

ARBITRATION PROCEEDINGS OF DOMAIN NAME

www.khadi.co.in

between

KHADI & VILLAGE INDUSTRIES
COMMISSION

...COMPLAINANT

AND

UTTAM RAO

...RESPONDENT

AWARD



VISHESHWAR SHRIVASTAV
SOLE ARBITRATOR
NEW DELHI



सत्यमेव जयते

INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

e-Stamp

Certificate No. : IN-DL72598676628156S
Certificate Issued Date : 27-Aug-2020 02:03 PM
Account Reference : IMPACC (SH)/ dlshimp17/ SUPREME COURT/ DL-DLH
Unique Doc. Reference : SUBIN-DLDSLHIMP1752956356324564S
Purchased by : V SHRIVASTAV
Description of Document : Article 12 Award
Property Description : Not Applicable
Consideration Price (Rs.) : 0
(Zero)
First Party : V SHRIVASTAV
Second Party : Not Applicable
Stamp Duty Paid By : V SHRIVASTAV
Stamp Duty Amount(Rs.) : 100
(One Hundred only)



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VISHESHWAR SHRIVASTAV

SOLE ARBITRATOR
IN

www.khadi.co.in

between

KHADI & VILLAGE INDUSTRIES COMMISSION

UTTAM RAO

AND

AWARD

(Dated 31/08/2020)

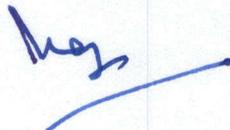
...COMPLAINANT

...RESPONDENT

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1. This Arbitral Tribunal was constituted by nomination of undersigned as the Arbitrator in the aforesaid proceeding through communication by NIXI and accordingly this Tribunal started the proceedings on 29/05/2020. It was noticed that due to prevailing COVID-19 Pandemic only soft copy of the complaint could be served on the Respondent. Hence, vide email dated 22/07/2020 this Tribunal directed the Respondents to file their Statement of Defense by 01/08/2020 and also directed the Complainant to send the hard copy of the complaint by courier to the notified address and the soft copy in word format within 5 days. However, the Complainant on 06/08/2020 sent the soft copy only by email. The complainants vide their email dated 06/08/2020 prayed to "expunge the Respondent's rights to file a replay to the said complaint" i.e. close the right of Defense of the Respondents for not filing it's Statement of Defense and thus not complying with the dates fixed by this Tribunal. This Tribunal noted that the Complainants had not marked/copied the email in question to the Respondents and thus was in violation of section 24(3) of the Arbitration and



Conciliation Act, 1996 read with Rule 2 read with Rule 7 of INDRP Rules of Procedures. Hence this Tribunal rejected the request of the complainants as contained in their aforesaid email as the same was in violation of the rule of natural justice.

2. This Tribunal also drew the attention of the Complainants to Sec. 25 (2) of the Arbitration and Conciliation Act, 1996 which gave this Tribunal discretionary power to close or not to close the Right of Defense. Be it that as it may, this Tribunal noticed with concern that the Complainants were given 5 days time for compliance of the order dated 22nd July, 2020 but the soft copy was emailed only on 06/08/2020 and the hard copy had not reached this Tribunal till 10th August, 2020. The Complainants were then directed to ensure the delivery of the hard copy of the Complaint by **14/08/2020**.
3. As stated *supra* this Tribunal had granted time to the Respondent till 01/08/2020 to file their SOD which they failed to comply, hence vide its order dated 10/08/2020 this Tribunal directed the Complainants to send their Evidence by way of

Affidavit by 20/08/2020. In the interest of Justice the Respondents were given time to send their SOD along with the documentary evidence if any, and their Evidence by way of affidavit in support of their SOD by 20/08/2020.

4. This Tribunal was in receipt of the an email dated 20/08/2020 sent by the Respondent, without going into the details thereof it was notified to the Respondent to put his say as specified in email detailed above in form of an affidavit duly notarized before a Notary Public and send a hard copy and a scanned copy in .pdf format with proof of postal dispatch to this Tribunal so as to reach this Tribunal **on or before 25th August, 2020.**
5. In response to the aforesaid direction the Respondent sent his reply making some averments as under:
- "Khadi.co.in is an social entrepreneurship and innovation idea we intend to use in Nation building along with www.msmeuniversity.com, www.reskilling.co.in and www.msmeexports.com.*
- This domain we acquired from Inregistry which is a Government of India organization.*
- Because of certain other issues we are facing the domain is not active now. We intend to make best use of it soon.*

If KVIC needs the domain let them talk to me directly If they can put the domain to better use I am willing to transfer it soon to them in the interest of the country.

KVIC needs to just pay part of my expenditure.

Regards,

*Dr. Uttam Rao.
Mobile: 9394720081".*

Later on:

"No need of Arbitration I will talk to KVIC and settle the issue."

From the above it was clear that the Respondent was determined not to join proceedings and become recusant.

6. On 27/08/2020, this Tribunal reserved the Award and clarified that incase the respondent send their Statement of Defense along with their affidavit /evidence in support thereof the same would be taken into consideration by this Tribunal at the time of making the award.
7. Thereafter there was silence from the side of the Respondents till receipt of email dated 31/08/2020 which



again contained queer averments and request which is given as under:

*"I am willing to meet KVIC officials and clear the issue without any Arbitration.
Do organize a meeting."*

CLAIM

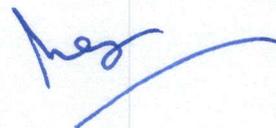
8. The claim as put forward by the complainant is briefly as under:
 - A. The Complainant is Khadi & Village Industries Commission which is a statutory body established by an Act of Parliament, 'Khadi and Village Industries Commission Act of 1956' and it's Head Office is located at "Gramodaya", 3, Irla Road, Vile Parle (West), Mumbai, Maharashtra, India. Pin - 400056. Reliance is placed on **Annexure A**.
 - B. It is noticed that the Complaint at hand is based on the adoption and use of the registered well-known trademark **KHADI** and its use in connection with its domain names.



C. It is claimed that 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."*

D. It is further claimed that in April 1957 the complainants took over the work of former All India Khadi and Village Industries Board and now it plays an important role in Indian economy as it generates employment in about 2.48 lakh villages throughout the country. It is also claimed that 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 and has offices in 28 states for the implementation of its various programs.

- E. By relying on Annexure B it is claimed that 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 other agencies and its programs are to promote products under the trademark **KHADI**. It is also claimed that the Complainant also implements Rural Employment Generation Program (REGP) for up-liftment and improvement of artisans, weavers and other members of small-scale village and rural industries. The Complainant have also filed a consolidated list of schemes offered by them as **Annexure C**.
- F. By relying on **Annexure D & E** it is claimed that the trademark **KHADI** and its variations are registered not only in India but also worldwide including Australia, China, Germany, United Kingdom, Russia and the European Union in favour of the Complainant

and are used in connection with goods sold and services offered by the Complainant and its authorized members. The pictorial display of the Complainant's trademark are as under:



and



- G. It is canvassed by the Complainant that it adopted the above trademark **KHADI** since 25th September 1956 and the same has been in use continuously till date.
- H. By relying on **Annexure F** it is claimed that the Complainant authorizes various retail sellers, organizations, societies and institutions to sell products under the **KHADI** trademarks and issues authorization to its authorized users.
- I. The Complainants by relying on **Annexure G, H, I, J, K & L** claims that it directly owns 7 sale outlets besides 8050 sales outlets spread across the country all selling authorized/ licensed

products under the **KHADI** trademarks which are prominently featured on boards and hoardings of each store that is authorized to sell products under the **KHADI** trademarks and various exhibitions / events etc. are organized by it besides their collaborating with Lakme Fashion Week.

J. It is claimed that the Complainant operates several social media platforms, such as Facebook, Twitter, YouTube, etc. all of which enjoy a wide followership and has annexed screenshots from it's as social media accounts **Annexure M** besides being available on it for years. The complainants claim that they have put in continuous efforts, time, capital, and resources in promoting the **KHADI** trademarks and have attained immeasurable goodwill and reputation so much so that the "**KHADI**" trademarks have attained paramount position and are identified exclusively with the Complainant. It is further claimed that the Complainant also operates mobile application by the of name Khadi India and this application helps customers, patrons and members of trade in locating the nearest Khadi India Store. Complainants have



furnished screenshots of the app, as available on the Google Play Store and the iOS App store as **Annexure N**.

- K. It is claimed 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 recognize and associate the goods and services under the **KHADI** trademarks with the Complainant and none other.
- L. The Complainant came across the Respondent's website under the domain name <http://khadi.co.in/> (hereinafter referred as 'the disputed domain') which subsumes the Complainant's registered trademark **KHADI** and therefore amounts to trademark infringement and passing off.
- M. It is alleged that the disputed domain was registered on 24th September, 2012, which is subsequent to the Complainant's adoption and/or registration of the trademark **KHADI**. With help

of a screen shot given as **Annexure O** it is alleged that the Respondent has parked this domain. A print out from .IN Registry WHOIS records for the disputed domain name has also filed as **Annexure P** by the complainants.

- N. It is alleged that the Respondent, with a view to capitalize on the well-known trademark **KHADI** has incorporated it in the disputed domain name so as to maximize the earning potential of his domain which typically increases when a domain exploits a well-known brand's value like KHADI.
- O. It is alleged that the Respondent's domain name is identical to a name, trademark/ trade name in which the Complainant has rights and the complainants feel that first impression in the minds of the consumers shall be that the Respondent's website originates from or is associated with, or is sponsored by the Complainant and further there exists a possibility that are likely to think that the disputed domain name is owned by the complainant or is in some way connected with the Complainant. Reliance has been placed on a case of "*Lockheed Martin*

Corporation Vs. Aslam Nadia (INDRP Case No. 947)” .

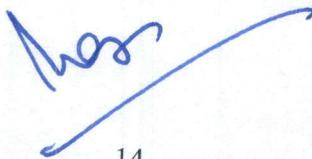
P. It is further alleged that the Respondent has no rights or legitimate interests in respect of the domain name as the Complainant has not authorized the Respondent to use its trademark/ trade name/trading style and he is not its licensee or franchisee and has adopted the identical trademark with a view to ride upon the goodwill associated with the complainant's well-known trademark **KHADI**. The Complainants rely upon paragraph 7 of the IN Domain Dispute Resolution Policy (INDRP), to base their allegations and further contends that the Respondent has merely parked the domain and has not hosted any content on the website and the web page states “UTTAM RAO”. Further, there exists no demonstrable use or actual use of the domain name in connection with any bona fide offering of goods or services thus the disputed domain name has been registered in bad faith as a simple trademark search at the time of the registration of the disputed domain name would have revealed the Complainant's trademark rights and also a simple search on the Internet would have revealed Complainant's

presence and trademarks. The Complainants rely on case of *IKEA Systems B.V. v. Roman Zubrickiy Case No. D2015-0046*.

Q. Based on the foregoing, it is vehemently alleged that the Respondent has registered and is using the disputed domain name in bad faith.

ORDER

9. This Tribunal has perused the complaint / Evidence and the documents relied upon by the complainants and notices that the same have not been rebutted or challenged by the Respondents despite opportunity being given to them by this Tribunal. It is not the case that the Respondent was not aware of the present Arbitration Proceedings but in his wisdom has chosen not join it.
10. Hence, in view of the un-rebutted evidence of the Complainants this Tribunal holds that the respondents do not have any claim on the domain name www.khadi.co.in, and this Tribunal directs the Registry to transfer the domain name www.khadi.co.in ie.to the complainants.



11. The Complainants too are free to approach the Registry and get the same transferred in their name.
12. There is no order as to the cost as no details of the cost along with necessary documentary Evidence have been specified / detailed in the complaint.
13. The original copy of the Award is being sent along with the records of this proceeding to National Internet Exchange of India (NIXI) for their record and a copy of the Award is being sent to both the parties for their records.

Signed on this 31st day of August, 2020.

NEW DELHI
31/08/2020



V. SHRIVASTAV
ARBITRATOR