

ADMINISTRATIVE PANEL DECISION

Arçelik Anonim Şirketi v. Domain Administrator, See PrivacyGuardian.org /

Bernard Piejos

Case No. D2022-2821

1. The Parties

The Complainant is Arçelik Anonim Şirketi, Türkiye, represented by Gün + Partners Avukatlık Bürosu, Türkiye.

The Respondent is Domain Administrator, See PrivacyGuardian.org, United States of America / Bernard Piejos, France.

2. The Domain Name and Registrar

The disputed domain name <arçelik.com> [<xn--arelik-xua.com>] is registered with NameSilo, LLC (the "Registrar").

3. Procedural History

The Complaint was filed in Turkish with the WIPO Arbitration and Mediation Center (the "Center") on July 29, 2022. On August 1, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 1, 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 August 2, 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 amended Complaint on August 5, 2022.

On August 2, 2022, the Center sent an email communicating in both English and Turkish regarding the language of the proceeding. The Complainant replied on August 5, 2022, providing an amended Complaint translated into English. The Respondent did not reply.

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 August 8, 2022. In accordance with the Rules, paragraph 5, the due date for Response was August 28, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on August 29, 2022.

The Center appointed Mihaela Maravela as the sole panelist in this matter on August 30, 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.

The language of the proceeding is English, being the language of the Registration Agreement, as per paragraph 11(a) of the Rules.

4. Factual Background

The Complainant is a Turkish company established in 1955 and operating in the fields of durable consumer goods production, sales, and after-sales support services in Türkiye and around the world. The Complainant filed 300 patent applications and it is also among the top four companies with the most patents in the consumer durables industry across Europe. The Complainant operates globally with more than 40,000 employees, having 28 production facilities in nine countries and subsidiaries in 49 countries.

The Complainant owns many ARÇELİK word and figurative trademarks, including the Turkish trademark ARÇELİK application No. 83/079217, with the Registration No. 79217, registered as of December 31, 1993, in classes 06, 07, 09, 11, 16, 20, and 21. The Complainant has registered since February 9, 1996, the domain name <arcelik.com.tr> that it uses as an official website.

The disputed domain name was registered on July 6, 2003, and does not resolve to any active website.

5. Parties' Contentions

A. Complainant

The Complainant argues that the disputed domain name is identical with its reputed trademark ARÇELİK that is included in its entirety in the disputed domain name.

As regards the second element, the Complainant argues that it did not give permission, authority, consent, or license to the Respondent to use the ARÇELİK trademarks. The Complainant also argues that the disputed domain name resolves to a page where the Complainant's ARÇELİK trademark is copied, and it redirects to services in the Complainant's area of activity.

With respect to the third element, the Complainant contends that the disputed domain name was registered and is used in bad faith given that the Complainant's distinctive ARÇELİK trademark has had a very high reputation in Türkiye for many years, and given the use of the disputed domain name to redirect to services in the Complainant's field of activity.

B. Respondent

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

6. Discussion and Findings

6.1 Preliminary Matters

No communication has been received from the Respondent in this case. However, given that notice of the Complaint was sent to the relevant addresses disclosed by the Registrar, the Panel considers that this satisfies the requirement in paragraph 2(a) of the Rules to “employ reasonably available means calculated to achieve actual notice”. Accordingly, the Panel considers it can proceed to determine the Complaint based on the statements and documents submitted by the Complainant as per paragraph 15(a) of the Rules and to draw inferences from the Respondent’s failure to file any Response.

The applicable standard of proof in UDRP cases is the “balance of probabilities” or “preponderance of the evidence”, and the Panel can draw certain inferences in light of the particular facts and circumstances of the case. See section 4.2, WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”).

6.2 Substantive Matters

Paragraph 4(a) of the Policy directs that the Complainant must prove each of the following elements:

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

A. Identical or Confusingly Similar

The Complainant has proved its rights over the ARÇELİK trademark. The disputed domain name consists of the ARÇELİK trademark, in addition to the generic Top-Level Domain (“gTLD”) “.com”. The gTLD is typically ignored when assessing whether a domain name is identical or confusingly similar to a trademark. See section 1.11 of the [WIPO Overview 3.0](#).

This Panel concludes that the disputed domain name is confusingly similar to the Complainant’s trademarks and therefore finds that the requirement of paragraph 4(a)(i) of the Policy is satisfied.

B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

As established by previous UDRP panels, it is sufficient for the Complainant to make a *prima facie* case demonstrating that the Respondent has no rights or legitimate interests in the disputed domain name in order to place the burden of production on the Respondent (see section 2.1 of the [WIPO Overview 3.0](#)).

In the present case, the Complainant has established a *prima facie* case that it holds rights over the trademark ARÇELİK and claims that the Respondent has no rights, legitimate interest or any legitimate reason to acquire and use the disputed domain name.

The Complainant argued in the Complaint that the disputed domain name resolves to a page where the Complainant’s ARÇELİK trademark is copied, and that it redirects to services in the Complainant’s area of activity. The Panel notes that the Complainant has provided no evidence in that respect. The evidence on which the Complainant relies on shows that the disputed domain name is parked with Sedo. Nevertheless, there is no evidence that the Respondent is using the disputed domain name in connection with a *bona fide*

offering of goods or services, nor does the Respondent appear to engage in any legitimate noncommercial or fair use of the disputed domain name.

Also, there is no evidence that the Respondent is commonly known by the disputed domain name. The Respondent has not replied to the Complainant's contentions, claiming any rights or legitimate interests in the disputed domain name.

Furthermore, the nature of the disputed domain name, that consists of the Complainant's well-established trademark, carries a risk of implied affiliation and cannot constitute a fair use as it effectively impersonates or suggests sponsorship or endorsement by the Complainant. See section 2.5.1 of the [WIPO Overview 3.0](#).

With the evidence on file, the Panel finds that the requirement of paragraph 4(a)(ii) of the Policy is satisfied.

C. Registered and Used in Bad Faith

According to paragraph 4(a)(iii) of the Policy, the Complainant must establish that the disputed domain name has been registered and is being used in bad faith. The Policy indicates that certain circumstances specified in paragraph 4(b) of the Policy may, "in particular but without limitation", be evidence of the disputed domain name's registration and use in bad faith.

According to the un rebutted assertions of the Complainant, its ARÇELİK trademark was widely used in commerce well before the registration of the disputed domain name and is well known. The disputed domain name consists of the Complainant's trademarks, in addition to the relevant gTLD. Under these circumstances, it is most likely that the Respondent was aware of the Complainant's trademark at the registration date of the disputed domain name. The Respondent provided no explanations for why it registered the disputed domain name.

As regards to the use, the disputed domain name is passively held.

Section 3.3 of the [WIPO Overview 3.0](#) describes the circumstances under which the passive holding of a domain will be considered to be a bad faith registration: "While panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put."

The Panel finds that passive holding of the disputed domain name does not in the circumstances of this case prevent a finding of bad faith. There is no evidence in the record of a legitimate use of the disputed domain name. The trademark of the Complainant is distinctive and widely used in commerce. UDRP panels have consistently found that the mere registration of a domain name that is identical or confusingly similar to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith. See section 3.1.4 of the [WIPO Overview 3.0](#).

Moreover, the Respondent has not formally participated in these proceedings and has failed to rebut the Complainant's contentions and to provide any evidence of actual or contemplated good faith use and indeed none would seem plausible.

In the Panel's view, the circumstances of the case represent evidence of registration and use in bad faith of the disputed domain name. The Respondent failed to bring evidence as to the contrary. Consequently, the Panel concludes that the condition of paragraph 4(a)(iii) of the Policy is fulfilled.

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, <arçelik.com> [<xn--arelik-xua.com>], be transferred to the Complainant.

/Mihaela Maravela/

Mihaela Maravela

Sole Panelist

Date: September 14, 2022