

ADMINISTRATIVE PANEL DECISION

Türkiye'nin Otomobili Girişim Grubu Sanayi Ve Ticaret A.Ş. v. DOMAIN IS FOR SALE AT WWW.DYNADOT.COM ---- c/o Dynadot
Case No. D2022-2285

1. The Parties

The Complainant is Türkiye'nin Otomobili Girişim Grubu Sanayi Ve Ticaret A.Ş., Türkiye, represented by Gün & Partners, Türkiye.

The Respondent is DOMAIN IS FOR SALE AT WWW.DYNADOT.COM ---- c/o Dynadot, United States of America (the "United States" or "US").

2. The Domain Name and Registrar

The disputed domain name <togggcare.com> is registered with Dynadot, LLC (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on June 24, 2022. On June 24, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 25, 2022, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that 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 June 28, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 18, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on July 21, 2022.

The Center appointed Anne-Virginie La Spada as the sole panelist in this matter on July 25, 2022. 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 Complainant is a Turkish automotive company founded in 2018 for the purpose of creating an automobile brand competing in the global arena. In December 2019, the Complainant unveiled two new models of electric cars for which production is planned. This was reported in a number of news articles and broadcasts in Türkiye and abroad, including in the US.

Among other registrations, the Complainant is the owner of the following trademark registrations:

- European Union trademark registration for “TOGG (special font)” no. 018212709, registered on July 2, 2020 in classes 1 to 45;
- Turkish trademark registration for “TOGGCARE” no. 2021/134756 registered on February 10, 2022 in classes 9, 12, 35, 37, and 42;
- European Union trademark registration for “TOGGCARE” no. 018565796, registered on January 8, 2022 in classes 9, 12, 35, 37, and 42.

The applications that resulted in the above-mentioned Turkish and EU registrations for TOGGCARE were filed on September 27, 2021, the exact time being 11:44 am Turkish time with respect to the Turkish trademark registration.

The Complainant has also registered the domain name <togg.com.tr>.

The disputed domain name was registered on September 27, 2021, a few hours after the filing of the application for the trademark TOGGCARE of the Complainant in Turkey.

At the time of filing of the Complaint, the disputed domain name redirected users to a parking page where the disputed domain name was listed for sale for USD 9.800.

5. Parties' Contentions

A. Complainant

According to the Complainant, the disputed domain name is identical to its TOGGCARE registered trademark as it identically reproduces its trademark, the generic Top Level Domain (“gTLD”), “.com” being disregarded due to its purely technical function.

The Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name for the following reasons: (i) the Respondent is not commonly known by the disputed domain name; (ii) the Respondent is not affiliated nor authorized by the Complainant in any way; specifically no license nor authorization has been granted to the Respondent to make any use of the Complainant's trademarks, or apply for registration of the disputed domain name; (iii) the disputed domain name resolves to a parking page where the disputed domain name is listed for sale, which confirms that the Respondent has failed to use the disputed domain name for a *bona fide* offering of goods and services.

Finally, the Complainant contends that the Respondent has used and registered the disputed domain name in bad faith. According to the Complainant, the Respondent was aware of the existence of the Complainant and of its trademark when it registered the disputed domain name. The Complainant further asserts that the Respondent is using the disputed domain name for the purpose of selling the disputed domain name to the Complainant, a behavior amounting to registration and use in bad faith.

B. Respondent

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

6. Discussion and Findings

According to paragraph 4(a) of the Policy, a complainant must assert and prove each of the following:

- (i) the domain name registered by the respondent 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 domain name; and
- (iii) the domain name registered by the respondent has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The disputed domain name is identical to the Complainant's trademark TOGGCARE.

Furthermore, the disputed domain name reproduces in its entirety the Complainant's trademark TOGG, with the addition of the term "care".

UDRP Panels accept that the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) to a domain name where the relevant trademark is recognizable within the disputed domain name does not prevent a finding of confusing similarity under the first element of paragraph 4(a) of the Policy (see [WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition \("WIPO Overview 3.0"\)](#), section 1.8).

In the present case, the trademark TOGG is clearly recognizable in the disputed domain name. The mere addition of the term "care" does not prevent a finding of confusing similarity between the disputed domain name and the Complainant's trademark.

UDRP panels accept that a gTLD, such as ".com", may be disregarded when assessing whether a domain name is identical or confusing similar to a trademark (see [WIPO Overview 3.0](#), section 1.11).

The Panel finds accordingly that the Complainant has successfully established the requirement under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Respondent has failed to file a response.

Based on the information submitted by the Complainant, the Respondent is not an authorized distributor of the Complainant, nor has the Complainant granted to the Respondent an authorization to use the disputed domain name. Moreover, there is no indication that the disputed domain name corresponds to the Respondent's name or that the Respondent has been commonly known, as an individual, business or otherwise, by the disputed domain name.

No evidence has been presented that the Respondent was using or was making demonstrable preparations to use the disputed domain name in connection with any type of *bona fide* offering of goods or services. Instead, the disputed domain name is parked on a web page listing the disputed domain name for sale at a price of USD 9.800, *i.e.* an amount well exceeding the out-of-pocket expenses usually incurred for the registration of a domain name. This type of use does not indicate any *bona fide* offering of goods and services.

The Panel may draw from the lack of a Response the inferences that it considers appropriate, according to the Rules, paragraph 14(b). The Panel finds that the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Panel finds that the Respondent's silence corroborates the Complainant's *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name.

Accordingly, the Panel rules that the Respondent has no rights or legitimate interests in the disputed domain name, and that the Complainant has satisfied the condition set out in paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Complainant has established the announcement of the launch of its TOGG branded cars has received widespread publicity. The record also shows that the disputed domain name was registered only a few hours after the Complainant filed an application to register its TOGGCARE trademark in Türkiye. Against this background and considering the distinctiveness of the Complainant's TOGGCARE trademark, the Panel accepts that the Respondent most probably knew of the Complainant's trademark when it registered the disputed domain name.

Furthermore, the Complainant has demonstrated that the disputed domain name was offered for sale shortly after its registration for the amount of USD 9.800. Accordingly, the Panel finds on the balance of probabilities that the Respondent has registered or acquired the disputed name primarily for the purpose of selling, renting, or otherwise transferring the disputed domain name to the Complainant or to a competitor of the Complainant, for valuable consideration likely to be in excess of his documented out-of-pocket costs directly related to the disputed domain name. The Panel, therefore, finds that bad faith has been demonstrated under 4(b)(i) of the Policy.

For the reasons set out above, the Panel finds that the Respondent has registered and used the disputed domain name in bad faith, and that the Complainant has satisfied the condition set forth in paragraph 4(a)(iii) 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 <toggcare.com> be transferred to the Complainant.

/Anne-Virginie La Spada/

Anne-Virginie La Spada

Sole Panelist

Date: August 8, 2022