

ADMINISTRATIVE PANEL DECISION

DPDgroup International Services GmbH & Co. KG v. Rega Bilgisayar Ltd.Sti.,
Rega Bilgisayar
Case No. D2022-4105

1. The Parties

The Complainant is DPDgroup International Services GmbH & Co. KG, Germany, represented by Fidal, France.

The Respondent is Rega Bilgisayar Ltd.Sti., Rega Bilgisayar, Türkiye.

2. The Domain Name and Registrar

The disputed domain name <dpd-trade.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 1, 2022. On November 1, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 14, 2022, 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 (No information provided) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 14, 2022, 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 amendment to the Complaint on November 14, 2022.

The Center verified that the Complaint together with the amendment to the 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 November 15, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 14, 2022 but, following a request from the Respondent, this was extended to December 24, 2022. The Response was filed with the Center on December 21, 2022.

Earlier on November 15 and 16, 2022, the Center received emails from the Respondent and an individual named "Seda" consenting to the transfer of the disputed domain name. The Complainant, however, rejected that offer. Despite that rejection, on December 5, 2022, the Respondent again communicated its readiness to transfer the disputed domain name to the Complainant. On December 6, 2022, however, the Respondent requested the extension of time to file the Response referred to above.

The Center appointed Warwick A. Rothnie as the sole panelist in this matter on January 10, 2023. 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.

4. Factual Background

The Complaint does not disclose much information about the Complainant. It appears to have registered the domain name <dpd.com> on March 20, 1991.

According to the website to which that domain name resolves, the Complainant claims to be one of the world's leading parcel delivery networks, with some 120,000 delivery experts operating in nearly 50 countries and a network of 70,000 pick-up points. The website claims that the Complainant delivers 8.4 million parcels each day, or 2.1 billion parcels each year; although it states it does so under the brands "DPD", "Chronopost", "SEUR", "BRT" and "Jadlog".

The Complainant has submitted a list of registered trademarks it owns which is some 62 pages long. The trademarks are variously for DPD, variations on a box device or combination of both. For present purposes, the registered trademarks include:

- (1) International Registration No 761146, DPD and box device, registered on May 26, 2001 in respect of a range of services including customs agency, transportation and storage of goods in International Classes 36 and 39 and which designated numerous jurisdictions including Türkiye;
- (2) International Registration No 1217471, DPD (figurative), registered on March 28, 2014 for a wide range of goods and services in International Classes 9, 16, 35, 39, and 42 including shipping and delivery services and transportation logistics services and which also designated numerous countries including Türkiye;
- (3) International Registration No 1232530, box device, registered on October 24, 2014 in respect of a range of goods and services in International Classes 9, 16, 35, 39 and 42 and which also designated numerous jurisdictions including Türkiye;
- (4) International Registration No 1271522, "dpdgroup" and box device, registered on August 25, 2015 in respect of a range of warehousing, shipping and delivery, transportation and logistics services in International Class 39 and which also designated numerous jurisdictions including Türkiye .

The disputed domain name was registered on June 3, 2022.

When the Complaint was filed, it resolved to a website apparently promoting maritime transport and logistics services under a logo which closely resembles the Complainant's trademark, the subject of International Registration No. 1271522. While the Complainant's registered trademark is represented with the letters DPD in black and "group" in gray and the box is red, the logo depicted in the Respondent's website is depicted all in white, but the letters DPD are much bolder than the letters for "group". The website displayed "buttons" to choose whether it presented in English or Turkish.

5. Discussion and Findings

Paragraph 4(a) of the Policy provides that in order to divest the Respondent of the disputed domain name, the Complainant must demonstrate each of the following:

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

Paragraph 15(a) of the Rules directs the Panel to decide the Complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable.

A. Identical or Confusingly Similar

The first element that the Complainant must establish is that the disputed domain name is identical with, or confusingly similar to, the Complainant's trademark rights.

There are two parts to this inquiry: the Complainant must demonstrate that it has rights in a trademark at the date the Complaint was filed and, if so, the disputed domain name must be shown to be identical or confusingly similar to the trademark.

The Complainant has proven ownership of at least the several registered trademarks identified in Section 4 above and their national or regional counterparts.

The Respondent contends that "DPD" is an abbreviation for many different things and persons in many different languages. It also contends that the inclusion of the word "trade" in the disputed domain name distinguishes the disputed domain name from the Complainant's trademarks.

The second stage of this inquiry, however, simply requires a visual and aural comparison of the disputed domain name to the proven trademarks. This test is narrower than and thus different to the question of "likelihood of confusion" under trademark law. Therefore, questions such as the scope of the trademark rights, the geographical location of the respective parties and other considerations that may be relevant to an assessment of infringement under trademark law are not relevant at this stage. Such matters, if relevant, may fall for consideration under the other elements of the Policy. See e.g., WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([WIPO Overview 3.0](#)), section 1.7.

In undertaking the comparison, it is permissible in the present circumstances to disregard the generic Top Level Domain ("gTLD") component as a functional aspect of the domain name system. [WIPO Overview 3.0](#), section 1.11.

It is also usual to disregard the design elements of a trademark under the first element as such elements are generally incapable of representation in a domain name. Where the textual elements have been disclaimed in the registration or cannot fairly be described as an essential or important element of the trademark, however, different considerations may arise. See for example, [WIPO Overview 3.0](#), section 1.10. Thus, while the Complainant's International Registration No 1217471 is classified as a figurative mark, the lettering is presented in only a simple sans serif italicised form and so it is appropriate to disregard the figurative styling for the purposes of this analysis.

Disregarding the ".com" gTLD, therefore, the disputed domain name consists of the Complainant's registered trademark DPD (International Registration No 1217471) and the term "trade". As this requirement under the Policy is essentially a standing requirement, the addition of this term does not preclude a finding of confusing

similarity. See e.g., [WIPO Overview 3.0](#), section 1.8. Apart from anything else, the Complainant's trademark remains visually and aurally recognisable within the disputed domain name.

Accordingly, the Panel finds that the Complainant has established that the disputed domain name is confusingly similar to the Complainant's trademark and the requirement under the first limb of the Policy is satisfied.

B. Rights or Legitimate Interests

The second requirement the Complainant must prove is that the Respondent has no rights or legitimate interests in the disputed domain name.

Paragraph 4(c) of the Policy provides that the following circumstances can be situations in which the Respondent has rights or legitimate interests in a disputed domain name:

- (i) before any notice to [the Respondent] of the dispute, [the Respondent's] use of, or demonstrable preparations to use, the [disputed] domain name or a name corresponding to the [disputed] domain name in connection with a *bona fide* offering of goods or services; or
- (ii) [the Respondent] (as an individual, business, or other organization) has been commonly known by the [disputed] domain name, even if [the Respondent] has acquired no trademark or service mark rights; or
- (iii) [the Respondent] is making a legitimate noncommercial or fair use of the [disputed] domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

These are illustrative only and are not an exhaustive listing of the situations in which a respondent can show rights or legitimate interests in a domain name.

The onus of proving this requirement, like each element, falls on the Complainant. Panels have recognized the difficulties inherent in proving a negative, however, especially in circumstances where much of the relevant information is in, or likely to be in, the possession of the respondent. Accordingly, it is usually sufficient for a complainant to raise a *prima facie* case against the respondent under this head and an evidential burden will shift to the respondent to rebut that *prima facie* case. The ultimate burden of proof, however, remains with the Complainant. See e.g., [WIPO Overview 3.0](#), section 2.1.

The Respondent registered the disputed domain name well after the Complainant began using its trademarks and also well after the Complainant had registered its trademarks.

The Complainant states that it has not authorised the Respondent to use the disputed domain name. Nor is the Respondent affiliated with it.

The disputed domain name is not derived from the Respondent's name. Nor is there any suggestion of some other name by which the Respondent is commonly known from which the disputed domain name could be derived. From the available record, the Respondent does not appear to hold any trademarks for the disputed domain name.

Prior to the filing of the Complaint, the disputed domain name appeared to be used in connection with services that fell plainly within the scope of the Complainant's trademark. As, according to the Complainant, the Respondent is not licensed by or otherwise associated with the Complainant, the use of the disputed domain name in competition with the Complainant or, at the very least, to misrepresent an association with the Complainant does not qualify as a good faith offering of goods or services under the Policy.

These matters, taken together, are sufficient to establish a *prima facie* case under the Policy that the Respondent has no rights or legitimate interests in the disputed domain name.

The Response does not claim that the Respondent is licensed by or otherwise associated with the Complainant.

Instead, in its Response, the Respondent states that it is an IT company and registered the disputed domain name on behalf of a client named DPD Uluslararası Ticaret ve Servis Hizmetleri Anonim Şirketi ("DPD Uluslararası") as a goodwill gesture. According to the Response, DPD Uluslararası is a well-known international trade company registered in Türkiye. The Response also states that DPD Uluslararası operates in a different business sector to the Complainant and claims there has been no use or reproduction of the Complainant's trademark.

The Response does not include any objective verification of the existence of DPD Uluslararası, such as its certificate of incorporation or current business registration. Further, the Response does not include any details about when DPD Uluslararası was incorporated or how it came to adopt "DPD" as part of its name.

The email correspondence before the Response was filed and which offered to surrender the disputed domain name did include an email from "Seda" using an account based on the disputed domain name.

On the other hand, the Panel's Google searches for DPD Uluslararası did not return any results apparently for such a company. Further, the claimed existence of such a company with legitimate interests in the disputed domain name does not sit well with the Respondent's three offers to surrender the disputed domain name. Further still, the website to which the disputed domain name resolved before the Complaint was filed contained a clear copy of the Complainant's registered trademark, DPDgroup and box logo, International Registration No. 1271522 and appeared to be offering services falling clearly within the scope of the Complainant's registered trademarks.

The Panel is not prepared to act on the basis of unsubstantiated claims of the existence of a company or business named DPD Uluslararası especially where the history of the adoption of that claimed name has not been fully and frankly disclosed and in circumstances where the website to which the disputed domain name resolves so clearly targets the Complainant.

Accordingly, the Respondent has not rebutted the *prima facie* case raised by the Complainant. Therefore, the Panel finds the Complainant has established the second requirement under the Policy also.

C. Registered and Used in Bad Faith

Under the third requirement of the Policy, the Complainant must establish that the disputed domain name has been both registered and used in bad faith by the Respondent. These are conjunctive requirements; both must be satisfied for a successful complaint: see *e.g.*, *Burn World-Wide, Ltd. d/b/a BGT Partners v. Banta Global Turnkey Ltd.*, WIPO Case No. [D2010-0470](#).

Paragraph 4(b) of the Policy identifies situations which may demonstrate that registration or use of a disputed domain name was not in bad faith under the Policy:

For the purposes of paragraph 4(a)(iii), the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of [the disputed] domain name in bad faith:

- (i) circumstances indicating that [the Respondent] has registered or [the Respondent has] acquired the [disputed] domain name primarily for the purpose of selling, renting, or otherwise transferring the [disputed] domain name registration to the Complainant who is the owner of the trademark or service mark or to a competitor of that Complainant, for valuable consideration in excess of [the Respondent's] documented out-of-pocket costs directly related to the [disputed] domain name; or
- (ii) [the Respondent has] registered the [disputed] domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that [the Respondent has] engaged in a pattern of such conduct; or

- (iii) [the Respondent has] registered the [disputed] domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the [disputed] domain name, [the Respondent has] intentionally attempted to attract, for commercial gain, Internet users to [the Respondent's] web site or other on-line location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of [the Respondent's] website or location or of a product or service on [the Respondent's] web site or location.

The instances of bad faith set out in paragraph 4(b) of the Policy are examples only, intended to illustrate types of conduct which is caught by the Policy. See e.g., *Do The Hustle, LLC v Tropic Web*, WIPO Case No. [D2000-0624](#).

Generally speaking, a finding that a domain name has been registered and is being used in bad faith requires an inference to be drawn that the respondent in question has registered and is using the disputed domain name to take advantage of its significance as a trademark owned by (usually) the complainant.

In the present case, the rejection of the Respondent's claim that its client has rights or legitimate interests in the disputed domain name leaves the basis of the Respondent's registration of the disputed domain name unexplained. At the time the disputed domain name was registered, moreover, the Complainant's business and trademarks had been in use very extensively and widely around the world.

Further, while the Respondent denies there has been any identity theft, phishing or other scam, the use of the Complainant's DPDgroup and box logo on the Respondent's, or its client's, website so soon after the disputed domain name was registered leads to a strong inference that the Respondent was well aware of the Complainant and its trademarks when the Respondent registered the disputed domain name.

In these circumstances, it is also permissible for the Panel to infer that the Respondent registered the disputed domain name for the purposes to which it has been put – namely for use on a website purporting to offer services the same as or similar to those of the Complainant in a manner which clearly misrepresents that the website is operated by the Complainant or someone associated with it.

Whether the person behind the website does in fact offer maritime transport and logistics services or is engaged in some sort of phishing or other fraudulent exercise is not decisive. The fact that the disputed domain name creates a likelihood of confusion is sufficient to constitute bad faith under the Policy where the Respondent has no rights or legitimate interests in the disputed domain name.

As the example in paragraph 4(b)(iv) shows, registration for that purpose constitutes registration in bad faith under the Policy. Subsequent use of the disputed domain name in carrying out that purpose is also use in bad faith.

Accordingly, the Complainant has established all three requirements under the Policy.

6. 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, <dpd-trade.com>, be transferred to the Complainant.

/Warwick A. Rothnie/

Warwick A. Rothnie

Sole Panelist

Date: January 24, 2023