

ADMINISTRATIVE PANEL DECISION

Khadi & Village Industries Commission v. Shashank Malik
Case No. D2024-1838

1. The Parties

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

The Respondent is Shashank Malik, India.

2. The Domain Name and Registrar

The disputed domain name <khadiherbs.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 May 1, 2024. On May 1, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 3, 2024, 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 (GoDaddy.com, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 7, 2024, 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 May 9, 2024.

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 May 15, 2024. In accordance with the Rules, paragraph 5, the due date for Response was June 4, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 5, 2024.

The Center appointed Meera Chature Sankhari as the sole panelist in this matter on June 21, 2024. 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, under 'Khadi and Village Industries Commission Act of 1956'. The Complainant generates employment in about 2.48 lakh villages throughout the country and has a widespread presence across the country. The Complainant also implements Prime Minister's Employment Generation Program (PMEGP) for upliftment and improvement of artisans, weavers and other members of small-scale village and rural industries.

The Complainant owns numerous registrations for the trademark KHADI (word) in India and other jurisdictions such as Mexico, Canada, Bahrain, France, Estonia, Singapore, United Kingdom, Bulgaria, Malaysia, Bhutan, New Zealand, United States of America, European Union and Australia.

A few of Complainant's earliest Indian trademark registrations for KHADI are as below:

Trademark	Registration number	Class	Date of Registration
KHADI	2851542	24	November 27, 2014
KHADI	2851543	25	November 27, 2014
KHADI	2851552	35	November 27, 2014

The Complainant adopted the trademark KHADI on September 25, 1956, and has used it continuously since then. The Complainant's trademark KHADI has also been declared as a well-known trademark by the *Hon'ble Delhi High Court in Khadi and Village Industries Commission v. Khadi Design Council of India and Others*, CS (COMM) 244/2021 and *Khadi & Village Industries Commission vs Raman Gupta & Ors.*, CS (COMM) 133 of 2022. Further, the Registrar of trademarks has also notified the Complainant's trademark KHADI as a well-known trademark bearing well-known application no. 816482 by notification dated August 15, 2022.

The disputed domain name <khadiherbs.com> was registered on January 16, 2024. The disputed domain name is parked and there is no bona fide use of the disputed domain name by the Respondent. The Respondent has not replied to the ongoing dispute proceedings.

5. Parties' Contentions

A. Complainant

Notably, the Complainant contends that the disputed domain name is confusingly similar to Complainant's trademark as it includes the Complainant's trademark KHADI in its entirety followed by the term "herbs" and by the generic Top-Level Domain ("gTLD") ".com". The Complainant contends that by creating the disputed domain name, the Respondent is creating confusion, and the consumers may believe that the disputed domain name refers to the Complainant. The Complainant further contends and relies upon the *Khadi & Village Industries Commission v. Rajesh Kubadiya, Khadi Herbal Shop*, WIPO Case No. [D2020-2933](#), to contend that the addition of other term, in this case "herbs", and by merely adding words, numerals or punctuation marks to a trademark, does not prevent a finding of confusing similarity between the disputed domain name and the mark.

Regarding the second element, the Complainant contends that the Respondent has merely parked the disputed domain name and there is no demonstrable preparation to use or actually use the disputed domain name in connection with any bona fide offering of goods or services.

Furthermore, the Complainant alleges that neither does the Respondent own any trademark corresponding to the disputed domain name nor has the Complainant licensed or authorized the Respondent to use its trademark or any domain name including the trademark KHADI. Accordingly, the Complainant contends that the Respondent lacks rights or legitimate interests in the disputed domain name.

On the last and third element, the Complainant contends that the Respondent's primary aim is to sell or transfer the domain name to the Complainant or any third party for value consideration. The fact that the Respondent has failed to host any content on the disputed domain name or use it for any bona fide offering of goods or services demonstrates that the Respondent has registered the disputed domain name in bad faith and with the mala fide intention to extract some commercial advantage from the Complainant.

The Complainant, inter alia, further claims that the fame and unique qualities of the KHADI trademarks, which were adopted and applied for by the Complainant make it extremely unlikely that the Respondent created the disputed domain name independently without any knowledge of the Complainant's trademark.

The Complainant also reiterates that merely because the disputed domain name is inactive, it does not prevent a finding of bad faith.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

The Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the mark is recognizable within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms here, "herbs" may bear on assessment of the second and third elements, the Panel finds the addition of such a term does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

The Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a prima facie case that the respondent lacks rights or

legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds the Complainant has established 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 showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

C. Registered and Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

In the present case, the Panel notes that the Respondent has not made any use of the disputed domain name and neither has there been any evidence of demonstrable preparations to use and/or actual use. As the Complainant alleges, the probability of the Respondent registering the disputed domain name to sell it to the Complainant at a profit cannot be ruled out.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

Panels have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding. [WIPO Overview 3.0](#), section 3.3. Having reviewed the available record, the Panel notes the distinctiveness or reputation of the Complainant's trademark, and the composition of the disputed domain name, and finds that in the circumstances of this case the passive holding of the disputed domain name does not prevent a finding of bad faith under the Policy.

The Panel finds that the Complainant has established the third element 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 <khadiherbs.com> be transferred to the Complainant.

/Meera Chature Sankhari/

Meera Chature Sankhari

Sole Panelist

Date: July 7, 2024