

ADMINISTRATIVE PANEL DECISION

Cadbury UK Limited v. Amit Akash
Case No. D2024-2537

1. The Parties

The Complainant is Cadbury UK Limited, United Kingdom, represented by Lall & Sethi Advocates, India.

The Respondent is Amit Akash, India.

2. The Domain Name and Registrar

The disputed domain name <tayarijeetki.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 June 21, 2024. On June 21, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 21, 2024, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that 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 June 26, 2024. In accordance with the Rules, paragraph 5, the due date for Response was July 16, 2024. The Respondent sent email communications to the Center on July 3, and 4, 2024. The Center advised the Parties concerning settlement procedures, but the Complainant declined to pursue this alternative.

The Center appointed W. Scott Blackmer as the sole panelist in this matter on July 22, 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 limited company established under English law and headquartered in the United Kingdom. The Complainant was founded in 1824 and is now part of the Mondelēz International group of companies (formerly Kraft Foods). The Complainant is a world leader in confectionary products, including chocolates, biscuits, and cocoa-based beverages. These include a malt and dairy beverage marketed since 1920 as a health drink under the brand name BOURNVITA. The Complainant launched a marketing campaign online and in print and other media for BOURNVITA in India beginning in 2011 with the trademarked tagline “tayyari jeet ki” (which, transliterated from Hindi script, may be translated as “preparation for victory or success”). The multimedia campaign was revived in 2013, 2021, and 2022, while the Complainant maintains a website using the tagline at “www.tayyarijeetki.in”..

The Complainant holds the following Indian Trademark registrations:

Mark	Registration Number	Registration Date	Class
TAYYARI JEET KI (word)	2185106	August 3, 2011	IC 30: Coffee, tea, cocoa, chocolate, etc.
TAYYARI JEET KI (word)	2185107	August 3, 2011	IC 32: Beverages and preparations for making beverages

The Registrar reports that the disputed domain name was created on November 12, 2019, and was registered under a privacy service. The Registrar subsequently identified the underlying registrant as the named Respondent, an individual listing no organization and showing a postal address in India with a Gmail contact email address.

The Complainant discovered in early 2022 that the disputed domain name was being used for a website (the “Respondent’s former website”) headed “Tayari Jeet ki” with an image of a graduate’s mortarboard and diploma. The website contained information, largely in English, about examination preparation and results for Indian polytechnical colleges. Screenshots of this website are available from the Internet Archive’s Wayback Machine. From the pages furnished with the Complaint and archived on the Wayback Machine, it appears that the Respondent’s former website allowed visitors to download PDF files of former sample exams, notes, and outlines and post comments but did not solicit personal information or payments, and it did not present commercial advertising. The “About Us” text did not identify the website operator formally but said that “Tayari Jeet Ki helps to provide study material for Up polytechnic students so they can download PDF of previous year question, semester wise notes in Pdf and lots [sic].”

Extracts from the Respondent’s former website were included in a cease-and-desist letter dated April 13, 2022, which the Complainant’s counsel addressed to the website operator using the contact email listed on the Respondent’s former website, as well as using the messaging feature of the website and the Respondent’s social media accounts. Using the contact information later furnished by the Registrar, the Complainant ultimately reached two individuals associated with the website in July 2023 who apologized for “the trademark violation committed by our company” and stated that they were taking steps to avoid future violations. The disputed domain name was subsequently redirected to an undeveloped website at “www.neoapk.com”. By May 2024, as at the time of this Decision, the disputed domain name was not associated with an active website and produced only an error message.

5. Parties’ Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant contends that the disputed domain name is identical to its registered and well-known trademark, which the Respondent lacks permission to use. The Complainant asserts that the Respondent has not been commonly known by a corresponding name and must have been aware of the Complainant's trademarked and heavily advertised campaign slogan, which had been in use for several years by the time the Respondent registered the disputed domain name. Thus, the Complainant infers "opportunistic bad-faith", an intent to mislead Internet users and profit from the "commercial attractiveness" of the Complainant's mark. The Complainant cites prior UDRP decisions involving very well-known marks such as AMAZON, VICTORIA'S SECRET, and VEUVÉ CLICQUOT, where the panels concluded that the fame of the mark warranted a conclusion of actual notice and an intent to exploit the trademark.

B. Respondent

The Respondent did not reply formally to the Complainant's contentions. The Respondent sent emails to the Center saying that he used the disputed domain name for "blogging" for "educational content" and was "open to exploring settlement options" but required compensation in the amount of USD 6,000.

6. Discussion and Findings

Paragraph 4(a) of the Policy provides that a complainant must demonstrate each of the following:

- (i) the domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights;
- (ii) and the respondent has no rights or legitimate interests in respect of the domain name;
- (iii) and the domain name has been registered and is being used in bad faith.

Under paragraph 15(a) of the Rules, "[a] Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable".

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 (the registered word mark TAYYARI JEET KI) 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, despite a slight difference in spelling (one "y" instead of two in the disputed domain name, and the absence of spaces, which cannot appear in URL addresses in the domain name system). Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7. See [WIPO Overview 3.0](#), section 1.9 (misspellings) and 1.14 (translations and transliterations).

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. The Respondent appears not to be known by a corresponding name, and there is no evidence on this record that a legal entity was formed with such a name. The individuals associated with the Respondent’s former website who replied to the Complainant’s cease-and-desist letter in 2023 apologized for “violating” the Complainant’s trademark and undertook not to repeat such violations, which strongly suggests a lack of rights or legitimate interests. The Panel notes that the disputed domain name consists of a Hindi phrase referring to preparation for success, and the Respondent’s former website had content relevant to that phrase, concerning preparation for school exams. As such, the Respondent conceivably might have claimed a legitimate, noncommercial, fair use interest in the disputed domain name for its dictionary sense under the Policy, paragraph 4(c)(iii), but the Respondent was no longer using the disputed domain name for such a purpose at the relevant time, when the UDRP proceeding commenced – nor at present. See [WIPO Overview 3.0](#), section 2.11. Moreover, such a claim would be undermined if it were determined that the disputed domain name was selected at least in part for its trademark value. That possibility is considered further below in the next section, on bad faith. In any event, the Respondent has not advanced claims of rights or legitimate interests and appears rather to have conceded a lack of them in response to the Complainant’s 2023 cease-and-desist letter.

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

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 Complainant argues that the Respondent must have been aware of its TAYYARI JEET KI slogan and trademark, identical to the disputed domain name save for a missing “y”, which had been in circulation for years before the Respondent registered the disputed domain name. The Complainant refers to the “commercial attractiveness” of its trademarked tagline, presumably invoking the example of the Policy, paragraph 4(b)(iv), which speaks of bad faith in intentionally attempting to attract Internet users for commercial gain by creating a likelihood of confusion with the Complainant’s mark.

This does not accord well with the present circumstances, however, where the Respondent’s former website does not appear at all commercial, although conceivably it enhanced the professional reputation and contacts of the site organizers in some manner. More generally, the Complainant cites decisions where bad faith is presumed because of the fame of the mark at issue (AMAZON, VICTORIA’S SECRET, VEUVE CLICQUOT) and its unique association with the trademark holder. This inference is less persuasive here, where the mark is a tagline consisting of a phrase (“preparation for success”) that would readily apply to the exam preparation content on the Respondent’s former website as well as to the energizing effects of a malt beverage. On the available record, it does not appear that the Complainant’s tagline is nearly as famous or as uniquely associated with a trademark holder as the trademarks in the cited precedents, and it is not self-evident that the Respondent “must have” targeted the Complainant’s tagline when the Respondent registered the disputed domain name in 2019.

To the contrary, the record shows that the Complainant registered its mark in 2011 and ran marketing campaigns in 2011 and 2013 and not again until 2021, after the disputed domain name was registered, in 2019. The Panel notes that the Complainant did not register a corresponding domain name until November 2021, more than two years after the disputed domain name was registered. On these facts, the Panel cannot find that the Respondent, more likely than not, selected the disputed domain name to exploit the fame of the Complainant's beverage slogan rather than for its plain meaning, which would be appropriate for the sense of preparing for college examinations.

The evidence in the case file as presented does not indicate that the Respondent's aim in registering the disputed domain name was to profit from or exploit the Complainant's trademark. Accordingly, the Panel finds the third element of the Policy has not been established.

7. Decision

For the foregoing reasons, the Complaint is denied.

/W. Scott Blackmer/

W. Scott Blackmer

Sole Panelist

Date: August 5, 2024