the market. In this regard, the Panel refers to and relies upon the previous UDRP decision in *Consitex S.A. Lanificio Ermenegildo Zegna & Figli S.p.A. Ermenegildo Zegna Corporation v. Mr. Lian Ming*, WIPO Case No. [DWS2003-0001](#) – holding that a respondent could not ignore the existence of a well-known trademark at the time of registering a domain name.
- The Panel notes that the website at the disputed domain name contains links that do not work, and that the postal address mentioned therein corresponds to the postal address mentioned in the Complainant’s website at “www.divyayoga.com”. In addition, the Panel notes that the disputed domain name is similar to the website of the Complainant “yoggram.divyayoga.com”.
- The Panel agrees with the Complainant’s contention that the disputed domain name is being used for the sole purpose of misdirecting Internet users, who may be seeking the Complainant’s website, to an unrelated website that offers identical services. Such use of the disputed domain name to misdirect Internet users for commercial gain is considered as strong evidence of bad faith in accordance with

paragraph 4(b)(iv) of the Policy. The Panel in this regard, relies on *State of Wisconsin v. Pro-Life Domains, Inc.*, WIPO Case No. [D2003-0432](#), holding that using a party's name to redirect Internet users to an unrelated commercial site for profit is recognized under the Policy as evidence of bad faith registration and use.

- The Panel, therefore, finds that the disputed domain name was registered and being used in bad faith by the Respondent.

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

*/Maninder Singh/*

**Maninder Singh**

Sole Panelist

Date: September 12, 2023