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BOLAGANA RAMA RAO
LICENCED STAMP VENDOR
L No 03/11/001.1999 RL No 03/11/05/2020
54-3/1, Seethammadhara
Visakhapatnam, Cell: 9849243254

Sl.No. 34223 Date 24/10/2020

Dr. V. Gopinath. 1/0. G. V. K. Chevulu

BEFORE THE NATIONAL INTERNET EXCHANGE OF INDIA
IN DOMAIN NAME DISPUTE POLICY (INDRP)

Dr. Vedula Gopinath, Sole Arbitrator

Arbitration Award in Case No.1285 dated 16th October 2020

In the matter atter of Arbitration

Between:

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

... (Complainant)

And

M/s. Zepo Technologies Private Limited
8, GFA Building, 3rd floor,
Near Ambaji Dham Mandir,
Bhakti Marg, Off LBS Road
Mulund (W), Mumbai Maharashtra, India
Pin - 400080.

... (Respondent)



I. The Parties

a. The Complainant viz., Khadi & Village Industries Commission's Authorized representatives in these administrative proceedings are:

Attorneys Shweta sree Majumder and Shreya Ganguly
Address Fidus Law Chambers
F-12, Ground Floor,
Sector 8, Noida-201301
Telephone 91-120-4847550
Fax 91-120-4847551
E-mail shwetasuree@fiduslawchambers.com

b. Respondents

Name: Zepo Technologies Private Limited
Organization: Zepo Technologies Private Limited
Address: 8, AGFA Building, 3rd floor,
Near Ambaji Dham Mandir,
Bhakti Marg, Off LBS Road
Mulund (W), Mumbai
Pin - 400080
Telephone: (91)9223583358
Email: it@zepo.in

II. Disputed Domain Name & Registrar

a. The following domain name is the subject of this Complaint.

justkhadi.zepo.in

b. The registry is the National Internet Exchange of India (hence forth referred to as NIXI).

c. The sponsoring Registrar with whom the domain name is registered is indicated as:



M/s. Zepo Technologies Private Limited
S-7, 2nd Floor, Pinnacle Business Park,
Mahakali Caves Road,
Andheri (E), Mumbai – 400093 Maharashtra, India

III. Background:

- a. Background: Arbitral proceeding commenced in accordance with In Dispute Resolution Policy (INDRP) and Rules framed there under and The Arbitration and Conciliation Act 1996 (as amended).
- b. **Dr. Vedula Gopinath** was appointed as Sole Arbitrator in the matter by M/s. National Internet Exchange of India (NIXI) vide communication dated 26-10-2020 Dr Vedula Gopinath accepted the assignment and given his statement of acceptance and declaration of impartiality and independence. The arbitration proceedings are deemed to have been commenced on 27th October 2020.
- c. The Complainant came across the Respondent's e-commerce business platform under the domain name justkhadi.zepo.in. The domain name contains the Complainant's registered trademark KHADI as a part of the sub-domain 'justkhadi' and therefore amounts to trademark infringement and passing off.
- d. The domain at which the Respondent's ecommerce business platform is hosted was registered on 15th June, 2011, which was subsequent to the Complainant's adoption and/or registration of the trademark KHADI. Under the disputed domain the Respondents are offering their products and services and selling un-authorized products under the Complainant's registered trademark KHADI through its ecommerce business platform. Screenshots from the website under the disputed domain comprising the sub-domain 'justkhadi' were furnished as Annexure O of the complaint.



e. copy of complaint has already been sent to the respondent by the in. Registry through e-mail. Upon receipt of the complaint, the Ld. Arbitrator sent a notice dated 27-10-2020 to the respondents to submit their defense/counter to the complaint along with supportive documents / evidence at their e-mail address within ten days from date of receipt. But the respondent did not come forward and send their defense / counter to the complaint. Failing to send the defense / counter by the respondents, the Arbitrator again sent another two notices on 5th November 2020 and 11th November 2020 respectively by giving fair opportunity to the respondents to send their defense / counter to the complaint.

f. In-spite of repeated notices, the respondent has again not come forward and has not sent any reply / defense / counter to the either notice or complaint to the Arbitrator.

Therefore, this matter is being decided on the merits of the case as per law of the land.

IV.Complainant's Business Activites.

1. The Complainant 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 which is ten days the apex organization established under the Ministry of Micro, Small and Medium Enterprises ("MSME") having objectives of rural employment, self-reliance and building rural community spirit.

2.. 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 creating vast employment. Its head office is in Mumbai, and having six zonal offices at various Metros and having offices network in all 28 states of India.



3. 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. The programs offered by the Complainant are to promote product under the trademark KHADI. The Complainant implements all Government schemes for improvement of artisans, weavers and other members of small-scale village and rural industries.

4.. The Complainant actively involved in the development of Khadi and other village industries by way of providing common facilities for raw materials and semi-finished goods and concessional financing, subsidies for artisans, weavers and promoting small-scale and village Industries across the Nation.

V, Complainant's Use of The Khadi Trademarks.

1.. The Complainant is engaged in the promotion and development of the KHADI brand and the products under the KHADI trademark through the institutions authorized and certified by the Complainant. It regulates, controls, certifies, and authorize specifically to deal the Khadi products and use of its Trade Mark/Name Khadi products. For this purpose, a separate specific agency viz., Khadi Institutions Registration & Certification Sewa (KIRCS). Exists. Complainant having 7 own sales outlets out of 8050 widely located outlets.

2. The KHADI trademarks are prominently featured on boards and hoardings of each store that is authorized to sell products under the KHADI trademarks. Wider publicity is given to Khadi Products and its trademark through Hoardings, Display boards, and participation in Exhibitions, Fashion Shows and collaborate with other reputed Brandoos to further bst the image of Khadi products and its Trade Names/Marks by participation in exhibitions in India and abroad.



3. The Complainant's products under the KHADI trademarks have been widely promoted through print and electronic media which includes television programs, advertisements, articles, write-ups appearing in leading newspapers, magazines, journals, shopping festivals, exhibitions. It also operates social media platforms such as Face Book, Twitter, You Tube etc. It also operates mobile application through Google Play stores viz., Khadi India to enable help customers spotting KHADI resource locations.

4. Complainant strongly believes that long Years of continuous efforts, time, capital, painstaking efforts and resources have been invested pursuant to which the KHADI trademarks have attained immeasurable goodwill and reputation so much so that the "KHADI" trademarks have attained paramount position and are identified exclusively with the Complainant.

5.. 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.

VI. The Complainant's Trademark/Domain Name Rights.

a)The Complaint is based on Trademarks KHADI and its variations, registered in favor of the Complainant and used in connection with goods sold and services offered by the Complainant and its authorized/approved/licensed members. The complainant owns various registrations under various classifications for the word mark **KHADI INDIA** (both in English and Hindi versions) and all registrations are claimed to be currently valid and subsisting. Details of registrations of KHADI trademarks have been furnished and marked as Annexure D to the complaint. Device marks appended below.



b) The Complainant's **KHADI** Trademarks are also registered in various other jurisdictions/ regions including International Registration and Australia Registration. Details are furnished marked as Annexure E. of Complaint.

c) 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 as been in use continuously till date. By virtue of its adoption more than sixty years ago, and extensive use thereof, the trademark **KHADI** has become exclusively and globally associated with the Complainant in the eyes of consumers. Therefore, use of this mark by any third party will lead to confusion and deception among the Complainant's patrons, members of trade, consumers and general public.

V. PARTIES' CONTENTIONS/AVERMENTS

a) The complainant has alleged that domain name of the respondent is identical and confusingly similar to their trademark in which it has rights.

b) The complainant has alleged that respondent does not have rights or legitimate interest in respect of domain name and also the respondent has no registered trademark rights of the said domain name. The complainant has further alleged that the respondent is seeking the advantage of the well known trade name and trademark of the complainant (KHADI) by prefixing word "just" and is thereby tarnishing the reputation and trademark at issue.



c) The complainant has further alleged that the domain name is registered by the respondent and is used in bad faith. The complainant has submitted that its trademarks are well known in India. The complainant has alleged that the respondent is misleading potential customers to their website. The complainant has further alleged that the respondent is tarnishing the complainant's reputation. The complainant has further alleged that the intention of the respondent could be creation of a likelihood of confusion with the complainant's company name and trademark and therefore the respondent has registered the disputed Domain name in bad faith. The complainant has further alleged that the respondent's intention is not to act in good faith but has got registered the disputed Domain name in bad faith.

VI. OPINION/FINDING/REASONING

1. It is therefore appropriate to examine the issues in the light of statements and documents submitted as evidence as per Policy, Rules and the provisions of the Act.

The para no.4 of the IN-Domain Dispute Resolution Policy (INDRP) is as follows: -

The Registrant's domain name is identical or confusingly similar to a name, trademark or service mark in which the complainant has rights; ii) the Registrant has no rights or legitimate interests in respect of the domain name and iii) The Registrant's domain name has been registered or is being used in bad faith-

The Ld. Arbitrator accepts the contentions of the Complainant as have been raised by them and holds that the registration of the domain name on the part of the respondent is in bad faith.



2. The para no.7 of the IN-Domain Dispute Resolution Policy (INDRP) is as follows:

Evidence of Registration and Use of Domain Name in Bad Faith.

The following circumstances, in particular but without limitation, if found by the Arbitrator to be present, shall be evidence of the registration and use of a domain name in bad faith: (clauses a & c)

IN-Domain indicating that the Registrant has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant, who bears the name or is the owner of the trademark or service mark, or to a competitor of that complainant, for valuable consideration in excess of the Registrant's documented out of pocket costs directly related to the domain name; or c) by using the domain name, the Registrant has intentionally attempted to attract Internet users to the Registrant's website or other online location, by creating a likelihood of confusion with the complainant's name or mark as to the source, sponsorship, affiliation, or endorsement of the Registrant's website or location or of a product or service on the Registrant's website or location."

3. The Para No.6 of the IN-Domain Dispute Resolution Policy (INDRP) regarding Registrants Right etc. states as follows:

Any of the following circumstances, in particular but without limitation, if found by the Arbitrator to be proved based on its evaluation of all evidence presented, shall demonstrate the Registrant's rights to or legitimate interests in the domain name for the purpose of paragraph 4 (b) supra:

- a) Before any notice to the Registrant of the dispute, the Registrant's use of, or demons tratable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services;
- b) The Registrants (as an individual, business, or other organization) has been commonly known by the domain name, even if the Registrant has acquired no trademark or service mark rights; or



c) the Registrant 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."

4. From the facts and evidence adduced complainant, it can be concluded that the domain name "**-JUSTKHADI.ZEPO.IN** is identical and confusingly similar to the trademark of complainant "**KHADI**" and the complainant has established that he has right in the trademark.

5. The respondent has not come forward in spite of repeated notices to file any reply / counter or to provide any positive, cogent and specific evidence that it is known or recognized by domain name. The respondent has neither put forth and has not provided such evidence. Thus, the conclusion is that respondent has no right or legitimate interest in the domain name. In spite of several notices, the Respondents does not dispute or opposed any of the contentions of the Complainants.

6. Under Order 8 Rule 10 of the Code of Civil Procedure, the arbitrator is empowered to pronounce judgment against the Respondent or to make such order in relation to the Complaint as it think fit in the event, the Respondent fails to file its reply to the Complaint in the prescribed period of time as fixed.

7. Sub-Section 3 of Section 19 of The Arbitration & Conciliation Act 1996 also empowers the Arbitral Tribunal to conduct the proceedings in the manner it considers appropriate including the power to determine the admissibility, relevance, materiality and weight of any evidence. The Complainant has filed evidence by way of Annexures with the Complaint. Also, declaration under Section 58 of Evidence Act has been filed by complainant. All the contentions and evidence deduced by the Complainant have been considered and accepted by the Ld. Arbitrator.

8. Judicial Precedents the Apex and High Courts in India have pronounced that domain names may be considered as trademarks (with few exceptions) based on use and brand reputation and so fall under the Trade Marks Act 1999. Yahoo Rediff, Satyam are leading cases and Courts laid down following guidelines:



1. Defendants should have sold/offered its goods/services in a manner that deceives the public into thinking that the goods/services in fact the plaintiff's.
2. Misrepresentations by the defendant to the public should be established.
3. Loss or likely loss to be established.

All the guidelines aforesaid shall apply to the case and the Complainant contentions and averments are positively proved basing on the evidence produced.

X. DECISION

I direct that the Domain name JUSTKHADI.ZEPO.IN be transferred in favor of the Complainant by Registry. Costs: I direct respondents to pay to the Complainants a sum of Rs.20,000 (Rupees Twenty Thousand only) towards the costs of the proceedings. National Internet Exchange of India are advised to take incidental or ancillary action involved in the transfer of the domain name as directed.

Place: Visakhapatnam AP India

Date : 16th October 2020




Dr. Vedula Gopinath
Sole Arbitrator

**BEFORE THE NATIONAL INTERNET EXCHANGE OF INDIA
IN DOMAIN NAME DISPUTE POLICY (INDRP)
Dr. Vedula Gopinath, Sole Arbitrator
Arbitration Award in Case No.1285 dated 16th October 2020
Addendum/clarificatory Order dated 25th November 2020
In the matter atter of Arbitration**

Between:

M/s. Khadi & Village Industries Commission,
Mumbai Maharashtra, India. Pin - 400056. Complainant

...

And

M/s. Zepo Technologies Private Limited
Mulund (W), Mumbai Maharastra, India ... Respondent

While publishing the award dated 16th November 2020, it was directed that the Domain name JUSTKHADI.ZEPO.IN be transferred in favour of the Complainant by Registry. Also National Internet Exchange of India are advised to take incidental or ancillary action involved in the transfer of the domain name as directed.

As per Paragraph 10 of .In Domain Name Dispute Resolution Policy the remedies available are Transfer or cancellation of the Registrant's domain name and as per paragraph 11 of Policy .In Registry shall attend to the execution of the award

Under Section 33 sub-sections 3 and 7 of Arbitration Act 1996, the arbitral tribunal is having authority to make amendment/correct/interpretation of the award within thirty days of the award.

In view of the above provision the Ld. Arbitrator hereby gives Suo moto order that the Domain Name JUSTKHADI.ZEPO.IN be **CANCELLED** by the Registry in case of any technical or procedural difficulty is faced or anticipated in the matter of transfer of impugned domain name in favor of the Complainant.



DR VEDULA GOPINATH

Visakhapatnam

SOLE ARBITRATOR

DATED 25TH Nov.2020