



सत्यमेव जयते

INDIA NON JUDICIAL Chandigarh Administration

e-Stamp

Certificate No. : IN-CH40782880481378V
 Certificate Issued Date : 24-Feb-2023 02:54 PM
 Certificate Issued By : chamikumi
 Account Reference : IMPACC (GV)/ chimpssp07/ E-SMP KIOSK SEC-43/ CH-CH
 Unique Doc. Reference : SUBIN-CHCHIMPSP0780405170057659V
 Purchased by : RAJESH KUMAR
 Description of Document : Article 12 Award
 Property Description : Not Applicable
 Consideration Price (Rs.) : 0
 (Zero)
 First Party : SAJAL KOSER
 Second Party : Not Applicable
 Stamp Duty Paid By : SAJAL KOSER
 Stamp Duty Amount(Rs.) : 100
 (One Hundred only)



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ARBITRATION AWARD

BEFORE SH. SAJAL KOSER, SOLE ARBITRATOR, CHANDIGARH

INDRP CASE NO. 1641 OF 2021

DISPUTED DOMAIN NAME: < .KHADDI.CO.IN >



JD 0006873235¹



Statutory Alert

1. The authenticity of this Stamp Certificate should be verified at www.shoestamp.com or using e-Stamp Mobile App of Stock Holding
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 2. The onus of checking the legitimacy is on the users of the certificate.
 3. In case of any discrepancy please inform the Competent Authority.

Khadi & Village Industries Commission, Gramodaya, 3, Irla Road, Vile Parle (West), Mumbai, Maharashtra, India - 400056.

...Complainant

Versus

SRK Group (Banarasi Weavers Shop), B 21/223, CK1, Ashfaq Nagar, Kamachha, Varanasi (UP) - 221010.

...Respondent

1. INTRODUCTION:

The present Complainant has been submitted by Khadi & Village Industries Commission, Complainant through its authorized representative for arbitration in accordance with INDRP Policy and Rules of Procedure, which is been entrusted to the undersigned.

2. THE PARTIES:

I) Complainant

The Complainant, in the present case is Khadi & Village Industries Commission, a statutory body established by an Act of Parliament, Khadi and Village Industries Commission Act of 1956. Its head office is located at Gramodaya, 3, Irla Road, Vile Parle (West), Mumbai, Maharashtra, India Pin 400056. Further contact details of the Complainant are given in the relevant para of the complaint.

II) Respondent

According to the Complainant, as evident from the domain name information annexed with the Complaint, the Respondent is SRK Group (Banarasi Weavers Shop) having address at B 21/223, CK1, Ashfaq Nagar, Kamachha, Varanasi 221010, Uttar Pradesh. Contact:

+91 7376864638, 9335989624, 7499363080, 8127195782, email:
khaddisilk@gmail.com and srkgroup01@gmail.com

III) **The Domain Name**

This dispute concerns the domain name identified below (as mentioned earlier):

< KHADDI.CO.IN >

IV) **The Registrar with whom the domain name is registered is:**

The Registry is the National Internet Exchange of India (henceforth referred to as NIXI). The sponsoring Registrar with whom the domain name is registered is indicated as:

Dreamscape Networks International Pte Ltd,
3 Irving Road, #568,
Collins St,
Singapore 369522

Email: abuse@dream@dreamscapenetworks.com

V) **Trademark/Service Mark Information**

The Complaint is based on the adoption and use of the registered Well known trademark KHADI of the Complainant and its use in connection with its domain names.

3. **PROCEDURAL HISTORY:**

- I) Vide email dated 10.12.2022, the undersigned was appointed as an Arbitrator to adjudicate the above mentioned dispute. Vide email of the same date sent to all the concerned parties, the undersigned submitted statement of Acceptance and declaration of impartiality and independence.

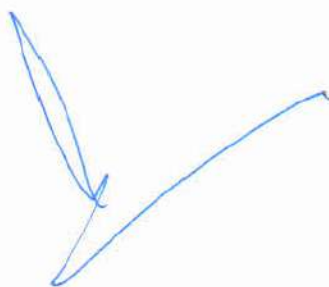


- II) As the undersigned received the complaint and all the documents as annexed with the complaint and being satisfied that the Respondent has also received the same, Notice to the Respondent was issued on 18.12.2022 requiring the respondent to file reply within 15 days as provided in INDRP Rules of Procedure.
- III) As within the stipulated period and thereafter also till 05.01.2023, since, the Respondent neither filed reply nor submitted any response to the complaint/notice, vide order dated 05.01.2023, the opportunity given to the Respondent to file reply/response to the Complaint was closed by order and the Complaint was fixed for passing award, ex-parte.

4. Submissions made by the Complainant with regard to its Trademark Rights, its exclusive use and ownership of the Trademark, "KHADI":

As per the Complainant, it is a statutory body formed in April 1957 by the Government of India, under the Act of Parliament, Khadi and Village Industries Commission Act of 1956. Relevant extracts of the Act are Annexed with the complaint as Annexure A. The complainant in the Complaint has made following submissions to define and describe its aims and objects:-

- I) The Complainant is the apex organization established under the Ministry of Micro, Small and Medium Enterprises (MSME). Its objective is three fold:
 - i) The social objective of providing employment in rural areas;
 - ii) The economic objective of producing saleable articles, and
 - iii) The wider objective of creating self-reliance amongst people and building up a strong rural community spirit.



- II) The Complainant, in April 1957, took over the work of former All India Khadi and Village Industries Board. The Complainant plays an important role in Indian economy as it generates employment in about 2.48 lakh villages throughout the country. Over the years, the Complainant has provided employment to rural people including those belonging to scheduled castes and scheduled tribes and rural women in India. Its head office is in Mumbai, and its six zonal offices are in Delhi, Bhopal, Bangalore, Kolkata, Mumbai and Guwahati. Other than its zonal offices, it has offices in 28 states for the implementation of its various programmes.
- III) Ever since its formation in the year 1957, the Complainant has been carrying on work related to implementation of programs for the development of Khadi and other Village Industries (KVI) in the rural areas in coordination with the other agencies. The programs offered by the Complainant are to promote products under KHADI. The complainant also implements Rural Employment Generation Programme for upliftment and improvement of artisans, weavers and other members of small-scale village and rural industries. In support of above, Complainant has attached a brief note on the KVI programmes by Shri Nitin Gadkari, Union Minister of Micro Small and Medium Enterprise dated 19th March 2020 as Annexure B.
- IV) The Complainant plans, promotes, organizes and implements programs for the development of Khadi and other village industries in rural areas nationwide. It also helps in building up reserve of raw materials of supply to producers. It focuses on the creation of common service facilities for processing of raw materials, such as semi-finished goods. In its effort to meet the core objectives the complainant has introduced several interest subsidies schemes for artisans, weavers and other members of small-scale village and rural

industries. A consolidated list of schemes offered by the Complainant is also annexed as Annexure C.

5. FURTHER SUBMISSIONS OF THE COMPLAINANT WITH REGARD TO ITS TRADEMARK RIGHTS AND USE

The complainant has also made following submissions with regard to its trademarks rights and basis of the present complaint:-

- I) That the Complainant is based on the trademark KHADI and its variations registered in favour of the Complainant and, used in connection with goods sold and services offered by the Complainant and its authorized members. The Complainant is the registered proprietor of the word mark **KHADI**, device mark Khadi India with the logo/design as mentioned in the Complaint (hereinafter the KHADI trademarks). The Complainant is also the registered proprietor of the marks of Charkha as mentioned in para 6 page 6 of Complaint (hereinafter the Charkha Device marks). Further, the Complainant owns numerous registrations for the aforesaid **KHADI** trademarks and Charkha device marks, in several classes. In support of above, Complainant has enclosed a consolidated list of the registered **KHADI** trademarks in the most relevant classes as Annexure D. According to the complainant, all of the registrations mentioned therein are currently valid and subsisting.
- II) That the Complaint's KHADI trademarks are also registered in various other jurisdictions/ regions including but not limited to Australia, China, Germany, United Kingdom, Russia and the European Union. According to the Complainant, the copies of the registration certificates are enclosed as Annexure E, however, a perusal of Annexure E reveals that the same are the computerized

abstract qua the list of Applications filed by the Complainant under International Trademark/Australian Trademark and contains the registration numbers of applications but Annexure E does not contain registration certificates. In the absence of any rebuttal to the same, these details are accepted for the purpose of present complaint.

- III) That the Complainant adopted the trademark KHADI (which forms a part of its trade name, corporate name and trading style) on 25th September 1956 the same has been in use continuously till date. By virtue of their adoption more than sixty years ago, and extensive use thereof, the trademark KHADI trademarks have become exclusively and globally associated with the complainant in the eyes of consumers. Therefore, use of these marks by any third party will lead to confusion and deception among the Complainant's patrons, members of trade, consumers and general public.
- IV) That the Complainant is engaged in the promotion and development of the KHADI trademarks & brand and the products under the KHADI trademarks through the institutions certified by the Complainant.
- V) That the Complainant authorizes various retail sellers, organizations, societies and institutions to sell products under the KHADI trademarks. In order to be listed as an authorized use of the KHADI trademarks for purpose of sales and promotions of KHADI certified products and services, each organization has to apply for recognition by the KHADI Institutions Registration & Certification sewa (KIRCS). A screenshot of the KIRCS page from the Complainant's website is enclosed as Annexure F with the Complaint.
- VI) That there are about 7 outlets directly owned by the Complainant out of 8050 sales outlets spread across the country all selling authorized/licensed products under the KHADI trademarks. The

KHADI trademarks are prominently featured on boards and hoardings of each store that is authorized to sell products under the KHADI trademarks. Images of these stores are enclosed as Annexure G with the complaint.

- VII) That the Complainant's KHADI trademarks are prominently featured on all of these products. Images of some sample products of the Complainant, all bearing the KHADI trademarks are enclosed as Annexure H with the complaint.
- VIII) That the Complainant's products bearing the KHADI trademarks are sold and showcased through exhibitions in various parts of the world. The Complainant has participated in several exhibitions and fairs to promote products and services under the trademark KHADI and to encourage artisans, spinners and weavers of India. A couple of images from exhibitions, fairs and other expos where the Complainant's KHADI trademarks have been prominently displayed and promoted are annexed as Annexure I by the Complainant.
- IX) That the Complainant has been actively involved in the community in its efforts to further promote its products and services under the trademark KHADI including sponsoring and organization of various events, completion and shows. Images of some social events where the KHADI trademarks and Charkha device marks are clearly visible are enclosed as Annexure J.
- X) That for the purposes of promotion of the KHADI trademarks, the Complainant collaborated with the 14th edition of the Lakme Fashion Week, in which collections were made by four designer labels under the trademark KHADI and the same were exhibited during a designated Sustainable Fashion Day at Lakme Fashion Week on 23rd

August 2018. In 2019, the Complainant collaborated with designers Gaurav Khanijo, Anuj Bhutani and Pallavi Dhyani to represent clothes under the Khadi trademark in the said Fashion week. Thereafter recently in March 2022, the Complainant showcased its collection at FDCI x Lakme Fashion Week wherein renowned Bollywood actress Kangana Ranaut walked the ramp as the showstopper for the Complainant. Further, the Complainant has also partnered with brands such as Raymond and Titan to promote the products under the trademark KHADI in the Indian and global markets. Screenshots of third Party articles on the above are enclosed as Annexure K.

- XI) That the Complainant's products under the KHADI trademarks have been widely promoted through print and electronic media. This includes television programs, advertisements, articles, write-ups appearing in leading newspapers, magazines, journals, shopping festivals, exhibitions. Some articles published in various magazines and journals and images from exhibition are enclosed as Annexure L.
- XII) That the Complainant operates several social media platforms, such as Facebook, Twitter, Youtube, etc all of which enjoy a wide followership. Screenshots from the Complainant's social media accounts are enclosed as Annexure M.
- XIII) That the Complainant also operates a mobile application under the name KHADI India. This application helps customers, patrons and members of trade in locating the nearest Khadi India Store. Screenshots of the app, as available on the Google Play Store and the iOS App store are enclosed as Annexure N.

According to the Complainant, years of continuous efforts, time, capital, painstaking efforts and resources have been invested pursuant to which the KHADI trademarks and the Charkha device

marks have attained immeasurable goodwill and reputation so much so that the KHADI trademarks and the Charkha device marks have attained paramount position and are identified exclusively with the Complainant.

Complainant has further submitted that in a recent order dated 26th July 2022, the Hon'ble Delhi High Court in the case of Khadi and Village Industries Commission Vs Khadi Design Council of India and Others, CS (COMM) 244/2021, has declared the trademark KHADI and the Charkha device marks as well known trademarks. Further, the Registrar of trademarks has also notified the Complainant's trademark KHADI as the well known trademark bearing notification dated 15th August 2022. Copies of the order alongwith the aforesaid notification are enclosed as Annexure O to this affidavit. However, a perusal of the order dated 26.07.2022 passed by the Hon'ble High court on an application for contempt filed by the Complainant, the Hon'ble High Court has taken a prima-facie view alongwith the balance of convenience while passing ex-parte ad-interim injunction dated 28.05.2022 and this is not an order passing declaration to the effect as stated by the Complainant above. However, for the present dispute, the said order supports the case of the Complainant.

The Complainant has also submitted that by virtue of such continuous and exclusive use since 25th September 1956 as well as the promotion of the KHADI trademarks by the complainant, general public and members of trade now recognized and associate the goods and services under the KHADI trademarks with the Complainant and none other.

6. The Complainant has made following submissions regarding arisen of cause of action against the Respondent:-

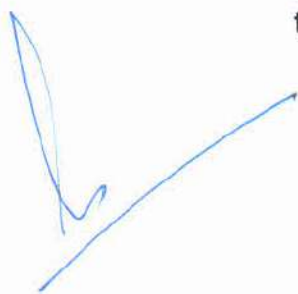
- I) That the Complainant came across the Respondent's domain name <KHADDI.CO.IN> (hereinafter referred as 'disputed domain') which

subsumes the Complainant's trademark KHADI and therefore amounts to trademark infringement and passing off.

- II) That the disputed domain was registered on 14th November 2019 which is subsequent to the Complainant's adoption and/or registration of KHADI trademarks. A print out from the WhoIS records for the disputed domain name are enclosed as Annexure P.
- III) That the acts of infringement and bad faith of the Respondent can be established from the following:
 - i) The disputed domain wholly incorporates the Complainant's well known trademark KHADI, with an international misspelling;
 - ii) The disputed domain is being used for commercial gains by the Respondent in respect of identical goods as that of the Complainant;
 - iii) The overall impression as construed by the general public upon assessing the disputed domain will be, that it is:
 - a) Sponsored by the Complainant;
 - b) An authorized/certified use of the Complainant's KHADI trademarks OR
 - c) Affiliated with the Complainant.

7. In view of above factual and legal submissions and averments, the Complainant has filed the present complaint and taken following grounds to establish and prove its case as provided in the relevant clauses of INDRP Dispute Resolution Policy:

- I. That the Respondent's domain name is identical and/or confusingly similar to a name, trademark/trade name in which the Complainant has rights:-**



- i) Complainant submits that the disputed domain name <KHADDI.CO.IN> wholly incorporates the Complainant's well known trademark KHADI with a mere addition of letter "d" which does not compensate for the overwhelming identity of the disputed domain name with the Complainant's trademark in any manner. The Respondent has adopted and acquired the well known trademark KHADI of the Complainant in its entirety and has made a common, obvious, or intentional misspelling of the Complainant's trademark KHADI which itself strikes towards the malafide intention of the Complainant.
- ii) Further, according to the Complainant, the disputed domain name is clearly a case of misspelling and typo squatting, and meets the threshold established in the below matters:-
 - a) The Complainant in its submissions places its reliance upon the WIPO Administrative Panel decision Center Point Energy, Inc. v. Contact Privacy Inc. Customer 0155489582/Accounts receivable, Case No. D2019-2638, the Panel held that the disputed domain name closely resembles and incorporates the entirety of the Complainant's trademark, but for a misspelling creating a word that does not exist in the English Language. As such the disputed domain name is confusingly similar to the Complainant's trademarks, notwithstanding the, apparently deliberate, misspelling. The Complainant further submits that the present disputed domain name closely resembles the Complainant's registered trademark and is merely a misspelling/slightly tweaked version of the said trademark KHADI.
 - b) That in the matter of AB Kvallstidningen Expressen v. Privacy Contact, UnoEuroWebhosting, Case No. D2018-1049, the Panel held that the test for confusing similarity

involves the comparison between the trademark and the Domain Name. In this case, the Domain Name is confusingly similar to the Complainant's trademark. The change of the letter "e" to "a" in the middle of the word represents a misspelling that does not provide sufficient distinction from the Complainant's mark.

Similarly, in the present instance, the Respondent has merely added the letter 'd' in the disputed domain name Such, additional "d" to the Complainant's registered trademark KHADI does not serve to distinguish the disputed domain name with the Complainant's trademark.

- c) That the Complainant in its submissions further places its reliance upon the WIPO Administrative Panel decision in CareerBuilder, LLC Vs Azra Khan, WIPO Case No. 2003-0493, wherein the Panel held that the domain name <careeerbuilder.com> is identical and confusingly similar to the Complainant's name and trade/service mark 'CareerBuilder'. The Panel further observed that the addition of an extra 'e' does not affect in any material way either the appearance or the sound of the name.
- d) That the Administrative Panel of WIPO Arbitration and Mediation Center has already decided a similar case of mis-spelling in favour of the Complainant. The Panel in the case of Khadi & Village Industries Commission Vs Bmo Software Case No. D2021-2556, held that the domain <khadhiyas.com> is mis-spelling of Complainant's trademark while deciding the first issue in favour of the Complainant.
- e) That without prejudice, the Complainant has further submitted that regardless of the reason of the inclusion

of the Complainant's trademark in the disputed domain name, due to the fame of the distinctive and reputation of the KHADI trademarks, the first impression in the minds of the consumers shall be that the Respondent's domain name originates from, is associated with, or is sponsored by the Complainant. Moreover, people assessing the disputed domain name, in view of the content, are likely to think that the disputed domain name is owned by the Complainant or is in some way connected with it.

f) Additionally, it is submitted that the disputed domain name was being used to sell sarees and dresses for women on its website by the Respondent. The Respondent, apart from using the word "Khaddi" in its domain name, was also using the same word "Khaddi" at several places on its earlier version of the website hosted on its domain name. Furthermore, the Respondent was using the logo on its earlier version of the website. The said logo comprises of a charkha like element which is confusingly similar to the registered and well known charkha device marks of the Complainant. A screenshot from the earlier version of the Respondent's website taken on 29th June 2022 demonstrating the above is enclosed as Annexure Q.

iii) The Complainant has further submitted that prior to filing of the present Complaint, the Complainant had sent a cease and desist letter to the Respondent in order to amicably resolve the dispute and transfer the domain to the Complainant but despite several follow ups, the Respondent failed to reply to the letter. Copy of the letter along with follow up email are annexed as Annexure R with the Complaint. However, according to the Complainant recently all the content from website hosted on

the disputed domain name has been temporarily removed, while the disputed domain name continues to remain under the control of Respondent. Extracts from the Respondent's current website in support of the above is enclosed as Annexure S.

The Complainant has further submitted that at present the website hosted on the disputed domain name is currently parked and no content is available. The Respondent, however, continues to operate its social media pages on Facebook, Instagram, Twitter, YouTube and Pinterest. The said social media pages of the Respondent clearly mentions the disputed domain name and also uses the word 'KHADI' & Logo and are being used to sell, promote and advertise clothing articles. Extracts from the Respondent's social media pages are enclosed as Annexure T.

- iv) That the Complainant's use of word "Khaddi" and deceptively similar Charkha device marks would have led the website visitors to believe that the website and the products sold on the said website belongs to the Complainant, which is in fact incorrect. Such usage of the word "Khaddi", which is nearly identical to registered and well known trademark KHADI of the Complainant, even on the content hosted on the domain name further gives an inference that the disputed domain name belongs to the Complainant.
- v) That further, the addition of the top-level domain .in does not help in distinguishing the disputed domain name from the Complainant's trademark. The Complainant in support of the above submissions relies upon the decision of National Internet Exchange of India in the case of Khadi & Village Industries Commission Vs AK Marketing, INDRP Case No. 1563, wherein it was observed that "in order to assess confusing similarity, it



is permissible for the Panel to ignore the country code Top Level Domain ("ccTLD") ".co.in".

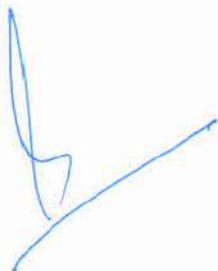
- vi) That the Panel in Lockheed Martin Corporation Vs Aslam Nadia (INDRP Case No. 947) also held that the addition of the top level domain .in will not distinguish the Respondent's disputed domain name.
- vii) That the complainant has established use of the trademark KHADI and is also the registered proprietor of the same. The Complainant has been using the said marks for over 60 years which is well prior to 14th November 2019, which is the registration date of the disputed domain. It is submitted that the Complainant has established rights in its KHADI trademark dating back to 25th September 1956. In view of the above, the issue ought to be decided in affirmation.

From above, averments and legal pronouncements, the Complainant has tried to prove and establish the requirement of clause 4 (a) of INDRP.

II. The Respondent has no rights or legitimate interests in respect of the domain name:-

In support of above ground, the Complainant has made following submissions:

- i) That the Respondent has no rights or legitimate interest in the disputed domain name, rather the sole purpose of the registration is to misappropriate the reputation associated with the Complainant's famous KHADI trademarks. The Complainant has not authorized the Respondent to use its trademark/trade name/trading style. The Respondent has no rights or legitimate interests in the word(s) KHADI or KHADDI.



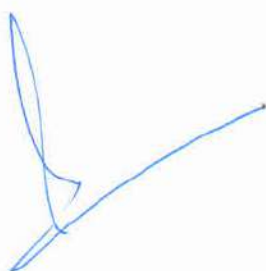
- ii) That KHADI are not only registered but are well known trademarks as well which were adopted by the Complainant several years prior to that of the Respondent. The KHADI trademarks belong to the source and origin of the Complainant and its products, or those of any authorized licencees or franchisees. The Respondent is not a licensee or franchisee of the Complainant and has adopted the nearly identical trademark with a view to ride upon the goodwill associated with the Complainant's well known KHADI trademarks.
- iii) That it is further submitted that the Respondent's failure to respond to the cease and desist letter (Annexure R) to comply with the demands of the Complainant, clearly signifies that the Respondent has no rights or legitimate interest in the disputed domain name and shows mala fide intentions of the Complainant.
- iv) That the Complainant places its reliance on the WIPO Administrative Panel Decision in the case of Set Active LLC Vs Zaid Hanif, Case No. D2022-2545, wherein the Panel took into consideration the infringing the content hosted on the social media pages of the Respondent to reach to the conclusion that the Respondent has no legitimate interest in the domain name and the same is registered in bad faith.
- v) The Complainant has also placed its reliance on WIPO Administrative Panel Decision in the case of Autodesk, Inc. Vs Oring Ltd, Case No. D2020-1610, wherein the Panel while deciding the third element observed that "Irrespective of whether the Respondent removed the infringing content from the affiliated website, for a period it contained or consisted entirely of material in which the Complainant had exclusive intellectual property rights." And held that the disputed domain name was registered in bad faith.

- vi) The Complainant also refers to another case of Accor Vs Lee Dong Youn, Case No. D2008-0705, the WIPO Panel held that the content was later removed, but it clearly shows that the Respondent was aware of the Complainant and its trademark and business. Further the Respondent's so comply with the Complainant's demand and held that the Respondent has acted in bad faith.
- vii) The Complainant in its submission further relies on The Great Eastern life Assurance Company Limited Vs Unasi Inc. Case No. D2005-1218 wherein the Panel held that the Respondent's failure to counter the allegations of the cease and desist letter amounts to adoptive admissions of the allegations. In light of the same, it is reiterated that, the Complainant wished to amicably resolve this issue and reached out to the Respondent by way of a legal notice. The fact that the Respondent failed to reply or comply with the terms of the said letter, further goes on to establish the mala fide intentions of the Respondent.
- viii) The Complainant has further submitted that the pay per click (PPC) advertisements currently appearing on the Respondent's domain name shows the malafide intentions of the Respondent's to monetize the disputed domain name and derive profits from passing off as the Complainant by taking unfair advantage of the Complainant's colossal fame and reputation. The Complainant in this regard relies upon Khadi & Village Industries Commission Vs Himanshu Kumar Goel, Medisu Health Solutions Case No. D2020-2162, Khadi & Village Industries Commission Vs Michael F Mann, Domain May Be for Sale, Check Afternic.com Domain Admin, Domain registries Foundation, WIPO Case No. D2018-1987, where it was observed that pay per click advertisements constitutes bad faith use because the Respondent is attracting Internet users



to its website by causing confusion as to whether its website is, or is associated with the Complainant or its services.

- ix) Furthermore according to the Complainant, the Panel in Khadi & Village Industries Commission Vs Lakshmi Saha, Case No. D2021-4031, while deciding the third element in the complaint filed against the domain name <khadiclothes.com> has recently observed that "use for competing pay per click links indicates bad faith being disruptive of the Complainant's business and diverting customers for commercial gain and also indicates actual knowledge of the Complainant and its business. "The Panel finally held that the Complainant has made out the case and as such has satisfied the three elements. Consequently, the Panel ordered the domain name to be transferred to the Complainant.
- x) Complainant further submits that under paragraph 7 (it is in fact it is clause/para 6 of the INDRP and not para 7 erroneously mentioned by the Complainant) of the IN Domain Dispute Resolution Policy (INDRP), any of the following circumstances, if found by the Panel, may demonstrate a Respondent's rights or legitimate interests in a disputed domain name:
 - a) Before any notice to the Respondent of the dispute, the Respondent's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bonafide offering of goods or services;
 - b) The Respondent has been commonly known by the domain name, even if it has acquired no trademark or service mark rights;
 - c) The Respondent is making a legitimate non commercial or fair use of the domain name, without intent for



commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

- xi) The Complainant submits that in the present case, the Respondent was hosting a website on the domain. As explained in preceding paragraphs, the content which was hosted on the website which includes use of the word "Khaddi" multiple times, confusingly similar Charkha logo and offering of identical goods cannot be, in any circumstances, considered to be a bonafide offering of goods or services. The Respondent was using the domain name in bad faith and with an ulterior motive to ride upon the established goodwill and reputation of the Complainant and to earn illegal profits. The use of the domain name by the Respondent amounts to infringement of the Complainant's rights in its trademarks.
- xii) In support of above submissions, the Complainant has relied upon the decision of the WIPO Arbitration and Mediation Center in Al Jazeera Media Network Vs Aljazeera Eyes, Case No. D2017-1626 wherein the Panel while deciding the second element in Complainant's favour held that "it can be concluded from the content of the site that the Respondent was aware of the significance of the trade mark AL JAZEERA in the news world at the time of registration as the site attached to the Domain Name used a logo very similar to the official logo used by the Complainant and also registered by the Complainant as a trade mark. The usage was highly confusing in the opinion of the Panel and not fair. As such it cannot amount to the bonafide offering of goods and services."
- xiii) The Complainant further relies upon the WIPO Panel's decision of Guccio Gucci S.P.A. Vs Edardy Ou, Case No. D2011-1028, wherein the Panel observed that "use of a trade mark to sell what appears to be counterfeit goods using the

Complainant's Gucci brand and other well known brands is clearly not a bonafide use in relation to goods or fair use and is not noncommercial."

- xiv) It is categorical case of the complainant that it has not authorized, licensed, or permitted the Respondent to register or use the Domain Name or to use its trademarks. The Complainant has prior rights in the trade mark Khadi and Charkha device mark which precedes the registration of the disputed domain name by the Respondent.
- xv) The Complainant has therefore established a prima facie case that the Respondent have no rights and legitimate interests in the disputed domain name and thereby the burden of proof shifts to the Respondent to produce evidence demonstrating rights or legitimate interests in respect of the domain name.

III. In order to establish the case under clause 4(c) of the INDRP i.e. the disputed domain name has been registered in bad faith, the Complainant has made the following submissions:-

- i) That the disputed domain name completely incorporates the Complainant's trademarks/trade name/trading style KHADI. Additionally, the contents which were previously being hosted on the website of the domain were also infringing and liable to cause confusion.
- ii) That the adoption of the trademark KHADI of the Complainant in the disputed domain name with a deliberate mis-spelling, and further hosting of infringing content including use of deceptively similar Chakha logo and offering of identical goods for sale itself demonstrates that the disputed domain name is registered in bad faith. Additionally, the use of deceptively similar trademarks on its social media pages further manifests the malafide intention of the Respondent.

- iii) That the Complainant again relies upon the decision of the WIPO Arbitration and Mediation Center in Al Jazeera Media Network Vs Aljazeera Eyes, Case No. D2017-1626 and submits that the facts of the aforesaid decision are squarely applicable to the facts of the present case wherein the Respondent alongwith using the Complainant's trademark in its domain name, was also using a confusingly similar logo on its website to create confusion. IN view of the same, it is submitted that the present case also be decided in favour of the Complainant.
- iv) Complainant further submits that in light of the goodwill, reputation and well known nature of the Complainant's KHADI trademarks and the Charkha device marks, the Respondent ought to have been aware of the same since a simple trademark search at the time of the registration of the disputed domain name would have revealed the Complainant's trademark rights. Also, a simple search on the internet would have revealed complainant's presence the trademarks. Hence, the Respondent could not reasonably have been unaware of the fame of the KHADI trade marks at the time of registration of the impugned domain name.
- v) That the evidence and law placed on record by the Complainant overwhelmingly supports the conclusion that the Respondent registered the disputed domain name in bad faith. The fame and unique qualities of the trademark KHADI, which was adopted and applied for by the Complainant well prior to the registration of the disputed domain name, make it extremely unlikely that Respondent created the disputed domain name independently without any knowledge of the Complainant's trademark. Even constructive knowledge of a

famous trademark like Khadi is sufficient to establish registration in bad faith.

- vi) Complainant again places reliance on case, Inter IKEA Systems B.V. Vs Roman Zubrickiy Case No. D2015-0046 in support of its submissions.

Complainant finally submits that given the Complainant's numerous trademark registrations for, and its wide reputation in, the KHADI trademarks as evidenced by the facts established above, it is not possible to conceive of a plausible circumstances in which the Respondent could legitimately use the disputed domain name. It is also not possible to conceive of a plausible situation in which the Respondent would have been unaware of this fact at the time of registration. In light of the above the fact that the Respondent does not have any rights or interests in the disputed domain name proves that the disputed domain name has been registered in bad faith.

- vii) Moreover, the holding of domain name and hosting of infringing content on the same by the Respondent is in bad faith in view of the circumstances mentioned below:

- a) The Complainant's trademark has a strong reputation and is widely known, as evidenced by its substantial use worldwide and in India;
- b) The Respondent has registered the domain name with an intention to procure commercial gain in an illegal manner;
- c) The Respondent has registered the domain name primarily for the purpose of disrupting the business of the Complainant;
- d) By using the domain name, the Respondent has intentionally attempted to attract, for commercial gain, internet users to its domain name or other online

location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of its domain name.

On the basis of above averments and legal submissions, the Complainant has submitted that it has established the requirement under clause 4(c).

8. **RELIEF SOUGHT**

On the basis of the averments made in the Complaint as well as documents annexed, the Complainant, in accordance with Paragraph 10 of the INDRP Policy, requested that the domain name < **KHADDI.CO.IN** > may kindly be transferred to the Complainant and for any other appropriate orders.

9. **FINDINGS:**

After going through unrebutted and uncontroverted averments and submissions made in the Complaint as well as the documents annexed and also quasi judicial pronouncement/legal pronouncement of the WIPO Administrative Panel Singapore and other authorities, the undersigned is of the view that the Complainant has been able to prove the ingredients of sub paras/sub clauses (a) to (c) of Clause 4 of the INDRP dispute Resolution Policy. From the contents and grounds mentioned in the complaint, it has been proved on record that the Disputed Domain Name is not only identical when pronounced in common parlance but so also is confusingly similar to the Trademark in which the complainant has rights. It has also been proved that the Respondent Registrant has no rights or legitimate interest in respect of the Domain name and also that the Domain name has been registered by the Respondent and is being used in bad faith. The Complainant has been able to prove its case in terms of clause 4 of the INDRP Dispute Resolution Policy and also falls within the ambit of Clause 7 of the said policy as and wherever applicable. Since, the Respondent has not chosen to contest the present case, therefore, this Tribunal has no other

alternative but to consider and accept the unrebutted contentions of the Complainant as made out in the Complaint. Further, though the Complainant has not annexed/placed on record copies of the orders relied upon by but the undersigned has gone through a couple of orders passed by WIPO Singapore and other Authorities and are found the same to be supporting the case of the Complainant.

10. **CONCLUSION:**

As evident from the findings above, since, the Complainant has proven its case as required under the INDRP Dispute Resolution Policy, therefore, the Complaint is allowed with cost and the following award is being passed in favour of the complainant and against the Respondent.

11. **AWARD:**

In view of above, it is awarded that the disputed domain name <KHADDI.CO.IN> is transferred to the complainant Khadi and Village Industries Commission. Accordingly, the registry is directed to transfer the said domain name in favour of the Complainant. It is further ordered that the Respondent is barred from using the mark <KHADDI.CO.IN> and therefore, shall immediately be ceased to use the said domain name in any manner whatsoever.

12. **COST:**

As due to abovementioned wrongful acts of the Respondent, the complainant has been unnecessarily forced to initiate the present arbitral proceedings, therefore, the cost of the proceedings are also awarded in favour of the Complainant.

(Sajal Koser)
Arbitrator
05.03.2023