

Domain Name Dispute Resolution Center (DNDRC)

Arbitration and Mediation Center

COMPLAINT PANEL DECISION

Case No. C2024-0003

Also in PDF C2024-0003

1. The Parties

The Complainant is Awami National Party (ANP), having its office at Bacha Khan Maraz, Pajagai Road, Peshawar, Khyber Pakhtunkhwa, Pakistan. The Complainant has initiated the Complaint vide their authorized representative, Haseeb Alam, with his address at Khawaja town, Pajaggi road, Peshawar, Khyber Pakhtunkhwa.

The Respondent's name is Sarfarosh Khan with his address at Battagram, Hazara.

2. The Domain Names and Registrar

The domain name in dispute is <anp.org.pk>, hereinafter referred to as the Disputed Domain Name [“the DDN”]. Vide email dated Friday 26 January 2024, PKNIC has informed DNDRC that the Disputed Domain Name was registered by Sarfarosh Khan with the contact name Fozan Khan, with his address at Battagram.

3. Procedural History

DNDRC was informed of the Complaint against the Respondent as per PKNIC - Internet Domain Registration Policy, by notification from the Complainant on 20 December 2023.

The Respondent was issued a notification of the dispute along with a copy of the Complaint and a Response Form on 29 January 2024 informing the Respondent that if a Response was not received 10 days from the notification, the dispute would be proceeded ex parte. The Respondent was issued reminder notifications on 2 February 2024, on 6 February 2024, and the Respondent was also given an extension till 19 February 2024 to provide a completed Response Form. The Respondent failed to provide a response within the stipulated time period on the Response Form.

Applying Paragraph 4(a) of the Rules for Uniform Domain Name Dispute Resolution Policy (the *Rules*), DNDRC appointed Mr. Umer Shariq as the sole Arbitrator who has verified that the Complaint satisfies the formal requirements of the Policy and the Rules.

Factual Background

The domain name upon which the Complaint is based is <anp.org.pk>.

PKNIC has confirmed via their email dated 26 January 2024 that the DDN was registered by the Respondent above-named and that the email address provided at the time of registration is skdeshani@gmail.com.

4. Parties Contentions

A. Complainant

The Complainant's brief contentions are reproduced below:

The Awami National Party (ANP) is a registered party with the Election Commission of Pakistan with the registered electoral symbol of "Lantern". The Party had registered the domain name i.e "anp.org.pk" with the abbreviation of the party name with PKNIC on [date]. This party is well recognized in Pakistan and part of the electoral process in Pakistan.

The name of the party which is registered one is itself a sign of its uniqueness and recognition and has been well-associated with the Complainant since its founding in 1996.

The registration certificate with the Election Commission of Pakistan is attached as "Annexure A"

Therefore, the Complainant seeks the following remedies:

- In accordance with Paragraph 4(i) of the Policy, the Complainant requests that the Administrative Panel appointed in this administrative proceeding transfer the Domain Name to the Complainant.

B. Respondent

The complaint was duly served to the Respondent, but the Respondent did not submit any formal

response. Under section 5(e) of the UDRP, in the absence of a response, the Panel has the authority to commence the proceedings in default and to determine the matter based upon the Complaint. Therefore, the Panel proceeded with the matter ex-parte.

5. Jurisdiction

The Panel's jurisdiction over this dispute between the Complainant and the Respondent is established by virtue of the Internet Domain Registration Policy version 4.4 (2019-08-19) and the Rules.

The Respondent applied for and was granted registration of the DDN on the basis of these regulations, and has submitted to, the PKNIC - Internet Domain Registration Policy version 4.4 (2019-08-19) and the Rules and correspondingly to the arbitral jurisdiction of the DNDRC and its arbitration decisions.

6. Discussion and Findings

In the landmark case of *Standard Chartered PLC v. Hosting Campus Domain* (case no. C2007-0001) available on the DNDRC website (http://www.dndrc.com/cases_resolved/pdf/c2007-0001.pdf), the Panel laid down the following four heads under which to analyze cases, under the Internet Domain Registration Policy version 4.4 (2019-08-19) and the UDRP:

1. *Illegality, unlawfulness or otherwise invalidity of the Application & Registration (a criteria in terms of the PKNIC - Internet Domain Registration Policy June 20, 2006 version 4.1 in addition to the criteria of the UDRP)*
2. *Identical or confusing similarity to a trademark or service mark in which the Complainant has rights (a UDRP criteria)*
3. *Legitimate interest in Domain Name (a UDRP criteria)*
4. *Registration and use in bad faith (a UDRP criteria)*

The decision of the dispute shall be addressed with respect to the following aspects:

- i. *Illegality, unlawfulness or otherwise invalidity with respect to the Application & Registration (a PKNIC - Internet Domain Registration Policy version 4.4 (2019-08-19) criteria).*
- ii. *Identical or confusing similarity with a trademark or service in which the Complainant has rights (a UDRP criteria).*
- iii. *Legitimate interest in the domain name (a UDRP criteria).*

- iv. Registration and use of the domain name in bad faith (a UDRP criteria).

I. Illegality, unlawfulness or otherwise invalidity of the Application & Registration

The PKNIC - Internet Domain Registration Policy version 4.4 (2019-08-19) states that it creates an exception for, and thus excludes the registration of a domain name that:

- a. *infringes upon a registered tradename,*
- b. *is not bona fide as recognized by international best practice,*
- c. *in the opinion of PKNIC, a contravention of the latest version of the Pakistan Penal Code Act, 1860 (including offences of defamation & blasphemy)/ Anti-Terrorism Act, 1997/any applicable criminal law,*
- d. *has been declared by a Criminal Court of appropriate jurisdiction to have contravened the latest version of Pakistan Penal Code Act, 1860 (including offences of defamation & blasphemy)/Anti-Terrorism Act, 1997/any applicable criminal law), or*
- e. *in the opinion of PKNIC is not appropriate for registration.*

As per the PKNIC - Internet Domain Registration Policy version 4.4 (2019-08-19),

If a party claims that a domain name already registered with PKNIC violates their registered tradename, an obvious derivation of their registered company name is not bona fide as recognized by international best practice, and is a contravention in the opinion of PKNIC to be a contravention of the latest version of the Pakistan Penal Code Act, 1860 (including offences of defamation & blasphemy)/ Anti-Terrorism Act, 1997/any applicable criminal law, PKNIC reserves the right to cancel, or transfer the domain to the claiming party as per the ICANN's Uniform Domain Name Dispute Resolution Policy [UDRP] (with PKNIC amendments) or as per the orders of a court judgment in Pakistan.

Therefore, for the purpose of assessing illegality, unlawfulness or otherwise invalidity of the Application & Registration of the Disputed Domain Name, the application and registration of the DDN shall be assessed in consideration of the following criteria:

- i. Whether the DDN infringes upon a registered trade name / trademark?
- ii. Whether the application and/or registration of the DDN is bona fide?
- iii. Whether the application and/or registration of the DDN contravenes the Pakistan Penal Code, 1860 (the "Penal Code") or any applicable criminal law?

The Complainant has not specifically contended that the registration of the DDN by the Respondent is illegal, unlawful, or otherwise invalid.

The Respondent has not provided a response on this point.

The Complainant contends that it is a political party registered with the Election Commission of Pakistan under the name “Awami National Party.”

The Complainant asserts that “ANP” is an abbreviation for “Awami National Party” and serves as a unique identifier for the Complainant, constituting an unregistered trademark, for which the Complainant has also submitted evidence. The Panel finds that “ANP” has become a distinctive identifier associated with the Complainant.

In the absence of any information provided by the Respondent, the Panel is unable to infer whether the Respondent also has rights to the term “ANP” that would indicate that the registration of the DDN by the Respondent was bona fide.

In view of the findings of the Panel that the DDN, which incorporates an unregistered trademark of the Complainant in its entirety, constitutes an infringement of the unregistered trademark of the Complainant in its entirety, the Panel, relying on the findings in *Standard Chartered PLC v. Hosting Campus Domain (case no. C2007-0001)*, also finds that the registration will contravene relevant provisions of the Pakistan Penal Code.

The Panel therefore finds that the registration of the Disputed Domain Name is unlawful. The Panel may decide this Complaint on this basis alone. However, for the sake of completeness and procedural fairness, but not to create a binding precedent, this Panel shall also assess the Complaint in terms of the ICANN UDRP as amended by the PKNIC - Internet Domain Registration Policy version 4.4 (2019-08-19).

II. Identical or confusing similarity to a trademark or service mark in which the Complainant has rights

The Complainant has contended the following:

Complainant and its unregistered trademark “ANP” enjoy a nationwide and worldwide reputation. The Complainant owns the unregistered trademark since the inception of the political party Awami National Party (ANP) in 1986.

With respect to the legal position, it is stated that despite the status of Complainant's unregistered trademark, the Complainant's mark has become a distinctive identifier, and a common name understood and recognized by the general population.

The disputed domain name is virtually identical to Complainant's name and unique identifier "ANP" making it the Complainant's unregistered trademark. The WIPO decision in Case No. D2011-1246 FinanceMalta v. Adriano Cefai the Panel decided that the Complainant had rights in the unregistered trademark.

The Complainant is also not required to register the mark as it has been in use of the mark "ANP" since its inception in 1986 due to the principle of passing off as defined in Section 17(4)(a) of the Trademarks Ordinance, 2001. It states: 17(4) A trade mark shall not be registered if, or to the extent that, its use in Pakistan is liable to be prevented - (a) by virtue of any law, in particular, the law of passing off, protecting an unregistered trade mark or other mark used in the course of trade;. Additionally, the WIPO Case No. D2009-1394 S.N.C. Jesta Fontainebleau v. Po Ser the Panel decided that the Complainant had rights in the disputed domain name by virtue of the principle of passing off. The Complainant satisfies the test of passing off as (a) the Complainant has a reputation and goodwill in respect of the name by being known nationwide and has been part of the federal and provincial government of Pakistan; (b) the Respondent is using it to cause deception in the marketplace by holding on to the Complainant's disputed domain name confusing its supporters regarding political updates of the Complainant and (c) the Complainant suffering or is likely to suffer consequential damage, the Complainant will likely suffer in the upcoming General Election due to not being in control of its official domain name as it requires the domain to conduct surveys and organize its supporters for election campaigning and may lose its substantial vote bank.

Furthermore, this acquired distinctiveness is based on multiple factors which are important for achieving such a mark. These include (a) the duration and nature of the use of the mark which we are using for a considerable time since the inception of the party (b) the advertising of the mark which can be ascertained from the active participation of the party in electoral process and remained part of different government in Pakistan (c) recognition by the public which itself can be ascertained by the voters all over Pakistan.

Keeping in view of the above proposition, this is crystal clear that the above domain name which has been under our use for a decade is related and important for the party and its working.

The main part of the domain name in dispute incorporates in its entirety the mark of the Complainant and by which the Complainant has become well-known.

For all the above-mentioned reasons, the domain name in dispute is confusingly similar to the unregistered trademark “ANP” in which the Complainant has rights, and therefore the condition of Paragraph 4(a)(i) is fulfilled.

It is an established principle that the incorporation of a Complainant’s trademark in full within a disputed domain name may be sufficient to establish confusing similarity between the mark and the disputed domain name.

The Complainant has crucially relied on a precedent set by another Panel, wherein when the disputed domain name was found to be virtually identical to Complainant’s name and unique identifier, which was considered to be the Complainant’s unregistered trademark for the purpose of this UDRP criteria: see *FinanceMalta v. Adriano Cefai*, Case No. D2011-1246 (WIPO, September 8, 2011).

The Complainant has also relied on another precedent set by another Panel, wherein the Panel discussed the passing off action, and how if the Complaint is able to establish that all three requirements for a passing off action are being met, then “...*this Panel is prepared to hold that the Complainant has rights in respect of the name...*” See: *S.N.C. Jesta Fontainebleau v. Po Ser*, Case No. D2009-1394 (WIPO, November 21, 2009).

For the purposes of a passing off action the Complainant needed to prove that “...*(a) it has a reputation and goodwill in respect of the name or sign in question, (b) the defendant is using it or a confusingly similar variant of it to cause deception in the marketplace and (c) the plaintiff is suffering or is likely to suffer consequential damage.*”

The Panel notes that the Complaint has attempted to establish the three requirements for a passing off action. Firstly, the Complaint has asserted that it is well-known with respect to the name in question. Secondly, the Complainant has stated that the Respondent, by holding onto the DDN, is causing confusion to the Complainant’s supporters, thus causing deception. Finally, the Complaint has stated that it will suffer damage since, in the absence of control of the DDN, the Complainant would be unable to conduct surveys and organize its supporters for election campaigning, resulting in a loss of the Complainant’s voter base.

Based on these submissions, the Panel finds that the Complainant does have rights to the name “ANP”. The question then arises whether the Disputed Domain Name is confusingly similar to the name to which the Complainant has rights.

Another Panel noted that the TLD suffix is generally disregarded, where it does not form part of the relevant trademark: see *Rexel Developpements SAS v. Zhan Yequn*, Case No. D2017-0275 (WIPO. April 24, 2017). In the present case, the applicable TLD suffix “.com” does not form part of the relevant trademark. The Disputed Domain Name, therefore, is confusingly similar to the name “ANP” in which the Complainant has rights.

In summary, the Complainant has provided sufficient information, including annexing evidence, that “ANP” is the unregistered trademark of the Complainant, and that the Complainant has rights in the word “ANP” by virtue of a passing off action. The addition of the ccTLD “.pk” would also not prevent the finding of confusing similarity.

The Respondent has not submitted any contention on this point.

In the absence of any valid explanation of how the DDN is not confusingly similar to the unregistered trademark of the Complainant, the Panel finds confusing similarity between the DDN and the Complainant’s unregistered trademark under paragraph 4(a)(i) of the Policy.

III. Legitimate interests in a domain name

As per paragraph 4(c), the UDRP requires the Respondent’s claim to be of legitimate interest and shall be:

“proved based on all evidence presented” that “shall demonstrate” the Respondent’s “rights or legitimate interests to the domain name for purposes of Paragraph 4(a)(ii).”

Paragraph 4(a)(ii) states that:

“(i) before any notice to you of the dispute, your use of, or demonstrable 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; or

(ii) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or

(iii) you are making a legitimate noncommercial 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.”

The Complainant has contended:

Respondent is neither affiliated with Complainant in any way nor has it been authorized by Complainant to use and register its mark, or to seek registration of the Complainant’s domain name incorporating said mark. Furthermore, Respondent cannot claim prior rights or legitimate interest in the domain name, as the ANP mark precedes the registration of the disputed domain name for years.

Respondent is not commonly known by the disputed domain name or the name “ANP”, in accordance with paragraph 4(c)(ii) of the Policy. There is simply no evidence that Respondent may be commonly known by the name ANP.

The domain name is virtually identical to the Complainant’s ANP mark that Respondent cannot reasonably pretend it was intending to develop a legitimate activity through the disputed domain name. Panels have found that “domain names identical to a Complainant’s trademark carry a high risk of implied affiliation”.

Moreover, Respondent cannot assert that, before any notice of this dispute, it was using, or had made demonstrable 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, in accordance with paragraph 4(c)(i) of the Policy. The disputed domain name, which entirely incorporates Complainant’s unregistered trademark, does not resolve to any webpage (Annexure D). This is supporting proof that the Respondent has no legitimate interest in the domain name and is just holding on to the Complainant’s domain name for purposes which are not legitimate.

Finally, given Complainant’s goodwill and renown nationwide, and the nature of the disputed domain name, which is virtually identical to Complainant’s mark, it is not possible to conceive a plausible circumstance in which Respondent could legitimately use the disputed domain name, as it would invariably result in misleading diversion and taking unfair advantage of Complainant’s rights.

For all the above-cited reasons, it is undoubtedly established that Respondent has no rights or legitimate interests in respect to the domain name in dispute under Paragraph 4(a)(ii) of the Policy.

The Respondent has submitted the following:

Please note that the domain was expired and available for sale when I bought it. This is my right to sale or not nobody have to right to force me. PKNIC also doesn't have right to access to give access third party. If something happens without my written permission. I will file case in court against the concerned.

As has been previously adopted by the discussions and findings in WIPO authorities, it is for the Respondent to rebut the allegations put forth by the Complainant after the Complainant establishes a prima facie case about the lack of legitimate interest in a disputed domain name. Also, with respect to proving rights or legitimate interests in the disputed domain name(s), it is for the Respondent to submit evidence pertaining to the same as it would be extremely difficult, if not impossible, for the Complainant to prove a negative assertion. As such, in order to satisfy the Panel that it has rights or legitimate interests to the DDN, the Respondent was obliged to respond and submit evidence with respect to the same.

As the Panel has already noted above, the Complainant has provided sufficient information that “ANP” is the unregistered trademark of the Complainant and that the Complainant has rights in the word “ANP” by virtue of a passing off action, demonstrating a prima facie case of legitimate interest in the DDN. The Complainant has clarified that it has never authorized the Respondent to use the “ANP” mark or corresponding domain names in any form.

In another case, another Panel held that when a Complainant does not provide authorization to the Respondent “to use any of its trademarks or to apply for or use any domain name incorporating those marks,” the Respondents would not be able to claim a legitimate use of the domain name. It was also noted that when the Respondent does not respond to the Complaint, the Respondent fails to invoke “...any other circumstance that might demonstrate... that it holds some right or legitimate interest in the disputed domain names...” See: LEGO Juris A/S v. DomainPark Ltd, Case No. D2010-0138 (WIPO, March 10, 2010).

The Respondent on the other hand only claims it registered the DDN due to its availability but has failed to provide any indication of any legitimate interest in the DDN.

In the absence of any information provided by the Respondent in support of his legitimate interest in the DDN, the Panel finds that the Respondent does not have rights to or a legitimate interest in the DDN pursuant to paragraph 4(a)(ii) of the Policy.

IV. Registration and use in bad faith

The Complainant has made the following submission:

Paragraph 4(a) (iii) of the Policy requires Complainant to prove that Respondent registered and used the disputed domain name in bad faith.

Bad faith can be found where Respondent “knew or should have known” of Complainant’s unregistered trademark rights and, nevertheless registered a domain name in which it had no rights or legitimate interest (WIPO Case No. D2009-0320, Research In Motion Limited v. Privacy Locked LLC/Nat Collicot; WIPO Case No. D2009-0113, The Gap, Inc. v. Deng Youqian). It is implausible that Respondent was unaware of Complainant’s right over the domain name when it registered the disputed domain name.

Firstly, Complainant is well-known throughout the nation and world at large

Secondly, the domain name <anp.org.pk>, was previously registered by the Complainant and upon its expiry the Complainant was under the impression that the domain name had been renewed till the year 2024. This clearly demonstrates that Respondent registered the disputed domain name based on the attractiveness of the Complainant’s unregistered trademark to cause harm to the Complainant’s vote bank in the up-coming General Elections in February 2024, the Complainant is a widely popular and active political party of Pakistan and wishes to participate in the upcoming elections. Prior Panels have held that bad faith can be found where a domain name is so obviously connected with a well-known mark that its very use by someone with no connection to the mark suggests opportunistic bad faith (WIPO Case No. D2013-0091, LEGO Juris A/S v. store24hour; WIPO Case No. D2008-0226, Lancôme Parfums et Beauté & Cie, L’Oréal v. 10 Selling; WIPO Case No. D2006-0464, Caixa D’Estalvis I Pensions de Barcelona (“La Caixa”) v. Eric Adam). Given the reputation of the ANP trademark, registration in bad faith can be inferred.

Under Section 2 of the ICANN Policy, it is established that when someone registers a domain name, he represents and warrants to the registrar that, to his knowledge, the registration of the domain name will not infringe the rights of any third party. It means that it was Registrant’s duty to verify that the registration of the disputed domain name would not infringe the rights of any third party before registering said domain name (WIPO Case No. D2009-0901, Compagnie Gervais Danone contre Gueorgui Dimitrov / NETART; WIPO Case No. D2002 0806, Carolina Herrera, Ltd. v. Alberto Rincon Garcia; WIPO Case No. D2000 1397, Nike, Inc. v. B.B. de Boer).

Hence, in view of the above-mentioned circumstances, it is inconceivable that Respondent did not know about Complainant's rights in the disputed domain name at the time of registration of the disputed domain name. Consequently, it is established that Respondent registered the disputed domain name in bad faith.

In a nutshell following is the legal basis on which Complainant relies.

*The Domain name is identical or confusingly similar to the Complainant's trademark
The Complainant has sole rights and legitimate interest in respect of the Domain name
The Complainant is commonly known by the domain name and the Complainant is a bonafide user of such.
The domain name is being used in bad faith by the respondent.*

The Respondent has failed to submit a substantive response on this issue.

The Complainant has relied on a precedent set by another Panel, wherein the Panel noted that “...Previous UDRP Panels have made a finding of bad faith where the complainant's trademark was shown to be well-known or in wide use at the time of registration of the disputed domain name...” Moreover, the Panel also noted that “...the mere “parking” of a website has been sufficient to demonstrate a finding of bad faith...” See: LEGO Juris A/S v. store24hour, Case No. D2013-0091 (WIPO, February 22, 2013). The Complainant has submitted evidence which shows that the DDN leads to a parked website.

The Panel finds that the ANP mark of the Complainant had considerable popularity and was well-known for the period that the Respondent has been using the mark. The Respondent did not provide any substantive submission that it was not aware about the Complainant or its business at the time of registration of the DDN.

The Panel, therefore, in the absence of any substantive submission to the contrary by the Respondent, finds that the DDN was registered and is being used in bad faith by the Respondent.

7. Decision

Analyzing the details provided by the Complainant, the Panel perceives that the Complainant has rights in the “ANP” mark, hence the Complainant reserves crucial interest in such mark. Usage of these marks by the Respondent could endanger the reputation that the Complainant has worked hard at building and maintaining and result in confusion as to the registrant of the DDN.

Taking all the discussion above into consideration, the Panel concludes and decides that:

1. The Respondent's registration of the DDN is contrary to the PKNIC - Internet Domain Registration Policy version 4.4 (2019-08-19)
2. The Respondent has no legitimate interest in the DDN.
3. The DDN is confusingly similar to the Complainant's unregistered trademark/names.
4. The DDN was registered and being used in bad faith.

Pursuant to Section 4 of the Policy, the Panel, therefore, recommends that PKNIC transfer the registration of the domain name in dispute <anp.org.pk> to the Complainant, as prayed, within 48 hours of receipt of this decision either by email or through the website where it will be uploaded, www.dndrc.com/cases_resolved/, whichever is earlier. The Complainant shall also be at liberty to contact PKNIC for implementation of this decision.

Arbitrator: Umer Shariq

Sole Panelist

Date: 23 March 2024