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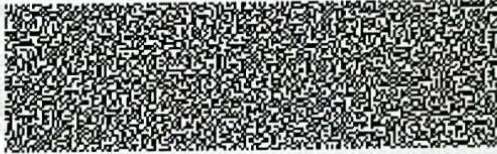
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ARBITRATION AWARD

.IN REGISTRY – NATIONAL INTERNET EXCHANGE OF INDIA [NIXI]

.IN Domain Name Dispute Resolution Policy

INDRP Rules of Procedure

Disputed Domain Name: <khadination.co.in>

INDRP Case No. 1424

Before the Sole Arbitrator: Mr. Maram Suresh Gupta

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ARBITRATION AWARD

.IN REGISTRY – NATIONAL INTERNET EXCHANGE OF INDIA [NIXI]

.IN Domain Name Dispute Resolution Policy

INDRP Rules of Procedure

Disputed Domain Name: <khadination.co.in>

INDRP Case No. 1424

Before the Sole Arbitrator: Mr. Maram Suresh Gupta

IN THE MATTER OF:

Khadi & Village Industries Commission (KVIC),

“Gramodaya”, 3, Irla Road, Vile Parle (West),

Mumbai – 400 056,

Maharashtra, India.

.....Complainant

Versus

FableSquare Business Services LLP,

P76, Sector 12, LIC Colony, 9th Main, JB Nagar,

Indiranagar, Bengaluru,

Karnataka, India.

.....Respondent

1. The Parties

a) The Complainant in the present arbitration proceedings is **Khadi & Village Industries**

Commission (KVIC) (hereinafter referred as ‘**Complainant**’), with its office at

“Gramodaya”, 3, Irla Road, Vile Parle (West), Mumbai – 400 056, Maharashtra, India.

The Complainant is represented by **Ms. Shwetasree Majumder** and **Ms. Shreya**

Ganguly of **Fidus Law Chambers**, having office at F-12, Ground Floor, Sector 8,

Noida-201301, Phone: 91-120-4847550 Fax: 91-120-4847551, Email:

shwetasree@fiduslawchambers.com and shreya@fiduslawchambers.com.

b) The Respondent in the present arbitration proceedings is **FableSquare Business Services LLP** (hereinafter referred as '**Respondent**') having postal address: P76, Sector 12, LIC Colony, 9th Main, JB Nagar, Indiranagar, Bengaluru, Karnataka, India. The Respondent international postal name is Mr. Mayur Bhat, having mobile number +91 9731 3666 99 and email id khadination01@gmail.com. The above contact details of the Respondent were not provided by the Complainant in its complaint dated 12th August 2021, but, later they provided the same in a copy of the complaint to the respondent dated 25th August 2021, pursuant to my directions. Nonetheless, these details are based on its search at WHOIS database, dated 6th August 2021. The complainant has furnished copies of the search results (redacted version) obtained from WHOIS database under **Annexure – O** of the complaint. Nonetheless, NIXI has provided me with WHOIS database results with complete information (unredacted version) along with the complaint via email attachments, dated 25th August 2021.

2. The Disputed Domain Name and The Registrar

- a) The following information about the disputed domain name and the registrar is as per the information furnished by the Complainant in its complaint and supporting annexures.
- b) The disputed domain name is <**khadination.co.in**> which was created on 8th May 2020 and it was set to expire on 8th May 2022. Based on information from WHOIS database, the registrant client ID is CR422901914 and registrant ROID is C2CA5EDF2132E416F8817D38C040FBA8D-IN.
- c) The accredited Registrar with whom the disputed domain name was registered is GoDaddy.com, LLC, 14455 North Hayden Road, Suite 219 Scottsdale, AZ 85260, United States of America.



3. Procedural History

- a) The present arbitration proceeding is as per the .IN Domain Name Dispute Resolution Policy (the "Policy"), adopted by the National Internet Exchange of India [NIXI] and the INDRP Rules of Procedure (the "Rules"), under the Indian Arbitration and Conciliation Act, 1996. By registering the disputed domain name with a NIXI accredited Registrar, the Respondent agreed to the resolution of disputes according to the Policy and the Rules thereunder.
- b) NIXI vide its email dated 24th August 2021 requested the availability of Mr. Maram Suresh Gupta to act as the Sole Arbitrator in the present matter. In return, on the same day, the Arbitrator indicated his availability and accordingly submitted the fully signed Statement of Acceptance and Declaration of Impartiality and Independence, which complied with the .INDRP Rules of Procedure.
- c) Pursuant to the above acceptance and declaration of the Sole Arbitrator, NIXI appointed, vide in its email dated 25th August 2021, Mr. Maram Suresh Gupta as the sole Arbitrator and the same was also intimated to both the Complainant and Respondent (hereinafter '*parties*'). Thereafter, on 25th August 2021, a notice having directions to both the parties was issued by me. In the said notice, the Complainant was directed to furnish copies of the complaint along with supporting annexures to the Respondent both via email and courier/ speed post. In addition, the Respondent was also directed to file his response to the complaint within 10 days from the date of the notice. The Complainant was also instructed to furnish confirmation copies of both the means of communication with the Arbitrator and a copy to NIXI.
- d) As directed, the Complainant served copies of the Complaint and its supporting annexures via email and courier to the Respondent. The confirmation copies were also



submitted by the Complainant to the Arbitrator with a copy to NIXI, dated 2nd September 2021. Based on the dates on courier confirmation, it is evident that the hard copies were delivered to the Respondent on 30th August 2021 – having speed post consignment no.: EU482264705IN.

e) On 4th September 2021, I informed the Parties that though no Response was received by the Panel from the Respondent within the allotted time, in the interest of justice, I granted an additional time of 5 days and that if no reply is filed by 9th September 2021, the award would be passed on merits. The additional time granted to the Respondent lapsed and no Response was received by the panel. In reality, there has been absolutely no communication from the Respondent till today.

4. Factual Background and Parties Contentions



The Complainant has made the following submissions in support of its complaint against the Respondent. The contentions are detailed as follows:

- a) The complainant is an apex organization established under the Ministry of Micro, Small and Medium Enterprises and was founded in 1957 by the Government of India under the Act of Parliament 'Khadi and Village Industries Commission Act of 1956'. The socio-economic objectives of the Complainant include but not limiting to employing in a rural area, develop and produce articles of commercial value and instilling self-reliance among people to build a strong rural community. The Complainant asserts that it has generated rural employment in about 2.48 lakh villages and is having six zonal offices and has a presence in 28 states in India to implement various programs ranging from offering financial subsidy schemes to the building of raw material reserves for supply to producers to enable the production of semi-finished goods. A perusal of **Annexures A to C** substantiates the aspects recited in this paragraph.



- b) Similarly, a perusal of **Annexures D to E** clearly indicates that the Complainant is the registered owner of the trademark KHADI. The marks registered include both the word and device marks (Table 1) as recited below under various classes of the Trademarks Act, 1999.

Table 1: Registered Trademarks of the Complainant

REGISTERED TRADEMARKS MARKS OF THE COMPLAINANT [Annexures D to E]	
Word Mark	Device Mark(s)
<p>KHADI</p> <p>Under TM classes: 1, 2, 4, 5, 6, 7, 8, 14, 16, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 29, 30, 32, 34, 35, 38 and 42.</p> <p>Also filed internationally bearing application number 1272626 under classes 01, 03, 05, 16 18, 20, 21, 23 and 24.</p> <p>Australian Trademark No.: 1734013</p>	 <p>Under TM classes: 1, 2, 3, 4, 5, 6, 7, 8, 14, 16, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 29, 30, 32, 34, 35, 38 and 42.</p>
	 <p>Under TM classes: 1, 2, 3, 4, 5, 6, 7, 8, 14, 16, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 29, 30, 32, 34, 35, 38 and 42.</p>

Most importantly, the Complainant has adopted and extensively used the trademark KHADI since 25th September 1956.



- c) The Complainant is actively engaged in promoting and development of the brand KAHDI via its authorized institutions under the aegis of Khadi Institutions Registration & Certification Sewa (KRICS). In addition, the Complainant asserts that promotional and developmental activities are also happening via its seven fully owned outlets and 8043 authorized outlets, thereby totalling to a sum of 8050 outlets. Further, a mobile app is also developed by the Complainant to offer ease to its consumers in doing the business. A perusal of **Annexures F to M** substantiates the aspects recited in this paragraph and also the aspects pertinent to brand promotion in various forums.
- d) The Complainant contends that the disputed domain name (www.khadination.co.in) subsumes its registered trademark KHADI thereby amounting to infringement. Besides, the Complainant contends that the disputed domain name was registered on 5th August 2020 which is much later than the date adopted by the complainant, 25th September 1956 and that the Respondent has employed the registered trademark KHADI in bad faith. A perusal of **Annexures N to P** substantiates the aspects recited in this paragraph. In short, the Complainant submits here that the disputed domain name was registered in bad faith, as the Complainant's use of the mark KHADI pre-dates Respondent's registration of the disputed domain name by more than 60 years. Given its long-term use, national and international protection of the mark KHADI, it is inconceivable that the Respondent was not aware of the popularity of the brand/ trademark KHADI at the time of registering the disputed domain name.
- e) The Complainant has prevailed in some of the proceedings of .INDRP and in Indian Courts towards domain names that are either similar or same as the trademark KHADI.
- f) The Respondent did not reply to the Complainant's contentions even after providing a fair opportunity. It is pertinent to reiterate that till today, this Panel has not received any response from the Respondent's.



5. Discussion and Findings

- a) As per Paragraph 4(i) of the Policy, the Complainant is required to show that it has a right in the trademark which it intends to assert. Based on the documents furnished by the Complainant it is abundantly evident that the trademark KHADI is registered and has been used since 25th September 1956. In addition, the Complainant has never authorized the Respondent in any manner whatsoever to offer the goods for sale under its registered trademark KHADI. Therefore, from the averments made by the Complainant, it is clear that the Respondent is neither a licensee nor has it otherwise obtained the authorization of any kind whatsoever to use the registered trademark KHADI. Accordingly, the Respondent does not have any legitimate interest and it appears that the Respondent has registered the disputed domain name only to enrich itself unjustly from such unauthorized adoption and registration.
- b) Once the Complainant makes a *prima facie* case showing its legal rights and lack of any kind of rights/ authorizations to the Respondent from the Complainant, the Respondent must come with proof of legitimate interest in the disputed domain name to rebut the presumption. Nonetheless, the Respondent has failed to file any Response till today towards the Complaint. According to Paragraph 8 (b) of the Rules I have given a fair opportunity to the parties to present their case. Though sufficient time (10 days + 5 days) was offered, the Respondent failed to file any response to the Complaint. Accordingly, under Paragraph 12 of the Rules, the proceedings are set *ex parte*. As stated previously, I initially gave the Respondent 10 days and in absence of the Response, I granted an additional 5 days to the Respondent to file a suitable Response to the Complaint. Nonetheless, the Respondent failed to file any response till today and has accordingly sought not to answer the Complainant's assertions raised in the Complaint. Therefore, I



have given a fair opportunity to the parties, particularly the Respondent to defend. Accordingly, I am proceeding to award *ex parte*.

- c) In light of the above circumstances, my decision is based upon the assertions; evidences presented by the Complainant and inferences drawn from the Respondent's failure to file/submit a Response despite offering sufficient opportunity and time to do so.

6. Issues in the Dispute

The Complainant invoked Paragraph 3 of the Rules to initiate arbitration proceedings by filing a Complaint with NIXI. The Respondent in registering the disputed domain name has submitted to the mandatory arbitration proceedings in terms of Paragraph 4 of the Policy, which determines the essential elements for a domain name dispute, which are as follows:

- Whether the disputed domain name is identical or confusingly similar to the registered trademark (legal right) of the Complainant?
- Does the Registrant/ Respondent have any right or legitimate interest in the disputed domain name?
- Does the disputed domain name of the Registrant/ Respondent is registered and is being used in bad faith?

All the above three essential elements are discussed in the following sections:

Essential Element No. 1: Whether the disputed domain name is identical or confusingly similar to the registered trademark (legal right) of the Complainant?

The test for confusing similarity involves the comparison between the registered trademark and the disputed domain name. In the present case, the disputed domain name incorporates the Complainant's registered trademark KHADI in its entirety with the addition of 'NATION'. The addition does not prevent a finding of confusing similarity. In order to assess confusing similarity, it is permissible for the Panel to ignore the generic



Top-Level Domain ("gTLD") ".co.in". Accordingly, the disputed domain name <khadination.co.in> consists of the registered trademark 'KHADI' of the Complainant. In addition, the Complainant has furnished sufficient evidence (registration certificates) in support of its registered trademark KHADI, arising out of its use for the past six decades. The Complainant has also prevailed in some of the proceedings of .INDRP [*KVIC v Zepo Technologies Pvt. Ltd – INDRP 1285; KVIC v I Wear Khadi – INDRP/1241 and KVIC v Sumit Rana – INDRP/1284*] and in Indian Courts towards domain names that are either similar or same as the registered trademark KHADI. The Respondent's adoption of the registered trademark KHADI immediately followed by a suffix NATION will not distinguish Respondent's domain name. Such an attempt by the Respondent amounts to asserting that the products sold under the disputed domain name are the Complainant's brand or its authorized licensee/ organization. Therefore, given the Complaint and its accompanying annexure documents and cited case laws, I am convinced beyond any ambiguity that the disputed domain name is confusingly similar to the Complainant's registered trademark KHADI. Further, the aforesaid attempt of the Respondents will inevitably lead consumers to believe that the disputed domain name is associated/ authorized by the Complainant.

Essential Element No. 2: Does the Registrant/ Respondent have any right or legitimate interest in the disputed domain name?

First and foremost, from the submissions of the Complainant it is abundantly evident that they have never authorized the Respondent to use or to register its mark, KHADI, as a domain name either alone or in combination with any suffix thereof. Moreover, based on the evidence provided, the Respondent has no legal working relationship with the business of the Complainant that would entitle the Respondent for usage of the registered trademark KHADI. In short, the Respondent is not affiliated or related to the Complainant



in any way whatsoever. Further, there is no reply/ response from the Respondent to provide any evidence to prove to the fact that it has a registered domain name as a trademark or acquired unregistered rights. Furthermore, the Respondent created the disputed domain name on 8th May 2020 which is much later than the originally adopted (25th September 1956) date by the Complainants. Therefore, the Respondent does not have any right to use the registered trademark KHADI of the Complainant to offer goods for sale under the disputed domain name or to create a risk of implied affiliation or association. Secondly, the burden of proof to establish legitimate interest over the disputed domain name lies with the Respondent. However, the Respondent failed to submit a reply to the Complainant within the allotted time. Thus, the Respondent fully and completely failed to establish legitimacy in registering the disputed domain name. Accordingly, in light of the Complaint with annexures and Respondents failure to file reply to the Complaint, I believe that the Respondent does not have a right and legitimate interest.

Essential Element No. 3: Does the disputed domain name of the Registrant/ Respondent is registered and is being used in bad faith?

Given the long usage, reputation and fame of the Complainant's registered trademark KHADI and the adoption of an identical/ similar domain name by the Respondent who is not authorized by the Complainant does create a *prima facie* presumption of bad faith. The adoption of the disputed domain name by the Respondent without any justification and in light of the documented evidence furnished by the Complainant under Annexure – N and Annexure - P conveys the intent of the Respondent to attract internet users towards the disputed domain name by creating a likelihood of confusion with the Complainants registered trademark KHADI as to the source, authorization, affiliation or endorsement of the Respondent's disputed domain name and the products sold under the same. The fact



that the Respondent has not replied to the Complainant's contentions, further points to bad faith. Further, a simple internet search would have made it clear to the Respondent that the Complainant owns the trademark KHADI and is being used extensively. It appears that the Respondent is aware of the commercial value of KHADI trademark and has intentionally adopted to derive undue benefits from it. Given the above, it is evident beyond reasonable doubt that the Respondent has adopted the disputed domain name in bad faith.

8. Decision

The Complainant has succeeded in establishing all the three essential elements of the .INDRP Policy.

In light of the above discussions and in accordance with the Policy and Rules, the Panel directs the transfer of disputed domain name <khadination.co.in> to the Complainant with a request to NIXI to monitor the transfer.

This award is being passed within the statutory deadline of 60 days from the date of commencement of arbitration proceedings.


Maram Suresh Gupta

Sole Arbitrator

Date: 14th September 2021