



## NATIONAL ARBITRATION FORUM

### DECISION

Brahma Kumaris World Spiritual Organization v. BrahmaKumaris.Info  
Claim Number: FA0709001075486

#### PARTIES

Complainant is **Brahma Kumaris World Spiritual Organization** (“Complainant”), represented by **Kelly R. McCarty**, 1111 Louisiana Street, 25th Floor, Houston, TX 77002. Respondent is represented by **Simon Halberstam**, of **SGH LLP**, 30 Farringdon Street, London EC4A 4HJ.

#### REGISTRAR AND DISPUTED DOMAIN NAME

The domain name at issue is <**brahmakumaris.info**>, registered with **GoDaddy.com**.

#### PANEL

The undersigned certify that they have acted independently and impartially and to the best of their knowledge have no known conflict in serving as Panelists in this proceeding.

Jeffrey M. Samuels, David E. Sorkin, Hon. Tyrus R. Atkinson, Jr., Esq., as Panelists.

#### PROCEDURAL HISTORY

Complainant submitted a Complaint to the National Arbitration Forum electronically on September 7, 2007; the National Arbitration Forum received a hard copy of the Complaint on September 12, 2007.

On September 10, 2007, GoDaddy.com confirmed by e-mail to the National Arbitration Forum that the <**brahmakumaris.info**> domain name is registered with GoDaddy.com and that the Respondent is the current registrant of the name. GoDaddy.com has verified that Respondent is bound by the GoDaddy.com registration agreement and has thereby agreed to resolve domain-name disputes brought by third parties in accordance with ICANN’s Uniform Domain Name Dispute Resolution Policy (the “Policy”).

On September 20, 2007, a Notification of Complaint and Commencement of Administrative Proceeding (the “Commencement Notification”), setting a deadline of October 10, 2007 by which Respondent could file a Response to the Complaint, was transmitted to Respondent via e-mail, post and fax, to all entities and persons listed on Respondent’s registration as technical, administrative and billing contacts, and to postmaster@brahmakumaris.info by e-mail.

On October 5, 2007, Respondent requested an extension of the date by which a timely Response could be filed. The National Arbitration Forum subsequently granted this

request, extending the date by which a timely Response could be filed until October 30, 2007.

A timely Response was received and determined to be complete on October 30, 2007.

A timely additional submission was received from Complainant on November 5, 2007 in accordance with the Forum's Supplemental Rule 7.

A timely additional submission was received from Respondent on November 9, 2007 in accordance with the Forum's Supplemental Rule 7.<sup>1</sup>

On November 7, 2007, pursuant to Complainant's request to have the dispute decided by a three-member Panel, the National Arbitration Forum appointed Jeffrey M. Samuels, David E. Sorkin, and the Hon. Tyrus R. Atkinson, Jr., Esq. as Panelists.

## **RELIEF SOUGHT**

Complainant requests that the domain name be transferred from Respondent to Complainant.

## **PARTIES' CONTENTIONS**

### **A. Complainant**

Complainant Brahma Kumaris World Spiritual Organization (BKWSO) is the U.S. branch of the Brahma Kumaris World Spiritual University (BKWSU), which is headquartered in Mt. Abu, Rajasthan, India. The University has 8,500 branches in over 100 countries with more than 825,000 students. The Brahma Kumaris institution was founded in 1937 in Hyderabad, Sindh (now in Pakistan) for the purpose of encouraging and facilitating spiritual enlightenment.

Complainant BKWSO was incorporated in 1977 as a Texas non-profit organization. Complainant's objectives include spiritual teaching through courses in Raja Yoga Meditation, courses in personal development, retreats, community outreach, global initiatives and partnerships and international projects. Complainant owns and maintains two official websites at <bkwsu.org> and <bktexas.com>.

On June 21, 2007, Complainant filed two applications with the United States Patent and Trademark Office seeking registration of the marks BRAHMA KUMARIS, for books and printed publications relating to spiritual and meditation issues and provision of advertising space by electronic means and global information networks, namely the Internet (Serial No. 77/212,153) and BRAHMA KUMARIS WORLD SPIRITUAL UNIVERSITY, for provision of advertising space by electronic means and global information networks, namely the Internet (Serial No. 77/212,561). Complainant also owns the common law marks BRAHMA KUMARIS, for spiritual and meditation services and products; BRAHMA KUMARIS WORLD SPIRITUAL ORGANIZATION,

---

<sup>1</sup> The Panel has considered the parties' additional submissions only to the extent that they provide information that could not reasonably have been included in the initial submissions.

for spiritual and meditation services and products; and BRAHMA KUMARIS WORLD SPIRITUAL UNIVERSITY, for spiritual and meditation services and products, including publications and courses regarding spiritual and meditation knowledge.

The disputed domain name, <**brahmakumaris.info**>, was registered on March 27, 2006 through Domains By Proxy, Inc.

Complainant alleges that, by virtue of its interstate use of the distinctive BRAHMA KUMARIS marks for its spiritual and meditation services, it has federal common law rights in the BRAHMA KUMARIS mark. It further contends that the disputed domain name is identical to the BRAHMA KUMARIS mark, except for the addition of the generic top-level domain “.info.” This variation, Complainant asserts, is irrelevant for purposes of determining whether the domain name in dispute is identical or confusingly similar to the BRAHMA KUMARIS mark.

Complainant maintains that Respondent should be considered as having no rights or legitimate interests in the disputed domain name. Complainant notes that the <**brahmakumaris.info**> web page references the name “BKWSU,” which appears as a link to <brahmakumaris.com>, which is owned by BKWSU. According to Complainant, this incorrectly suggests a connection with Complainant.

Respondent’s site, Complainant observes, also displays numerous hyperlinks that are unrelated to Complainant’s goods and services. Complainant further points out that Respondent’s site contains “Links” and “Forum Links” sections with hyperlinks to Complainant’s competitors, such as PBK. Thus, Complainant argues, Respondent’s use of the domain name is not in connection with a bona fide offering of goods or services.

Upon information and belief, Complainant alleges that Respondent does not make any legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark at issue. According to Complainant, “Respondent’s use of Complainant’s mark is meant to attract users of Complainant’s site, to discourage those users from associating with Complainant, and then to redirect users to websites that offer unrelated products and solicit donations, subscriptions, and advertising space.”

Complainant further asserts that Respondent also uses the disputed domain name to disparage Complainant and to tarnish Complainant’s mark. Complainant complains that Respondent makes false allegations of rape, murder, suicide, broken families, and undue influence – all attributable to Complainant – and then attempts to give the appearance of authority to the allegations by posting them under the guise of legitimate news articles. Complainant disputes Respondent’s categorization of Complainant organization as a cult and also contends that Respondent allows others to use its site to post defamatory and offensive statements against Complainant. “Although Respondent may have a right to free speech and a legitimate interest in criticizing activities of an organization like Complainant, that free speech does not create rights or legitimate interests in a domain name that is virtually identical to Complainant’s mark,” Complainant states.

With respect to the issue of bad faith registration and use, Complainant contends that Respondent registered the disputed domain name in order to prevent Complainant from reflecting the mark in a corresponding domain name and that Respondent has engaged in a pattern of such conduct. In support of such assertion, Complainant argues that Domains By Proxy, Inc. has engaged in a pattern of registering domain names incorporating well known and famous marks in which it does not have legitimate rights and using them for commercial gain.

Complainant also maintains that Respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor. Complainant contends that Respondent's registration and use has been for the primary purpose of disrupting Complainant's charitable work. According to Complainant, users of Respondent's site, as a result of comments found therein disparaging Complainant and of links opposing the teachings and principles of Complainant, will be discouraged from associating with Complainant.

Finally, Complainant argues that Respondent has intentionally attempted to attract, for commercial gain, Internet users to its site by creating a likelihood of confusion with Complainant's mark as to the source, sponsorship, affiliation, or endorsement of such site or the products or services offered at such site. With regard to the "commercial gain" element, Complainant notes that other UDRP panels have inferred that a commercial gain is received from "click-thru" fees accrued by directing Internet users to unrelated commercial websites.

## B. Respondent

Respondent first argues that Complainant has no rights in the BRAHMA KUMARIS marks. He contends that pending trademark applications do not confer "rights" and that the term BRAHMA KUMARIS is the name of a religion or cult and does not serve as a mark.

Respondent also contends that he is making legitimate noncommercial and fair use of the domain name. The site in issue, Respondent asserts, is devoted to providing information about Brahma Kumaris. As stated on the homepage:

Brahmakumaris.info is a wholly independent, not-for-profit, information service documenting the work, beliefs and lifestyle of the Brahma Kumaris World Spiritual Organization (BKWSU), organizers of BK Raja Yoga Centers.

BrahmaKumaris.info is volunteer run collaboration of mainly ex-members and associates of BKWSU offering a forum for mutual support and discussion and free access to information. It is impartial and non-doctrinal. Intended to be honest, informed and accurate, the site and its contributors

take a detailed look at this international organization, its leaders and the effects of the lifestyle promoted by its leaders.

Respondent maintains that he operates the site on a noncommercial basis, without any intent for commercial gain. The links are provided as part of the function of the site of enabling members of the public to find out about Brahma Kumaris, Respondent asserts. Respondent also indicates that his site, including the above-referenced passage on the home page, does not mislead members of the public into believing that it is an official website of Complainant. While some of the material on the site is critical of some aspects of Brahma Kumaris, Respondent states, “the criticism is made in good faith and reflects reasonable concerns about the movement.”

Respondent also takes issue with Complainant’s contention that the disputed site provides links that are unrelated to Complainant’s goods and services. He also contends that PBK is a particular sect of Brahma Kumaris and references a number of academic textbooks that refer to Brahma Kumaris as a “new religious movement” or “cult.”

Respondent further challenges Complainant’s assertions with respect to bad faith registration and use. Respondent asserts that he does not compete with Complainant; that Domains By Proxy, Inc. is not a party to this action and, thus, that any domain name registrations owned by it are irrelevant to this matter; and that he does not seek to disrupt the “good work” carried on by Brahma Kumaris.

Finally, Respondent contends that this complaint was brought in bad faith and that, as a result, the Panel should enter a finding of “reverse domain name hijacking.” According to Respondent, “[a]t the very least, the Complaint has been brought recklessly and with a knowing disregard of the likelihood that Respondent has rights or legitimate interests....” Indeed, it is highly likely that the Complaint has been brought in an attempt to suppress criticism or investigation or particular elements of the Brahma Kumaris cult and to harass those who seek to make such criticism and investigation possible.”

### C. Additional Submissions

In its “Additional Written Statements and Documents in Reply to Respondent’s Response,” Complainant maintains that it has common law rights in the BRAHMA KUMARIS marks. Such rights, it argues, are established through evidence of use of such marks on publications for over ten years and in connection with spiritual and meditation products and services since at least as early as 1977. Moreover, Complainant declares, any suggestion that BRAHMA KUMARIS is a generic term fails to recognize that the more than 825,000 students of Brahma Kumaris are all part of one organization, BKWSU, and that the 8,500 branches in over 100 countries, including BKWSO, are governed by BKWSU.

Complainant also cites a number of federal court cases and ICANN decisions holding that the use of a mark in a domain name to attract users to a site with competing or critical views to those of the trademark owner are not protected by rights of fair use

because the competing trademark user is impermissibly taking advantage of the trademark owner's interest in its mark.

Complainant further argues that the challenged site is misleading because the disclaimer found therein is not prominently positioned at the top of the webpage and not displayed in a font size larger than any other on the page. In this case, Complainant asserts, the disclaimer is drowned out by the bold title "BrahmaKumaris.info and lost amid the lengthy text. More importantly, Complainant adds, the disclaimer is not sufficient to overcome the initial interest confusion.

Complainant also contends that the affidavit submitted by Respondent in support of the noncommercial purpose of his site is insufficient to establish that its site is not used for commercial purposes. Even if Respondent did not receive revenue from the site, Complainant asserts, the links found on the site are enough to show commercial gain. These links, Complainant points out, redirect users to third-party sites offering items for sale, soliciting donations and subscriptions, and containing ads. According to Complainant, the fact that Respondent may not earn any income from the redirection is not determinative. "The fact is that someone other than Complainant is profiting from the use of the disputed domain name – a name that is confusingly similar to Complainant's mark. Consequently, the "for profit" nature of the use of the disputed domain name may be imputed to Respondent."

Complainant also argues that the mere fact that Respondent has registered and is using a domain name identical to the BRAHAM KUMARIS marks to criticize Complainant is evidence of registration and use in bad faith. Complainant further maintains that Respondent may be deemed a "competitor" since he acts in opposition to Complainant with respect to tricking internet users and competing for internet traffic.

With regard to the claim of "reverse domain name hijacking," Complainant asserts that Respondent has pointed to no evidence that BKWSO knew or should have known of any right or legitimate interest of the Respondent in the disputed domain name. Indeed, Complainant emphasizes, Respondent has no rights or legitimate interests in the domain name.

In his "Additional Submission," Respondent argues that Complainant has failed to establish common law trademark rights and that the evidence indicates, at most, that the organization in Mt. Abu has rights in the terms "Brahma Kumaris World Spiritual University" and "Brahma Kumaris World Spiritual Organization." Respondent finds no evidence, however, that Complainant is authorized to bring this complaint on behalf of the Mt. Abu organization. According to Respondent, it appears that this proceeding was instituted as part of a personal campaign by Sister Hansa Raval, who has objected to criticism of her medical claims.

Respondent also challenges many of the cases relied upon by Complainant in support of its contention that Respondent has no rights or legitimate interests in the domain name. Respondent argues that some of these cases were specifically disapproved of in

*Lamparello v. Falwell*, 420 F.3d 309 (4<sup>th</sup> Cir. 2005). Respondent indicates that the court in *Lamparello* rejected the application of the initial interest confusion theory to criticism sites. Moreover, Respondent adds, the nature of his site is perfectly clear and “no one who has visited or will visit Respondent’s site has been or will be confused.”

## **FINDINGS**

The Panel finds as follows: (1) Complainant has not met its burden of establishing that Respondent has no rights or legitimate interests in the domain name; (2) Complainant has not met its burden of establishing that the domain name was registered and is being used in bad faith; and (3) Respondent has not met its burden on the issue of reverse domain name hijacking. In view of the above findings, the Panel declines to reach the issue of whether the domain name is identical or confusingly similar to a mark in which Complainant has rights.

## **DISCUSSION**

Paragraph 15(a) of the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”) instructs this Panel to “decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable.”

Paragraph 4(a) of the Policy requires that the Complainant must prove each of the following three elements to obtain an order that a domain name should be cancelled or transferred:

- (1) the domain name registered by the Respondent is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (2) the Respondent has no rights or legitimate interests in respect of the domain name; and
- (3) the domain name has been registered and is being used in bad faith.

### **Identical and/or Confusingly Similar**

As noted above, in view of the Panel’s determinations on the issues of “rights or legitimate interests” and “bad faith” registration and use, the Panel declines to address this element of the Policy.

### **Rights or Legitimate Interests**

The Panel concludes that Respondent has rights or legitimate interests in the <brahmakumaris.info> domain name. Upon review of all the evidence, the Panel finds that Respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the mark at issue, within the meaning of paragraph 4(c)(iii) of the Policy.

Annex 2 to the Response includes a sworn affidavit by Respondent, paragraph 3 of which states, in part, as follows:

I registered the domain name brahmakumaris.info and administer the website at www.brahmakumaris.info on behalf of a group of other individuals with varying degree of connection to the BKWSU who wish to make information about Brahma Kumaris more readily available, in particular to support other Brahma Kumaris souls who were experiencing difficulties and friends and family of Brahma Kumaris who were at a loss to understand the changes in their loved ones. We intended it to include information about various problems and criticisms which some elements in the movement have sought to suppress. However, we did not intend the website to be limited to this. On the contrary, we intended to provide a facility for discussion of all aspects of Brahma's philosophy, history and practice, both good and bad.

Respondent, in paragraph 5 of his affidavit, indicates that "I confirm that I do not obtain any profit or revenue from the website at www.brahmakumaris.info. In particular, none of the links are [sic] sponsored or provide click-through commissions."

The Response includes other evidence of the noncommercial use of the disputed domain name. For example, Annex 5 contains a statement from a Mr. Joel Roth, who was involved with Brahma Kumaris for 12 years, including five years as head teacher at the organization's mediation center in Tokyo, and four years as head of the group's center in Osaka. Mr. Roth indicates that:

"Since 2003, the forum at XBKChat.com (now defunct) and its successor forum at brahmakumaris.info have provided a venue for members of the Brahma Kumaris, ex-members, friends and family of these individuals, academics, and others to communicate freely about the teachings, practices, and human dynamics within the organized religion that the Brahma Kumaris have built over the last six decades.

"The brahmakumaris.info forum is comprised of more than 16,000 articles posted by participants over the two years. No payments are required to participate. The site offers neither for-fee services nor any commercial products. It is run entirely by volunteers.

"In addition to the forum, the site at brahmakumaris.info has many unique information resources of value to those seeking to better understand the Brahma Kumaris, such as a dictionary of the group's religious terminology, summaries of key teachings, and lectures by the group's founder."

[\*\*\*]

"There is no editorial direction to the content present on the brahmakumaris.info forum, no concerted effort either to praise or criticize. Each posting is written independently. Both supporters and critics of the group post on the forum. Some participants criticize particular ... aspects of



the group, while supporting other aspects. Some of the discussion has no connection, or only peripheral connection to the Brahma Kumaris.

[\*\*\*]

“The forum serves an essential role in allowing people to discuss ... problems [relating to the emotional turmoil associated with adopting extreme religious beliefs], establish new relationships based on open communication, find acceptance, and be guided to psychotherapists, counselors or other appropriate resources for people with mental health issues.

“And as far as I am aware, the forum is the only online forum where friends and family members of newly recruited BKs can ... communicate with others about such BK practices as celibacy, restrictive diet, prohibition against ‘discussion of worldly matters’, that may create strains in the household.

“The forum at brahmakumaris.info serves an important support of free speech about a religious organization with membership in excess of 100,000 whose public image is otherwise controlled by the group’s public relations experts.”

In view of this evidence, the Panel concludes that the disputed domain name is being used in a noncommercial manner.

Complainant contends that Respondent may not be found to be using the domain name in a noncommercial manner, in part, because “[a]lthough Respondent may have a right to free speech and a legitimate interest in criticizing activities of an organization like Complainant, that free speech does not create rights or legitimate interests in a domain name that is virtually identical to Complainant’s mark” Presumably, therefore, Complainant would have no objection if Respondent used a domain name that was not identical or confusingly similar to the BRAHMA KUMARIS mark. However, in that case, Respondent would not need to rely on the noncommercial use “defense” to prevail; it could prevail solely on the grounds that the mark and domain name were not identical or confusingly similar. Thus, to accept Complainant’s argument would mean that the noncommercial or fair use “defense” would be applicable only in cases where it was not needed. The Panel declines to interpret the Policy in such a fashion.

The Panel recognizes that the Policy requires that a respondent make a noncommercial use “without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.” As noted in *Howard Jarvis Taxpayers Ass’n v. Paul McCauley*, D2004-0014 (WIPO April 22, 2004), the concept of “misleadingly diverting consumers” refers to the kind of confusion that arises in a trademark infringement context when a competitor diverts consumers to its site, and potentially, diverts sales. See also *Britannia Bldg. Soc’y v. Britannia Fraud Prevention*, D2001-0505 (WIPO July 6, 2001); *Benjamin Ladner v. Ben Wetmore*, FA305190 (Nat. Arb. Forum Oct. 13, 2004). Such does not appear to be the case here.

The Panel is also of the opinion that Respondent's site does not tarnish Complainant's mark. Tarnishment can occur only where there is commercial use, and ICANN panels generally require evidence that the mark is being used in connection with unwholesome or vulgar concepts, such as drugs, sex or violence. *See, e.g., Nicole Kidman v. John Zuccarini d/b/a Cupcake Party*, D2000-1415 (WIPO Jan. 23, 2001). In this case, the evidence establishes that Respondent's site is being used to comment upon (albeit often critically) the practices of Brahma Kumaris.

In sum, this Panel agrees with the ICANN panel's decision in *Britannia Building Society* to the effect that:

[t]he goals of the Policy are limited and do not extend to insulating trademark holders from contrary and critical views when such views are legitimately expressed without an intention for commercial gain. Use of the Policy to provide such insulation would radically undermine freedom of discourse on the internet and would undercut the free and orderly exchange of ideas that the Policy seeks to promote.

### **Registration and Use in Bad Faith**

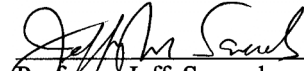
The Panel concludes that Complainant has not met its burden of establishing that the domain name was registered and is being used in bad faith. The Panel agrees with Respondent's contention that the actions of Domains By Proxy, Inc., a non-party to this proceeding, may not be attributable to Respondent. The Panel further finds that the disputed domain name is not being used primarily to disrupt Complainant's charitable work. Rather, as noted above, the Panel determines that the challenged domain name is being used primarily in connection with a site that includes both commentary and criticism of Complainant and that such use is protected under the Policy. Finally, given the Panel's finding that Respondent is using the domain name in a noncommercial manner, the Panel rejects Complainant's argument under paragraph 4(b)(iv) of the Policy.

### **Reverse Domain Name Hijacking**

Although the Panel concludes that Complainant is not entitled to the relief sought, it finds insufficient evidence of bad faith to justify a determination of reverse domain name hijacking. In this regard, the Panel notes that prior ICANN panel decisions have reached results contrary to that reached by the instant Panel. *See, e.g., Justice for Children v. R neetso/Robert W. O'Steen*, D2004-0175 (WIPO June 4, 2004); *Mission KwaSizabantu v. Benjamin Rost*, D2000-0279 (WIPO June 7, 2000); *Quirk Nissan, Inc. v. Maccini*, FA 94959 (Nat. Arb. Forum June 29, 2000); *Monty and Pat Roberts, Inc. v. J. Bartell*, D2000-0300 (WIPO May 8, 2000).

## **DECISION**

Having failed to establish all three elements required under the ICANN Policy, the Panel concludes that relief shall be **DENIED**.

  
Professor Jeff Samuels  
Arbitrator

---

Jeffrey M. Samuels  
David E. Sorkin  
Hon. Tyrus R. Atkinson, Jr., Esq.  
Panelists

Dated: November 19, 2007