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BEFORE SHRI PANKAJ GARG, SOLE ARBITRATOR, AT NEW DELHI

**COMPLAINT NO. INDRP
CASE NO. 1346/2021**

**KHADI & VILLAGE INDUSTRIES COMMISSION
VERSUS
JITENDRA JAIN**

.....COMPLAINANT

.....RESPONDENT

**CORAM:
HON'BLE MR. PANKAJ GARG**

**AWARD AND ORDER
03.05.2021**



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ORDER

03.05.2021



The matter is taken up today by this Tribunal from its residential office due to Covid-19 pandemic situation for passing an award in terms of the notice issued by this Tribunal on 04.03.2021.

The service of the hard copy as well as the soft copy of the Complaint and the Notice of this Tribunal upon the Respondent has already been completed.

The Respondent filed a reply/counter on the Complaint of the Complainant on 15.03.2021. Thereafter the Complainant filed its rejoinder on 20.03.2021.

The matter was listed for 22.03.2021 for passing an award. The Award was reserved on 22.03.2021.

Considering the circumstances that the award has to be passed in time bound manner, within 60 days from the date of initiation of the Arbitral Proceedings, an order on merits is passed today on 03.05.2021.

Separately an award of even date is also passed which shall be shortly delivered.

CONCLUSION FOR ORDER

As per the material placed on record and the averments made in the complaint and also in the annexed evidences and documents,



which have been proved in evidence, it is evident that the domain name www.khadi.in is a well known domain name. The same is known to most of the people of the entire world. No one is entitled and can be authorized to use the same either as a domain name or as a trademark in relation to the similar or dissimilar business, as the said domain name/trade mark has got a unique goodwill and reputation.

In nutshell the case of the Complainant is that the impugned domain name is being illegally used by the Respondent giving an injury to the Complainant. It is also stated by the Complainant that various Trade Marks in the name of “Khadi”/ “Khadi India” have already been registered in 2014 and 2018 and are being used by the Complainant since 1956.

Contrary to this the case of the Respondent is that the impugned domain name is being used by the Respondent since 2005 and “KHADI” is a generic name. It is claimed by the Respondent that since, when the impugned domain name was acquired by the Respondent in 2005 the Trade Mark “KHADI” was not a registered Trade Mark in the name of the Complainant, therefore, the Respondent has legitimate rights over the impugned domain name.

After considering the rival submissions this Tribunal reaches to a conclusion that the dispute before this Tribunal is *qua* the



impugned domain name for its present use. Complainant is also not seeking any relief for the past infringement of its rights arising out of the use of the impugned domain name.

It is an undisputed fact that the Complainant is the legitimate owner of the Trade mark "KHADI" / "KHADI INDIA" and has acquired ownership rights in terms of the provisions of Section 17 of Trade Marks Act, 1999, even if it is considered that the Respondent is using the impugned domain name which includes the word "KHADI", since 2005, then also the Respondent cannot have a better title over the names "KHADI" / "KHADI INDIA". This Tribunal is jurisdictionally bound to consider only the dispute of present domain name. And in the present circumstances under the impugned domain name word "KHADI" is already a registered Trade Mark under the ownership of the Complainant and one particular fact can also not be ignored that Respondent since 2014 when the Trade Mark "KHADI" was registered for Complainant has not taken any steps against the said registration, thus Respondent can be said to be estopped.

This Tribunal also doesn't concur with the other submission of the Respondent that the "KHADI" is a generic word and the Respondent is entitled to use it. On this issue, this Tribunal is of a view that the question whether the "KHADI" is a generic word or



not is not within the jurisdiction of this Tribunal since, the impugned domain name consists of a word "KHADI" which is already under the legitimate ownership of Complainant in terms of the provisions of Trade Marks Act, 1999. The Respondent if wishes to challenge the registration of "KHADI/ KHADI INDIA", is at liberty exercise an appropriate remedy.

In the opinion of this Tribunal, the impugned domain name is a trademark backed domain name and it not only violates the provisions of the Trade Marks Act, 1999 but also violates Clause 4 of the INDRP policy issued by the NIXI. The impugned domain name conflicts with the legitimate rights and interests of the Complainant on the following premises:-

- a) The impugned domain name is identical and confusingly similar to a named trademark as well as a service mark, in which the Complainant has a right;
- b) Respondent has no right or legitimate interest in respect of the impugned domain name;
- c) The Respondent impugned domain name has been registered and is being used in bad faith by using the registered



trademark of the Complainant and giving a pecuniary loss to the Complainant by using the name and trademark of the Complainant.

The evidences filed by the Complainant have been proved by the Complainant, therefore, the statements and documents filed by the Complainant are accepted as correct deposition. In view of the facts and settled law, with the deposition and documents of the Complainant placed before this Tribunal, the Complaint deserves to allowed for an Award on merits in favour of the Complainant, as prayed in the Complaint by the Complainant.

DECISION

- a) In view thereof, it is directed that the domain name www.khadi.in be transferred in favour of the Complainant by the Registry. As a result, the Respondent, his agents, servants, dealers, distributors and any other person(s) acting for and on its behalf are permanently restrained from using the domain name www.khadi.in or any other deceptively similar trademark, which may amount to infringement of Complainant registered trademark and also from doing any



other thing, which is likely to create confusion and deception with the goods/services of the Respondent for any connection with the Complainant.

- b) The Complaint is allowed in the above terms.
- c) National Internet Exchange of India (NIXI) is advised to take incidental or ancillary action involved in the transfer of the domain name, as directed.




(PANKAJ GARG)
SOLE ARBITRATOR

Place: New Delhi

Date: 3rd May, 2021