

## **ADMINISTRATIVE PANEL DECISION**

Manhattan Review, Inc. v. Sunil Chunduru  
Case No. D2023-4833

### **1. The Parties**

The Complainant is Manhattan Review, Inc., United States of America (“United States”), internally represented.

The Respondent is Sunil Chunduru, India.

### **2. The Domain Name and Registrar**

The disputed domain name <manhattanreviewindia.com> is registered with GoDaddy.com, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 23, 2023. On November 23, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 23, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name which differed from the named Respondent (either Sunil Kumar Chunduru, CK’s Edvantage Education (P) Limited, or Manhattan Review Education Private Limited) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 27, 2023 providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on November 28, 2023.<sup>1</sup>

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on December 8, 2023. In accordance with the Rules,

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<sup>1</sup> The Complainant removed two domain names from the Complaint upon receipt of the Center’s notice of multiple underlying registrants.

paragraph 5, the due date for Response was December 28, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on January 2, 2024.

The Center appointed Andrew D. S. Lothian as the sole panelist in this matter on January 4, 2024. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

On January 5, 2024, the Panel issued Procedural Order No. 1 to the Parties. This requested that the Complainant expand upon its submissions in section VI. B of the Complaint, notably (1) to provide further details of the Complainant's business activities and history, including the nature and extent of its use of the trademark MANHATTAN REVIEW from 1999 to 2023 (such evidence if the Complainant claims that an unregistered mark was in existence over some or all of that period to be provided in accordance with the guidance and range of factors set out in section 1.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)")); (2) to provide a copy of the franchise agreement under which the Respondent operated and the precise period during which the franchise agreement was in operation; (3) to provide a fuller explanation of what the Complainant means by "they went rogue", i.e., in what activities did the Respondent engage, together with more precise dates for these activities; (4) to provide details of how and when the franchise agreement was terminated (if it was), and the manner in which such termination was notified to the Respondent or its company; and (5) the extent to which, if at all, the Complainant was aware of the Respondent's use of the disputed domain name in the period during the operation of the franchise agreement or before its commencement.

The Complainant was requested to provide its response to the Procedural Order on or before January 12, 2024. The Respondent was invited to comment on the Complainant's submission (if any) on or before January 19, 2024. The decision due date was extended to February 2, 2024. The Complainant responded to the Procedural Order on January 5, 2024 and January 12, 2024. The Respondent did not respond to the Procedural Order.

#### **4. Factual Background**

The Complainant is a New York, United States, corporation. It is engaged in the provision of course study materials and educational services for testing preparation. The Complainant was incorporated on December 29, 1999 when its founder was a doctoral student. Over subsequent years, the Complainant's founder has operated the "Manhattan Review" brand via the Complainant and, with a minority partner ("the Minority Partner"), via a Delaware company named Manhattan Review LLC, incorporated on May 13, 2005, which became inactive on January 24, 2012.<sup>2</sup>

The Complainant's founder and the Manhattan Review corporate entities received media coverage of their activities, namely, articles in The Times newspaper of October 6, 2005, Newsweek of March 6, 2006, and BusinessWeek of August 23, 2007 (the latter quoting the Minority Partner). The Complainant makes the uncontradicted assertion that following litigation between its founder and the Minority Partner, all rights in the MANHATTAN REVIEW trademark reverted to said founder and the Complainant. The Panel therefore treats the Complainant as the cancelled entity's successor in interest in respect of any relevant rights in the name "Manhattan Review".

The Complainant is the owner of United States Registered Trademark Number 7207815 in respect of the word mark MANHATTAN REVIEW, filed on August 20, 2014 and registered on October 31, 2023 in Classes 9 (claim of first use in commerce of August 20, 1999), 16 (claim of first use in commerce of January 1, 2001), 41 (claim of first use in commerce of August 20, 1999), and 42 (claim of first use in commerce of January 1,

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<sup>2</sup> The Panel verified these details from the New York State Division of Corporations website, which disclosed the details of Manhattan Review LLC as a 'foreign limited liability company' of Delaware, United States, jurisdiction. On the topic of a panel conducting such independent research of publicly available sources, see section 4.8 of the [WIPO Overview 3.0](#).

2001). Said mark contains a disclaimer stating, "No claim is made to the exclusive right to use the following apart from the mark as shown: 'REVIEW'". The Complainant is also the owner of Indian Registered Trademark Number 4330767 for the mark MANHATTAN REVIEW, applied for on October 24, 2019, in Class 35 (claim of first use dated January 26, 2000).

The disputed domain name was registered on March 15, 2013, and resolves to a website prominently displaying the mark MANHATTAN REVIEW and providing education services. The Respondent is an individual based in India. There is no evidence or submission before the Panel suggesting that the Respondent is not the original registrant of the disputed domain name, and the Panel therefore proceeds on the presumption that the Respondent is the original registrant of and has owned the disputed domain name since 2013. The Respondent previously had a business relationship with the Complainant and/or its predecessor in interest.

The history of the Parties' business relationship, so far as identifiable from the record, is as follows: According to an email produced by the Complainant, the Respondent first contacted the Complainant's organization on December 28, 2007 via its general email address under the domain name <manhattanreview.com>. In said email, the Respondent proposed to open "a Manhattan Review franchise in India". The Respondent noted that it would be in a position to meet the Complainant's representative for international markets in March 2008. Following a meeting between the Minority Partner and the Respondent on March 5, 2008, the Complainant's predecessor in interest, Manhattan Review LLC, appears to have entered into a franchise agreement with the Respondent's company. The franchise agreement is undated but seems to have been created on April 3, 2009 and modified on April 8, 2009. It is unsigned.

The franchise agreement was produced in the litigation between the Complainant's founder and the Minority Partner and is noted on its face to be confidential pursuant to a protective order of the court concerned. For that reason, the Panel will refer to its provisions in general terms and only to the extent relevant to the issues between the Parties in this administrative proceeding.

Payments were made by the Respondent's company to the Complainant between 2009 and 2012 ostensibly under the franchise agreement. Thereafter, the Parties have been in dispute. In particular, the Parties have been engaged in various trademark disputes in India for the last nine years. It appears that the Parties (more precisely the Complainant and the Respondent's company) have each applied for MANHATTAN REVIEW trademarks in India and that, excepting the Indian trademark referred to above, they have each opposed the other's applications.

The Complainant produces a screenshot of a website at "www.indiamr.com" which it says is the Respondent's company's former website, noting that it has now switched to using the disputed domain name. The website at "www.indiamr.com" references "the New York-based test preparation company", describes itself as "Manhattan Review" or "Manhattan Review, India", and references its operations in Hyderabad, India. The Complainant also produces a comparison between its own site and the website associated with the disputed domain name, showing that the Respondent reproduces the same logo on its website as that on the Complainant's site. The Complainant makes the uncontradicted claim that it created this logo in 1999.

## **5. Parties' Contentions**

### **A. Complainant**

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant contends that the Respondent has no legal rights to use the trademark MANHATTAN REVIEW, that the Respondent wishes to confuse customers by tricking them into believing that it is an operation sanctioned by the Complainant, and that the Respondent has switched from

<indiamr.com> to the disputed domain name, which highlights a purported connection to the Complainant. The Complainant adds that while the Respondent operated under a franchise agreement for some time, it “went rogue” at some point “in the beginning of the last decade”.

## **B. Respondent**

The Respondent did not reply to the Complainant’s contentions.

## **C. Complainant’s reply to Procedural Order No. 1**

In summary, the Complainant responded as follows:

1. Further details of the Complainant’s business activities and its use of the MANHATTAN REVIEW trademark from 1999 to 2023.

The Complainant’s business was originally conceived in August 1999 as a test preparation institute when its founder was a doctoral student. The Complainant was incorporated on December 30, 1999. The founder took on the Minority Partner and the “Manhattan Review” brand was operated by Manhattan Review LLC, a Delaware limited company from 2005 to 2011. Thereafter it was operated by a different company until 2014 when it was operated by the Complainant again. A dispute between the Minority Partner and the Complainant was resolved following litigation. The dispute in part related to a United States registered trademark on the Supplemental Register for MANHATTAN REVIEW, which was later cancelled. A settlement to the litigation confirmed the Complainant’s founder as the owner of all rights in the MANHATTAN REVIEW trademark. The mark existed from 1999 and was prominent, garnering media attention in October 2005, June 2006, and August 2007, before any contact was received from the Respondent.

2. To provide a copy of the franchise agreement under which the Respondent operated and the precise period during which the franchise agreement was in operation.

The Respondent (as opposed to the Respondent’s company) never held a franchise agreement and should be treated as a standard domain name squatter. On March 5, 2008, the Respondent agreed terms for a franchise with the Minority Partner in person. The ensuing franchise agreement with the Respondent’s company was produced in the Complainant’s founder’s litigation with the Minority Partner and is subject to a confidentiality restriction pursuant to a protection order. Although the agreement is unsigned, bank statements show that the Respondent’s company began making regular payments into Manhattan Review LLC’s bank account with effect from June 8, 2009, suggesting its adoption. The last such payment exhibited by the Complainant is dated January 25, 2012.

3. To provide a fuller explanation of what the Complainant means by “they went rogue”, i.e., in what activities did the Respondent engage, together with more precise dates for these activities.

The Respondent’s company stopped making agreed franchise fee payments but continued to use the Complainant’s mark. Said company then filed for an Indian trademark for MANHATTAN REVIEW in December 2012, copying the Complainant’s distinctive logo, whereupon the Complainant retained counsel and applied for its Indian trademark.

4. To provide details of how and when the franchise agreement was terminated (if it was), and the manner in which such termination was notified to the Respondent or its company.

The Complainant does not wish to speculate as this matter may be the subject of future litigation. The failure to make payment and/or the Respondent’s application for a copy of the Complainant’s trademark may be taken as suitable dates of termination. The Respondent as an individual was never a franchisee.

5. The extent to which, if at all, the Complainant was aware of the Respondent's use of the disputed domain name in the period during the operation of the franchise agreement or before its commencement.

The Respondent did not register the disputed domain name while the franchise agreement was in operation, but in 2013. The Complainant was not aware of the disputed domain name when it was registered.

## **6. Discussion and Findings**

### **A. Identical or Confusingly Similar**

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. [WIPO Overview 3.0](#), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1. Although the textual element "review" is disclaimed in the Complainant's mark, the scope of protection of said mark extends to the entirety of the mark as shown, namely both words together, being MANHATTAN REVIEW. The disclaimer does not extend to the entirety of the textual elements of the mark. [WIPO Overview 3.0](#), section 1.10.

The Panel finds the mark (when compared to the disputed domain name in its entirety) is recognizable within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms, here, "india" may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

The Panel also finds that the Complainant has established unregistered trademark rights in the mark MANHATTAN REVIEW, based upon, first, the length of trading under the name concerned dating from at least the Complainant's incorporation date in 1999, and secondly, the media coverage dating from between 2005 and 2007 which it has exhibited. The Complainant's MANHATTAN REVIEW mark featured in prominent publications with a substantial circulation and this accordingly shows a degree of actual public recognition. [WIPO Overview 3.0](#), section 1.3.

The Panel finds the first element of the Policy has been established.

### **B. Rights or Legitimate Interests**

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has

not rebutted the Complainant's prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

Despite the Respondent having failed to rebut the Complainant's case, there are two aspects of the Respondent's position that are worthy of closer examination by the Panel. First, there is the franchise agreement apparently entered into between the Complainant's predecessor in interest and the Respondent's company. Secondly, there is the fact that the Respondent's company has applied for registered trademarks in the term MANHATTAN REVIEW in India which remain under opposition by the Complainant. The Complainant's position is that the Respondent would not be able to claim rights and legitimate interests by these means because the franchise agreement was entered into, and the trademark applications were made, by the Respondent's company rather than the Respondent. However, insofar as the Respondent's company might possess rights or legitimate interests via these means, the Panel considers that it would be reasonable for the purposes of the administrative proceeding to impute these to the Respondent as an individual, given that it is clearly the founder and controller of the corporate entity. To do otherwise would be to take an overly narrow or unduly restrictive view which would not accommodate the fact that the Respondent's interests are likely to be closely aligned with those of its affiliated company.

Turning therefore to the franchise agreement, the Panel considers that such a commercial arrangement may, in appropriate cases, confer a right or legitimate interest upon a respondent that is a franchisee with regard to a domain name which reflects the brand of the franchisor. In all such cases, this would depend upon the nature and extent of the rights conferred in the agreement. In the present case, it is clear from the terms of the agreement that one specific domain name, described as "the Website", was to be used for the franchise. That domain name is not the disputed domain name. The franchise agreement goes on to provide that future domain names might be deployed as and when the terms of the franchise were extended. However, the agreement stipulates that in such cases these "will be made available" by the Complainant's predecessor in interest.

In these circumstances, the Panel considers that the Respondent could not claim rights or legitimate interests in the disputed domain name by virtue of the franchise agreement as it was not "made available" by the Complainant but was registered by the Respondent (as an individual) directly. Furthermore, it should be noted that the disputed domain name was registered in 2013, over a year after payments ceased under the franchise agreement, marking the point at which relations between the Parties had broken down. While the Complainant is not clear that the franchise agreement has been formally terminated, it does not seem unreasonable to the Panel to infer that de facto termination has taken place. There is no evidence before the Panel, for example, that the Respondent's company has attempted, or is still offering, to adhere to the franchise agreement. Likewise, the Respondent has not argued that it did not enter the franchise agreement. For all of these reasons, the Panel considers that the Respondent would not have been able to claim rights or legitimate interests in the disputed domain name on the strength of the franchise agreement, and it is notable that the Respondent has not engaged with the administrative proceeding in order to make any such contention.

Turning next to the trademark applications made by the Respondent's company, while these are still under application, it should be noted that the existence of any trademark, even if it had proceeded to registration, would not automatically confer rights or legitimate interests upon a respondent. Panels have generally declined to find respondent rights or legitimate interests in a domain name on the basis of a corresponding trademark registration where the overall circumstances demonstrate that such trademark was obtained to prevent the complainant's exercise of its rights (even if only in a particular jurisdiction). [WIPO Overview 3.0](#), section 2.12.2.

Here, the Panel is clear that the Complainant had been using its MANHATTAN REVIEW unregistered trademark in commerce from its incorporation in 1999 and had obtained a degree of public recognition of such mark between at least 2005 to 2007. The Panel takes the view that the Respondent's initial approach to the Complainant's predecessor in interest to seek a franchise arose more probably than not due to the Complainant's prominence in its particular field of activity and to the goodwill already established in the

MANHATTAN REVIEW brand, from which the Respondent wished to benefit via a suitable commercial arrangement. The Complainant makes the uncontradicted assertion that despite entering into a franchise agreement and making initial payments thereunder, the Respondent's company then ceased all cooperation and began to usurp the Complainant's prior rights by way of the trademark application which features the Complainant's logo. In the absence of any explanation from the Respondent, the Panel sees this as an attempt to prevent the Complainant's exercise of its rights in the jurisdiction concerned rather than the expression of the Respondent's own relevant rights or legitimate interests.

Based on the available record, the Panel finds the second element of the Policy has been established.

### **C. Registered and Used in Bad Faith**

This case presents somewhat differently from the typical case under the Policy involving prior business relations between a complainant and a respondent. In the typical case, the domain name concerned is usually registered at the outset of the parties' business discussions or at least during the currency of the commercial agreement between them with the intention that it be used in furtherance of mutual business purposes. In many such cases, it can be difficult for a complainant to show that such a domain name registration was probably motivated by bad faith, not only due to the passage of time but also because it can be difficult to impute a bad faith motivation to a person who appears to be engaging in prima facie good faith commercial activities.

The situation can be different where a domain name has been registered contrary to the express provisions of an agreement between the parties concerned, in circumstances where the registration takes place after such agreement has come into force. That appears to be the position here. The factual matrix shows a process of the establishment of commercial relations between the rights holder or franchisor with the intended franchisee which include clear parameters specifying how domain name(s) featuring the Complainant's brand could be employed by the Respondent's company. The franchise agreement effectively provides a prohibition on registration of domain names by the Respondent's company, given that any beyond the initial domain name are to be "made available" only by the Complainant's predecessor in interest. In the context of the agreement, the Panel reads "made available" as meaning "registered" (or possibly the granting of express permission for the Respondent to do so). This also corresponds to the wider context which provides that the Complainant will be responsible for website hosting, advertising, and search engine optimization, suggesting that the Parties envisaged that the Complainant would handle all matters pursuant to the configuration of relevant domain names.

On this analysis, the disputed domain name could not have been registered in good faith, unless this particular provision of the franchise agreement had been waived by the Complainant's predecessor in interest. There is no evidence before the Panel of any such waiver having been made, whether on an express or implied basis. There is likewise no evidence before the Panel that the Complainant and the Respondent or the Respondent's company did not proceed on the basis of the franchise agreement (albeit unsigned) or that they agreed alternative terms that would have suggested the Respondent's good faith regarding the registration of the disputed domain name in 2013. Given the prior discussions dating back to 2008, therefore, there can be no doubt that the disputed domain name was registered with the Complainant's rights in mind, and the Panel also finds that it was most probably registered in the knowledge either that it would violate the terms of the franchise agreement or at the very least that it would contravene the Complainant's express wishes regarding who the holder of any related domain name should be. That could not on any view be regarded as a registration in good faith.

The Panel is fortified in its view on this topic by the fact that the disputed domain name was only registered by the Respondent a year after the Respondent's company had ceased to make payments in terms of the franchise agreement. On the Complainant's uncontradicted submissions, after relations between the Parties broke down, the Respondent's company began to attempt to establish independent intellectual property rights in India featuring the Complainant's brand without the Complainant's permission, and the disputed domain name was registered as part of that scheme. In the absence of a plausible explanation from the Respondent as to what it was doing in the context of the Parties' prior commercial relations, it is difficult if not

impossible for the Panel to view the Respondent's actions in registering the disputed domain name as having any good faith motivation. In all of these circumstances, the Panel finds on the balance of probabilities that the disputed domain name was registered in bad faith.

Turning to the use of the disputed domain name, on the uncontradicted submissions of the Complainant, the disputed domain name is being used to impersonate the Complainant and its brand in India in circumstances where neither the Respondent nor the Respondent's company have any right to present themselves as the Complainant or as its official representative in the country concerned. The Panel is again faced with a lack of explanation from the Respondent as to why it considers itself entitled to adopt this stance, particularly as the Respondent's company appears to have operated under the franchise agreement for a period of time and has then chosen to depart from its provisions. The Respondent's silence on this topic is remarkable. The disputed domain name reproduces the Complainant's brand and trademark together with the country name "India". As such, it carries a high risk of implied affiliation with the Complainant's mark and, indeed, it appears to be the Respondent's intention to provoke confusion among consumers, given the Complainant's uncontradicted evidence that the Respondent has also reproduced the Complainant's logo on its associated website. The Panel therefore finds that the disputed domain name is also being used in bad faith.

Based on the available record, the Panel finds that the Complainant has established the third element of the Policy.

## **7. Decision**

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain name <manhattanreviewindia.com> be transferred to the Complainant.

*/Andrew D. S. Lothian/*

**Andrew D. S. Lothian**

Sole Panelist

Date: February 2, 2024