

## ADMINISTRATIVE PANEL DECISION

Dagi Giyim San. Ve tic.a. Ő. v. PrivacyDotLink Customer 4594967 /

Domain Admin

Case No. D2022-2730

### 1. The Parties

The Complainant is Dagi Giyim San. Ve tic.a.Ő., Türkiye, represented by Grup Ofis Marka Patent Inc., Türkiye.

The Respondent is PrivacyDotLink Customer 4594967, Cayman Islands / Domain Admin, Barbados, represented by Muscovitch Law P.C., Canada.

### 2. The Domain Name and Registrar

The disputed domain name <dagi.com> (the “Disputed Domain Name”) is registered with GoDaddy Online Services Cayman Islands Ltd. (the “Registrar”).

### 3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 26, 2022. On July 26, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On July 26, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on July 27, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. On the same day, the Center sent an email communicating in both English and Turkish regarding the language of the proceeding. The Complainant replied on July 27, 2022, asking Turkish to be the language of the proceeding instead of English. The Respondent replied on August 4, 2022, objecting to this.

The Center sent an email communication to the Complainant on August 5, 2022, requesting a translation of the Complaint into English. On August 15, 2022, the Complainant filed an amended and translated Complaint into English.

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 August 16, 2022. In accordance with the Rules, paragraph 5, the initial due date for Response was September 5, 2022. Upon request of the Respondent, the Response due date was extended to September 13, 2022. Response was filed with the Center on September 12, 2022.

The Center appointed Nick J. Gardner, Emre Kerim Yardimci, and Nicholas Smith as panelists in this matter on September 29, 2022. The Panel finds that it was properly constituted. Each member of 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 “ready-to-wear” clothing retailer. It was founded in 1984. It has over 100 retail stores in Türkiye. It also has around 27 stores outside Türkiye, including in Bosnia and Herzegovina (2), Dagestan (1), Palestine-Israel (1), Georgia (7), Iraq (7), Israel (1), Kazakhstan (1), Cyprus (4), Mongolia (1), and Jordan (1).

The Complainant is the owner of a number of trademark registrations for the term “DAGİ”. Most, if not all, of these appear to be for the term “DAGİ” in stylised form - see for example United States trademark serial no. 79202023 and registration no. 5332114, registered on November 14, 2017. These trademarks are referred to in this decision as the DAGİ trademarks. The DAGİ trademark has been recognised as “well known” by a decision numbered T/02461 of the Turkish Patent and Trademark Office. It is not entirely clear but it appears that the earliest of the DAGİ trademarks was registered in 1987 but was allowed to lapse. It appears from the online records of the Turkish Patent and Trademark Office, that the Complainant’s earliest duly renewed trademark dates back to 2009. The Respondent also owns a number of further trademarks which include the term DAGİ as part of the trademark but the Panel has not found it necessary to consider these in any detail.

The Complainant’s principal website is linked to the domain name <dagi.com.tr> which it registered in 1997.

The Disputed Domain Name was registered on February 8, 2000. The Respondent acquired the Disputed Domain Name on December 20, 2012.

The Respondent is a BVI corporation with an office in Barbados.

The Disputed Domain Name has not been used other than having been linked to webpages which offer it for sale. It appears that at times, it has been advertised for sale via “www.afternic.com” at a price of USD 125,000. It also appears that at times the webpage displayed may have contained advertising in the form of links to third party sites which the Panel infers are automatically generated. None of these links relate to the Complainant.

#### **5. Parties’ Contentions**

##### **A. Complainant**

The Complaint goes into considerable detail and cites numerous previous UDRP cases. In summary the Complainant’s case is as follows.

The Complainant submits that the Disputed Domain Name is confusingly identical to the DAGI trademark. It also says it is confusingly similar to its other trademarks which include the term DAGI.

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name. It states that it has never authorized the Respondent to use its DAGI trademark, that the Respondent has not been commonly known by that name, and that the Respondent is making neither *bona fide* commercial use nor legitimate noncommercial or fair use of the Disputed Domain Name.

The Complainant says that the Disputed Domain Name has not been used but has been offered for sale with an advertised price of USD 125,000. It also says that an attempt to access a website linked to the Disputed Domain Name was blocked (presumably by the system used to attempt the access) with an indication that malicious content might be present. It also relies on the fact that it says the Disputed Domain Name has been redirected to differing locations which change over time. Overall it says “The fact that the [D]isputed [D]omain [N]ame is not used regularly, constant redirection to different sites and publishing dangerous content within the site do not indicate a use in good faith. On the contrary, if this domain name is sold to any real or legal person other than the Complainant, there can be no use in good faith, and any use to be made will cause damage to the Complainant’s mark and name rights or dilution of the well-known mark”.

So far as bad faith is concerned the Complainant says “..... While the disputed trademarks belonging to the Complainant have been registered since 1988, the name and trade name of the Complainant has been registered in the trade registry in accordance with the laws of the Republic of Türkiye and is used continuously and widely throughout Türkiye, and also the domain names of the Complainant with national and generic extensions have been registered and used since 1997. The trademark ‘DAGI’ belonging to the Complainant is both officially recognized as a well-known mark, and a well-known and reputed mark in terms of ready-to-wear also in other countries where it operates, primarily within the borders of Türkiye. Accordingly, although there is no information about the Respondent as of this date, it is impossible for the Respondent, who has registered a domain name that is similar to the Complainant’s name, marks and domain names and hence is assumingly living in Turkey and speaks Turkish, to have no knowledge of Dagi or registered and well-known marks of the Complainant as of 08-02-2000. And yet, the choice of the word ‘DAGI’ by a person who is not aware of DAGI and its marks, and register it as a domain name at a time when the Complainant is known with DAGI in a way that would have a wide repercussion in the media, and entered into a process of rise and change, with many new plans and initiatives known to the public, is not a result of a coincidence. And also the fact that the same person has never used the domain name <dagi.com> which it registered in its own name, has put the <dagi.com> domain name directly on sale and kept it in its hand for sale through the website Afternic, has tried to sell the domain name for a certain fee on the whois domain name inquiry screen and aimed to gain unfair profits and sought an offer for the domain name <dagi.com> which is for sale cannot also be considered as an act of goodwill. This should be accepted as an indication that the Respondent has registered the disputed domain name in a conscious and planned manner and aims to gain unfair advantage”.

The Complainant also says that when a search for “dagi” is made in the Google search engine, the domain name <dagi.com.tr>, which is the web page of the Complainant, appears in the first place among 32,200,000 results.

The Complainant requests the transfer of the Disputed Domain Name.

## **B. Respondent**

A detailed Response has been filed. The main points the Respondent makes are as follows.

It says the Complainant erroneously assumed that the Disputed Domain Name’s registration date was the “Creation Date” of February 8, 2000. The Respondent’s actual registration date was on or about December 20, 2012, when the Respondent purchased the Disputed Domain Name as part of a portfolio. It produces evidence as to this transaction.

The Respondent produces a declaration from its director and manager confirming that at the time the Disputed Domain Name was registered it had no knowledge of the Complainant and the Disputed Domain Name was purchased because of its value as a generic four-letter domain name (see further below).

The Respondent points out that when the Complaint is analysed carefully it only actually claims that the Complainant's DAGİ trademark is well known in Türkiye. There is no claim it is well known elsewhere. It also says the Complaint is unclear as to what the extent of the reputation of the trademark "DAGİ" was, even in Türkiye, in 2012.

Insofar as the Complainant has stores in other countries the Respondent says as follows: "Complainant does state that it operates a number of branches outside of Turkey in 'off the beaten path' locations, such as in Iraq, Mongolia, Kazakhstan, and Bosnia-Herzegovina, but provides no evidence of when such stores were opened nor does Complainant provide any indication of brand awareness in those countries (to the extent that it even matters as they are all a world apart from Respondent's location). These aforementioned stores were likely opened long after Respondent registered the Domain Name in 2012. For example, Complainant's store in Bagdad apparently only opened less than a year ago in November, 2021 according to its website".

The Respondent says there is no evidentiary basis for concluding that the Complainant had any significant consumer awareness or reputation outside of Türkiye at any time prior to 2012 when the Disputed Domain Name was registered.

The Respondent refers to the Google search the Complainant relies upon and says as follows: "Complainant submitted what appears to be a current day Google search for `Dagi` conducted by someone ostensibly located in Turkey and claims that it shows that Complainant in first place. A current day search is immaterial in demonstrating any alleged awareness of Complainant prior to the Domain Name registration date in 2012. Moreover, it is well known that the location of the person conducting the search in combination with search history, has substantial bearing on what results Google shows. ....[in] a historical Google search from prior to December 20, 2012 using a British Virgin Islands search, Complainant is not at the top or even on the first page".

The Respondent denies having any knowledge of the Complainant when it registered the Disputed Domain Name and says it acquired the Disputed Domain Name as part of a portfolio of obviously innocuous domain names along with hundreds of others such as <kidsgame.com>, <frvi.com>, <nfc.org>, <ukrainedating.com>, <canadajob.com>, <dryeyes.com>, <rtys.com>, <wcm.com>, <icta.com>, <lucu.com>, <zals.com>, <hiphopstar.com>, <cheapesthotels.com>, <afta.com>, <jewler.com>, <idon.com>, <delt.com>, <zibi.com>, <bmx.org>, <qibs.com>, <sellmywatch.com>, <cign.com>, and many others. It says this is the clearest and independent evidence of a dispassionate and innocent selection of domain names for investment purposes without any intention or indication of targeting the Complainant's Turkish trademark which was and is, entirely unknown outside of Türkiye. To believe otherwise is to incredibly believe that the Respondent hid one particular domain name, <dagi.com>, amongst hundreds of other innocent domain names within a portfolio, specifically to hide the Respondent's "actual" intention of targeting a relatively unknown Turkish company. It also says it has systems in place to avoid registering names that correspond to well-known trademarks but these would not have identified the Complainant in 2012 as it had no reputation outside Turkey.

The Respondent says that in fact the Disputed Domain Name's value is wholly independent of the Complainant. Short, four-letter and ".com" domain names are regularly bought and sold on the open market and fetch relatively high sale prices due to their rarity and attractiveness to a very wide range of prospective purchasers. It provides evidence of the third party sale of <sati.com> for USD 977,000 in 2017, <deso.com> for USD 447,000 in 2022, <betu.com> for USD 917,000 in 2021. Accordingly, the Respondent says its sole interest in the Disputed Domain Name was its inherent value as a short-four letter and ".com" domain name that could be attractive to any number of people anywhere in the world and as such was an appropriate addition to the Respondent's stock in trade.

The Respondent also says the word, “dagi” actually has substantial significance and interest far beyond the Complainant. It says as follows:

(1) that although not even mentioned by the Turkish Complainant, the word, “dagi” means “mountain” in Turkish<sup>1</sup>. The word is commonly used to refer to a particular mountain, as in “Mountain of...”. For example, Mount Ararat (Agri Dagi) which is sometimes attributed as the place where Noah’s Ark came to rest. A Google search for “dagi mountains turkey” shows many dagis (mountains) in Türkiye.

(2) Dagi is also a girl’s name derived from the Scandinavian feminine form of Dagi and is also short for Dagmar. It comes from the old Norse for “day”.

(3) There are celebrities named Dagi, such as the well-known mixed martial artist, Dagi Arslanaliev and the social media influencer and businesswoman, Dagi Bee who has 6.7 million followers on Instagram and 3.96 million subscribers on YouTube.

(4) There are nearly 1,500 registered domain names that start with, “dagi”.

(5) There are numerous “dagi” websites including those linked to the following domain names: <dagi-co.com>, a Mexican office technology company; <dagi.ca> a Canadian Internet services and technology company; <dagi.cz> a Czech art gallery; <dagi.ge> a major Georgian construction company; <dagi.com.tw> a Taiwanese pen manufacturer; and <dagitax.com> a Washington DC tax firm.

(6) The Brookings Institution also uses the acronym DAGI to describe its “Development, Aid and Governance Indicators (DAGI)”. The Brazilian government’s Academic Directory of Information Management also uses this acronym.

(7) In Canada, Dagi is shared as a business name by cleaning companies, renovation companies, construction companies, and design companies, that adopted the name, Dagi, both before and after the Respondent registered the Disputed Domain Name, thereby demonstrating that the Disputed Domain Name is of potential interest to not only existing but new entrants to the marketplace.

(8) There are dozens of Dagi companies unrelated to the Complainant, all over the world, in a wide variety of businesses, such as Dagi Comercio de Cosmetico in Brazil, Dagi Estudio de Arquitectura in Spain, Dagi Enterprises in Georgia, USA, Dagi Holding AB in Sweden, Dagi Inc. in Michigan, Dagi Pizza in New York, Dagi S.A. in Panama, and many more. Many of these companies were created after the Respondent registered the Disputed Domain Name, demonstrating that the Respondent selected a domain name that would be attractive to new entrants to the marketplace. UK Companies House shows several Dagi companies such as for example, Dagi Plumbers Ltd. created years after the Respondent registered the Disputed Domain Name. The Florida Secretary of State database likewise shows Dagi Corp., Dagi LLC, Dagi Exposure LLC, Dagi Express Inc., and Dagi Group, some created before and some after the Respondent registered the Disputed Domain Name. The NY Secretary of State database similarly shows companies such as Dagi Pizza Inc., Dagi Management Corp., and Dagi Logistics Corp., along with additional older and more recent registrations.

(9) Facebook shows numerous people named Dagi. LinkedIn shows numerous companies all over the world other than the Complainant, such as Dagi Security & Consulting in Italy and Dagi Auto and Body Shop in Texas. Forbearers shows thousands of people who all share the Dagi surname.

Overall, the Respondent asks rhetorically in light of all of these third party uses of the term, how can the Complainant credibly say, without evidence, that it was the reason for the registration?

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<sup>1</sup> The Panel does not believe this statement is strictly accurate. The correct word for the “Mountain of ...” in Turkish is Dağ, and not identically “Dagi”.

The Respondent says that the evidence is clear that not only does the Complainant not have any monopoly over a commonly used dictionary word in Turkish, common personal name, and common business name, but there is no evidentiary basis for concluding that the Complainant was the reason for the Respondent's registration. The Complainant covets the Disputed Domain Name but there is no evidence that the Complainant was the reason for the registration. Rather, the abundant evidence shows that the Disputed Domain Name corresponds to a common and attractive term that has been and which continues to be newly adopted by a variety of persons and businesses all over the world.

The Respondent says it has no knowledge of the "threat notice" that the Complainant's lawyer apparently received when it tried to visit the website associated with the Disputed Domain Name. It says that perhaps it was a result of the web browsing or anti-virus software being used, however in any event the Respondent says it has never used the Disputed Domain Name in connection with any such "trojan horse" or other such malware.

The Respondent also says that the Complainant has attempted to buy the Disputed Domain Name but has not disclosed this in the Complaint. The evidence in this regard is discussed below in connection with Reverse Domain Name Hijacking ("RDNH").

The Respondent seeks a finding of RDNH. In this regard it says that while the Complainant may be forgiven for incorrectly and self-servingly assuming that the Respondent "must be Turkish and therefore a cybersquatter" without any evidence and waiting to see if it was or not, it is more difficult to accept that the Complainant apparently failed to disclose that it repeatedly and at its own initiative, attempted to purchase the Disputed Domain Name (see below), making offers of USD 5,000 and possibly as high as USD 50,000 under threat of a coercive legal proceeding. When it failed to obtain the Disputed Domain Name in the marketplace, it brought this proceeding as a Plan B (See *TOBAM v. M. Thestrup / Best Identity*, WIPO Case No. [D2016-1990](#); "using the Policy after failing in the marketplace to acquire the disputed domain name").

Indeed, the Complainant appears to have expressly threatened this possibility in the correspondence in question. As in *Patricks Universal Export Pty Ltd. v. David Greenblatt*, WIPO Case No. [D2016-0653](#), the Complainant's only real gripe is the price Respondent asked for the Domain Name, making this a classic "Plan B" case. Use of the Policy to increase leverage in negotiations to purchase a domain name, a highly improper purpose. See *BERNINA International AG v. Domain Administrator, Name Administration Inc. (BVI)*, WIPO Case No. [D2016-1811](#). It also says the Complainant also failed to disclose the meaning of the word, "dagi" in Turkish, which it surely was well aware of.

## **6. Discussion and Findings**

### **Preliminary Matters – Respondent Identity**

The filed evidence establishes that although the Respondent was identified in the Complaint as "PrivacyDotLink Customer 4594967, Cayman Islands / Domain Admin" the Respondent is properly named as Abstract Holdings International Ltd., which is a BVI corporation headquartered in Barbados. References to the Respondent are to both the named Respondent and that company.

### **Preliminary Matters – Language of the Proceedings**

The Panel notes the Complainant proceeded on the basis that the proceedings would be in Turkish and originally filed the Complaint in that language. It accompanied that document with what it said was a copy of the Registration Agreement for the Disputed Domain Name, which it said was in Turkish. In fact the document annexed to the Complaint is partly in Turkish and partly in English and contains the following clause: "4.12 English Language Controls. This Agreement, along with all policies and the applicable product agreements identified above and incorporated herein by reference (collectively, the "Agreement"), is executed in the English language. To the extent any translation is provided to you, it is provided for convenience purposes only, and in the event of any conflict between the English and translated version,

where permitted by law, the English version will control and prevail. Where the translated version is required to be provided to you and is to be considered binding by law (i) both language versions shall have equal validity, (ii) each party acknowledges that it has reviewed both language versions and that they are substantially the same in all material respects, and (iii) in the event of any discrepancy between these two versions, the translated version may prevail, provided that the intent of the Parties has been fully taken into consideration”.

The Registrar subsequently confirmed to the Center that the Registration Agreement was in English. The Panel concludes the document that the Complainant provided is a partial translation of the original English language Registration Agreement entered into by the Respondent.

The Complainant in the Complaint provided a number of arguments as to why the proceedings should be in Turkish, as follows:

“(a) The Complainant is a company established under the laws of the Republic of Turkey and its main communication language is Turkish,

(b) The disputed trademarks/trade name “Dagi Giyim San. Ve Tic.A.Ş.” are created in Turkish,

(c) Despite the fact that the disputed trademarks are the subject of national and international use, they have both gained official recognition in Türkiye and are well known and recognized by the Turkish public,

(d) The Complaint and annexes (evidence) submitted by the Complainant are drawn up in Turkish,

(e) Since the Disputed Domain Name is identical with the trademarks of the Complainant and confusingly similar to some trademarks, it is thought that the domain name is a real or legal person who has a command of the Turkish language and can communicate in this language”.

The Complainant’s assumption that the Respondent could speak Turkish was in fact incorrect.

Taken as a whole these reasons seem to the Panel to involve the Complainant assuming that because the Complainant is Turkish and its trademarks are (it says) well known in Turkey, that means the proceedings can take place in Turkish. That is not what the Rules provide. Paragraph 11 of the Rules provides as follows: “Language of Proceedings. (a) Unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding”.

The Respondent objected to the proceedings being in Turkish and the Complainant subsequently filed a translation of the Complaint into English. In all the circumstances the Panel considers that there is no proper basis for departing from paragraph 11 of the Rules, as to do so would manifestly disadvantage the Respondent who does not speak Turkish. Accordingly the Panel concludes that these proceedings should be in English. The Panel has treated the version of the Complaint translated into English as the Complaint. Insofar as various other documents filed by the Complainant are in Turkish the Panel has not found it necessary to require further translations given one member of the Panel is a native Turkish speaker.

### **Substantive Matters**

In order to succeed in the Complaint, the Complainant is required to show that all three of the elements set out under paragraph 4(a) of the Policy are present. Those elements are:

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

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

The Complainant has established that it is the owner of the DAGİ trademarks. It may be that all of these trademarks are device marks but each features prominently as part of the registered device the term DAGİ and in these circumstances the Panel concludes the Disputed Domain Name is confusingly similar to each of these trademarks. Similarity between a domain name and a device mark which includes words or letters is a readily accepted principle where the words or letters comprise a prominent part of the trademark in question – see for example *EFG Bank European Financial Group SA v Jacob Foundation* WIPO Case No. [D2000-0036](#), and *Sweeps Vacuum & Repair Centre, Inc. v Nett Corp.* WIPO Case No. [D2001-0031](#).

It is also well established that the generic Top-Level Domain (“gTLD”), in this case “.com”, does not affect the Disputed Domain Name for the purpose of determining whether it is identical or confusingly similar. See, for example, *Rollerblade, Inc. v. Chris McCrady*, WIPO Case No. [D2000-0429](#).

Accordingly the Disputed Domain Name is confusingly similar to the Complainant’s trademark and the Panel therefore finds that the first element under paragraph 4(a) is satisfied.

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

In the light of the Panel’s findings in respect of bad faith, below, it is unnecessary for the Panel to express a conclusion on the question of the Respondent’s rights or legitimate interests.

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

The Complainant’s entire case rests on the assumption that because its DAGİ trademark is well known in Türkiye, and because the Disputed Domain Name is identical to that trademark, then the person who registered the Disputed Domain Name must be Turkish or speak Turkish, and must have registered the Disputed Domain Name because of its connection with the Complainant. It has ignored completely (1) the fact that four-letter domain names may be intrinsically valuable anywhere in the world and hence the Disputed Domain Name could have been registered by a person unconnected with Türkiye; and (2) there are persons and businesses outside Türkiye that use the term “dagi” as their name or part of their name or as an acronym, completely independently of any connection with Türkiye.

The Respondent has convincingly demonstrated that both (1) and (2) are the case (see the Respondent’s evidence above) and that it acquired the Disputed Domain Name on December 20, 2012 as part of a portfolio of names. The Panel finds the Respondent’s evidence compelling in this regard – in particular it acquired many other fourletter domain names at the same time as it acquired the Disputed Domain Name including <frvi.com>, <rtys.com>, <wasm.com>, <icta.com>, <lucu.com>, <zals.com>, <afta.com>, <idon.com>, <delt.com>, <zibi.com>, <qibs.com>, and <cign.com>.

For completeness the Panel acknowledges that the Complainant’s evidence contains one reference from 2005 in the form of a Turkish newspaper article about the Complainant intending to open 15 stores outside Türkiye. Whether it in fact did so, and if so at what dates is unclear. Apart from this there is no evidence of the Complainant having any reputation outside Türkiye at the date the Respondent acquired the Disputed Domain Name and the Panel sees no reason to disbelieve the Respondent when it says it had never heard of the Complainant when it acquired the Disputed Domain Name.



In the circumstances, the Panel considers that on the evidence the Respondent did not register the Disputed Domain Name with knowledge of the Complainant's trademark nor with the intention of taking unfair advantage of that trademark, and cannot therefore have registered it in bad faith for the purposes of the Policy. The Panel adopts the approach described in WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") at section 3.2.2: "On the other hand, where the complainant's mark is not inherently distinctive and it also corresponds to a dictionary term or is otherwise inherently attractive as a domain name (e.g., it is a short combination of letters), if a respondent can credibly show that the complainant's mark has a limited reputation and is not known or accessible in the respondent's location, panels may be reluctant to infer that a respondent knew or should have known that its registration would be identical or confusingly similar to the complainant's mark".

Since the requirement under paragraph 4(a)(iii) is conjunctive, *i.e.*, the Disputed Domain Name must have been both registered and used in bad faith, the Complaint must therefore fail. The Panel would in any event add that it does not consider there is any evidence the Disputed Domain Name has been used in bad faith. Offering for sale a legitimately held domain name is not *per se* a bad faith use. Although in some circumstances asking a very large price may give rise to an inference of bad faith registration and use, the Panel does not consider that to be the case here, given the lack of any evidence casting any doubt on the Respondent's account of why it registered the Disputed Domain Name. It may well be the case that the Complainant would like to own the Disputed Domain Name and finds itself at a disadvantage if it cannot, but these are not reasons supporting a finding of bad faith.

The Complainant's further grounds that the Disputed Domain Name has been redirected in different ways and that it received a warning about malicious content seems to the Panel to be matters where the evidence is unclear and not sufficient to alter the above analysis.

Accordingly the Panel concludes the Complainant has failed to discharge its burden of proof and has failed to establish that the third condition of paragraph 4(a) of the Policy has been fulfilled.

## **7. Reverse Domain Name Hijacking**

Under paragraph 15(e) of the Rules:

"If after considering the submissions the Panel finds that the complaint was brought in bad faith, for example in an attempt at Reverse Domain Name Hijacking or was brought primarily to harass the domain-name holder, the Panel shall declare in its decision that the complaint was brought in bad faith and constitutes an abuse of the administrative proceeding."

In *Jazeera Space Channel TV Station v. AJ Publishing aka Aljazeera Publishing*, WIPO Case No. [D2005-0309](#), the majority of the three-member panel noted that the onus of proving that a complainant has acted in bad faith is on the respondent, and that mere lack of success of the complaint is not of itself sufficient to constitute reverse domain name hijacking. The majority went on to note that:

"Allegations of reverse domain name hijacking have been upheld in circumstances where a respondent's use of a domain name could not, under any fair interpretation of the facts, have constituted bad faith, and where a reasonable investigation would have revealed the weaknesses in any potential complaint under the Policy (see *Goldline International, Inc v. Gold Line*, WIPO Case No. [D2000-1151](#)). See also *Deutsche Welle v. DiamondWare Limited*, WIPO Case No. [D2000-1202](#), where an allegation of reverse domain name hijacking was upheld in circumstances where the complainant knew that the respondent used the at-issue domain name as part of a *bona fide* business, and where the registration date of the at-issue domain name preceded the dates of the complainant's relevant trademark registrations."

The three-member panel in *Yell Limited v. Ultimate Search*, WIPO Case No. [D2005-0091](#) noted that whether a complainant should have appreciated at the outset that its complaint could not succeed will often be an important consideration.

In the view of the Panel this is a complaint which should never have been launched. The Complainant is professionally represented in this matter and, in the opinion of the Panel should have appreciated that establishing registration and use in bad faith in respect of a domain name which had first been registered many years previously and which was a four-letter acronym was likely to involve difficult considerations. The Complainant appears to have ignored any such considerations. It should have been apparent to the Complainant's representatives that an argument that because the Complainant's trademark was well known in Turkey the Respondent must be a Turkish speaker who knew of the Complainant was simply not the only possibility. The obvious fact was that a four-letter domain name could have been registered by many people for many reasons, none of which had anything to do with the Complainant. Reasonable enquiries would have quickly established this was likely the case. Given the nature of the Policy and the multiplicity of previously decided cases dealing with similar issues in relation to short acronym type domain names where there was a lack of targeting of the complainant's mark, this was a case that had no reasonable prospects of success.

The Panel is also concerned by the evidence that the Respondent has submitted as to the Complaint having likely tried to buy the Disputed Domain Name. The Respondent points out that the Complainant's own evidence contains a copy of an email exchange dated December 23, 2021 between an individual with an email address at <mnmedia.com> and an individual at <godaddy.com>. Clearly the former had been enquiring as to the price of the Disputed Domain Name and given this email is in the Complainant's evidence was presumably acting on behalf of the Complainant. The Respondent then produces further evidence from GoDaddy's online system showing that an individual from a company called RNV Analytics made an unsolicited offer for USD 5,000 on February 1, 2022. The Respondent produces evidence to show that RNV Analytics is an organisation that provides analysis services to the Complainant. The Respondent then shows that a further offer was made on March 8, 2022 via the Uniregistry brokerage service, by a person using an email address that is not identifiable but which the Respondent says is likely the same person or at least another person acting on behalf of the Complainant. This offer was USD 40,000. A counter-offer was made by the Respondent for USD 110,000 and then the prospective buyer in a communication of March 14, 2022 raised his price to USD 50,000 and said that this was their best offer and that they would take the legal route if this offer was declined.

The Panel thinks it more likely than not that these offers were all made on behalf of the Complainant. The Panel agrees with the Respondent that the Complainant cannot have properly certified that "the information contained in this Complaint is to the best of the Complainant's knowledge complete and accurate" in circumstances where it has not disclosed it was prepared to pay USD 50,000 to purchase the Disputed Domain Name and threatened to "take the legal route" if this offer was declined. The Panel also agrees with the Respondent that the approach set out in *BERNINA International AG v. Domain Administrator, Name Administration Inc. (BVI)*, *supra* is applicable: "In the Panel's view, this is a classic "Plan B" case, *i.e.*, using the Policy after failing in the marketplace to acquire the disputed domain name. This stratagem has been described in several earlier UDRP cases as "a highly improper purpose" and it has contributed to findings of RDNH. See, *e.g.*, *Patricks Universal Export Pty Ltd. v. David Greenblatt, supra* (holding such approach as a basis for a finding of RDNH) and *Nova Holdings Limited, Nova International Limited, and G.R. Events Limited v. Manheim Equities, Inc. and Product Reports, Inc.*, WIPO Case No. [D2015-0202](#) (use of UDRP proceeding to increase bargaining leverage in sale negotiations called "a highly improper purpose")."

In all the circumstances the Panel agrees with the Respondent that the Complaint was brought in bad faith and constitutes an abuse of the administrative proceeding.

## 8. Decision

For the foregoing reasons, the Complaint is denied. The Panel finds that the Complainant was brought in bad faith and constitutes an abuse of the administrative proceeding.

*/Nick J. Gardner/*

**Nick J. Gardner**  
Presiding Panelist

*/Emre Kerim Yardimci/*

**Emre Kerim Yardimci**  
Panelist

*/Nicholas Smith/*

**Nicholas Smith**  
Panelist

Date: October 17, 2022