

ADMINISTRATIVE PANEL DECISION

Enuygun Com Internet Bilgi Hizmetleri Teknoloji Ve Ticaret Anonim Şirketi v.
Kamran Agali, Ornek Teknoloji AS
Case No. D2023-0770

1. The Parties

The Complainant is Enuygun Com Internet Bilgi Hizmetleri Teknoloji Ve Ticaret Anonim Şirketi, Türkiye, represented by Ahi Hukuk, Türkiye.

The Respondent is Kamran Agali, Ornek Teknoloji AS, Türkiye, represented by Ilker Atamer, Türkiye.

2. The Domain Name and Registrar

The disputed domain name <enuygun.net> 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 February 21, 2023. On February 21, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 21, 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 (Registration Private, Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on February 22, 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 amendment to the Complaint on February 27, 2023.

The Center sent an email communication in English and Turkish to the parties on February 22, 2023, regarding the language of the proceeding, as the Complaint has been submitted in Turkish and the language of the registration agreement for the disputed domain name is English. The Complainant sent an email to the Center requesting Turkish to be the language of the proceeding on February 23, 2023. The Respondent submitted a request for English to be the language of the proceeding on February 23, and February 27, 2023. The Center sent a request to the Complainant to submit a translated Complaint in English on February 28, 2023. The Complainant filed a translated Complaint on March 4, 2023.

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 March 7, 2023. In accordance with the Rules, paragraph 5, the due date for Response was March 27, 2023. The Response was filed with the Center on March 27, 2023.

The Center appointed Ugur G. Yalçiner as the sole panelist in this matter on March 31, 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.

On April 12, 2023, the Panel issued Administrative Panel Procedural Order No.1 whereby the Parties were invited to submit evidence as regards the ownership of the disputed domain name, and the decision due date was extended accordingly. On April 16, 2023, and April 17, 2023, the Parties submitted their responses to the Procedural Order. The Respondent submitted a supplemental filing on April 22, 2023.

4. Factual Background

The Complainant has been operating in the field of airline ticket sales, bus ticket sales, hotel reservation, car rental, finance, insurance, GSM and Internet services since 2008.

The Complainant is the owner of the below trademarks before the Turkish Patent and Trademark Office ("TURKPATENT")

- Trademark ENUYGUN.COM with No. 2020 55344, filed on May 29, 2020, and registered on June 6, 2021;
- Trademark EN UYGUN UÇAK BİLETİ with No. 2020 82153, filed on July 20, 2020 and registered on June 6, 2021;
- Trademark EN ENUYGUN ARAÇ with No. 2021 168613 filed on November 25, 2021, and registered on October 24, 2022;
- Trademark EN ENUYGUN ARAÇ KİRALAMA with No. 2021 168614 filed on November 25, 2021, and registered on June 16, 2022;
- Trademark EN ENUYGUN FİNANS with No. 2022 061150 filed on April 27, 2022, and registered on August 18, 2022.

The disputed domain name was created on July 31, 2007. The Respondent registered the disputed domain name on December 29, 2019, and it is redirected to the official website of the Turkish Competition Authority.

5. Parties' Contentions

A. Complainant

The Complaint includes the following contentions:

(i) Identical or Confusingly Similar

The Complainant states that it has been operating in the field of airline ticket sales, bus ticket sales, hotel reservation, car rental, finance, insurance, GSM and Internet services since 2008 with the its main trademark ENUYGUN.COM and other trademarks. The trademark ENUYGUN.COM is registered on behalf of the

Complainant with number 2020 55344 before the TURKPATENT, it also owns trademarks EN UYGUN UÇAK BİLETİ, EN ENUYGUN ARAÇ, EN ENUYGUN ARAÇ KİRALAMA, EN ENUYGUN FİNANS which contain the phrase “enuygun”. The Complainant claims use of the phrase “en uygun” as a trade name since 2008 and ownership of domain name <enuygun.com>.

The Complainant asserts that the disputed domain name is confusingly similar to the trademarks registered on behalf of the Complainant, the phrase “enuygun” in the disputed name leads the impression that the disputed domain name is related to the Complainant, it also claims that the Brand Awareness and Image Perception Research conducted in February 2022 proves the awareness of the Complainant.

(ii) Rights or legitimate interests

The Complainant states that the Respondent has not any relation with the Complainant, its trademarks or its domain name <enuygun.com>, the Complainant has not authorized or licenced the Respondent for the use of the Complainant’s trademarks, the Respondent does not have any rights or legitimate interests in respect of the disputed domain name.

(iii) Registration and Use in Bad Faith

The Complainant claims that it uses the phrase “enuygun” extensively in Türkiye by referring the first page of the results of the search with the keyword “enuygun” at the Google, which are related to the Complainant and it also states that as a result of conducting the search for the phrase “enuygun” in applications such as App Store, Google Play, the applications belonging to the Complainant are placed at the top.

The Complainant asserts that considering the reputation of the Complainant, it is not possible that the Respondent was unaware of the trademark of the Complainant, therefore the Respondent has not registered or using the disputed domain name in connection with a *bona fide* offering of goods or services and the Respondent was in a position to know that it will infringe the trademark rights of the Complainant and it registered and is using the disputed domain name in bad faith in order to prevent the Complainant to register the disputed domain name on its behalf, and that due to the reputation of the Complainant and confusingly similarity between the disputed domain name and the Complainant’s trademarks, Internet users may be misled with the expectation that they will access a website belonging to the Complainant, in which case the Respondent will gain unfair benefit.

The Complainant further contends that the use of the disputed domain name also proves the bad faith of the Respondent, since the disputed name is redirected to the official website of the Turkish Competition Authority.

In response to Procedural Order No.1, the Complainant filed provided the invoices proving that the disputed domain name used to belong to the Complainant between the years 2012 and 2019 and claiming that it had missed to renew the disputed domain name and the Respondent registered and started to use the disputed domain name.

B. Respondent

The Response includes the following contentions:

(i) Identical or Confusingly Similar

The Respondent claims that the word set “en uygun” in the disputed domain name and the Complainant’s trademark is a commonly used generic word set in Turkish, being the combination of two words, which may be translated as “the most reasonable” into English, it is a very common generic word combination that is commonly used by a variety of business entities in Türkiye, with regard to various goods and services, it is not exclusively or distinctively associated with the Complainant in connection with its services, and that word set cannot be monopolized by the Complainant, in relation to cases such as this which concern a name or

mark comprised of a geographic term and a generic word some UDRP panels have found that a higher standard is required and that there is a greater *onus* on the complainant to present compelling evidence of secondary meaning and distinctiveness.

The Respondent further states that the Complainant is the owner of the trademark of ENUYGUN.COM, however, this trademark ownership does not give the Complainant a privilege or property right for all other Top-Level Domains containing the same generic and commonly used words, therefore, the first element is not sufficiently established in the present case.

(ii) Rights or legitimate interests

The Respondent states that the Complainant solely asserts that the Respondent has no rights or legitimate interests in the disputed domain name without supporting facts or evidence, however the Respondent has rights and legitimate interests in the disputed domain name as the Respondent has a trademark that contains the word “uygun” which is a part of the disputed domain name, and the Respondent’s business has been known as “uygunu” since 2019, before the Complainant registered the trademark ENUYGUN.COM in 2020, the Respondent registered the disputed domain name prior to the registration of the Complainant’s trademark, with the intent of use it with *bona fide* online services.

The Respondent contends that it registered the domain name <uygunu.com> on December 27, 2019, to provide online goods and services on his website with regard to cheap hotel reservations, flight, and bus tickets, subsequently it registered the disputed domain name on December 29, 2019, which demonstrates that the Respondent registered both of the domain names in the same week to use for his legitimate business purposes, the Respondent also registered the trademark UYGUNU.COM on February 3, 2020, while the Complainant obtained the trademark ENUYGUN.COM on May 29, 2020.

The Respondent also claims that it has been using the trademark UYGUNU.COM continuously since that time of the registration, prior to the registration of the Complainant’s trademark ENUYGUN.COM, and its trademark UYGUNU.COM has been recognized in the market.

(iii) Registration and Use in Bad Faith

The Respondent asserts that the Complainant must prove that the Respondent acted in bad faith while registering or acquiring the disputed domain name with material facts and evidence, however, the Complaint does not encompass any facts or evidence that prove the Respondent registered the disputed domain for the purpose of selling, renting, preventing the refaction of a trademark, disrupting a business, attracting financial gain, or creating confusion with the alleged trademark.

The Respondent states that it registered the disputed domain name to use it for his legitimate business purposes, not for selling or renting out to the Complainant or a competitor. The Respondent registered a trademark containing the word “uygun” about three months before the Complainant’s trademark registration for ENUYGUN.COM, therefore, the Respondent registered the disputed domain name before the Complainant’s trademark rights accrued, hence, the registration of the disputed domain name cannot be in bad faith, since the Complainant had not acquired its trademark rights at the time of the domain registration.

The Respondent also refers to the screenshots from Google search results, the Apple Store, and the Google Play Store, which were presented by the Complainant and points out that they are insufficient to prove that the Complainant’s trademark was known by the Respondent at the time of the registration, since the Respondent registered the disputed domain name on December 29, 2019, while the screenshots were taken in February, 2023.

Regarding the Complainant’s redirection claim, the Respondent explains that it had an argument with anonymous persons who accused the Respondent of breaking the competition law with regard to the disputed domain name, and therefore, it redirected the disputed domain name to the website of the Turkish

Competition Authority to address the competition law. The redirection does not create a misrepresenting or threat to the Complainant, therefore the redirection of a domain name to a national competition authority, which is a legal and legitimate website, cannot be considered as bad faith.

In response to Procedural Order No.1, the Respondent provided the screenshots of the email and the invoice showing the date of the purchase of the disputed name, which is December 29, 2019, and also the screenshot of emails that show a purchase offer received and rejected by the Respondent for the disputed domain name in 2020.

6. Discussion and Findings

6.1. Language of the Proceeding

Pursuant to the Rules, paragraph 11(a), in the absence of an agreement between 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.

According to the information received from the Registrar, the language of the registration agreement for the disputed domain name is English. The Complainant has submitted the Complaint in Turkish, however the Respondent argues that the language of the administrative proceeding should be English based also on the fact that his lawyers who would deal with this matter do not speak Turkish. It is established practice to make a decision regarding the language of the proceeding to ensure fairness to the Parties and the maintenance of an inexpensive and expeditious avenue for resolving domain name disputes. In this case, considering that the language of the registration agreement is English, and moreover that the Respondent requests the language of the administrative proceeding to be English, the Panel determines English to be the language of this proceeding.

6.2. Substantive Issues

In accordance with paragraph 4(a) of the Policy, the Complainant must prove that each of the three elements are present:

- (i) The disputed 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 disputed domain name; and
- (iii) The disputed domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

According to the paragraph 4(a)(i) of the Policy, the Complainant must prove that the disputed domain name registered by the Respondent is identical or confusingly similar to a trademark or service mark in which the Complainant has rights. The Complainant claims its registered trademark ENUYGUN.COM with number 2020 55344 and its following trademark registrations with the term "enuygun" before the TURKPATENT as a basis of the first element of its Complaint. The Panel determined that the registration date of the trademark ENUYGUN.COM with number 2020 55344 is June 6, 2021 and its other cited trademarks' registration dates are the same or even later than its trademark with number 2020 55344.

According to the Respondent as per the Procedural Order No.1, the disputed domain name was registered by the Respondent on December 29, 2019, which is before the date the Complainant has registered its trademark ENUYGUN.COM. The Complainant neither relies on acquired distinctiveness or secondary meaning of its trademark rights based on the long-term, intensive and genuine use, nor has it submitted any evidence as to unregistered trademark rights. When the Complaint, its annexes and the reply to the Procedural Order No. 1 are analyzed, the Panel observes that the disputed domain name was registered

before the Complainant has acquired trademark rights.

As it is stated in WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.1.3, “The fact that a domain name may have been registered before a complainant has acquired trademark rights does not by itself preclude a complainant’s standing to file a UDRP case, nor a panel’s finding of identity or confusing similarity under the first element. Where a domain name has been registered before a complainant has acquired trademark rights, only in exceptional cases would a complainant be able to prove a respondent’s bad faith.” The Panel also refers to *Greenvelope, LLC v. Virtual Services Corporation*, WIPO Case No. [D2017-0006](#), in which the Panel observes that the domain name was predating Complainant’s trademark, however, for purposes of the first element under paragraph 4(a) of the Policy, the Panel evaluates the similarity between the predated disputed domain name and the Complainant’s registered (albeit postdated) trademark and concludes that the Complainant has established the first element of paragraph 4(a)(i) of the Policy.

The Panel should determine whether the disputed domain name is identical or confusingly similar to the Complainant’s trademark since Paragraph 4(a)(i) which strictly speaking does not require the Complainant to acquire the trademark rights prior to the registration of disputed domain name. As discussed in several UDRP cases, this issue may be relevant to the assessment of bad faith pursuant to Paragraph 4(a)(iii), which is considered below.

The Complainant’s trademark is a combination of word and design element, in which the design element is placed at the forefront. As the term “enuygun” in the word element is translated as “most appropriate” or “best fit” in English and this term may often be used in the field of commerce or registered with additional terms or designs by different proprietors, the Panel considers that the Complainant’s trademark is relatively weak. As the UDRP panel pointed out in its decision of *Sweeps Vacuum & Repair Center, Inc. v. Nett Corp.*, WIPO Case No. [D2001-0031](#), “the fact that the mark is weak, however, does not mean that Respondent’s domain name is not identical or confusingly similar to Complainant’s mark”. As an accepted principle, the words or letters in a trademark are taken into consideration during the assessment of the similarity, while as the design elements that cannot be reproduced in a domain name should be left out. See, *EFG Bank European Financial Group SA v. Jacob Foundation*, WIPO Case No. [D2000-0036](#).

The disputed domain name entirely incorporates the term “enuygun” within the Complainant’s trademark ENUYGUN.COM except the extension “.com” and it is confusingly similar to the Complainant’s trademark. Nevertheless, the fact that the words concerned are generic or weak may be relevant to panel assessment of the second and third elements, which is considered below.

In the light of the above, the Panel finds that the disputed domain name is confusingly similar to the Complainant’s registered trademark and that the requirements in paragraph 4(a)(i) of the Policy are fulfilled.

B. Rights or Legitimate Interests

Pursuant to the paragraph 4(a) of the Policy, the Complainant must prove that all requirements in aforesaid paragraph are fulfilled together. The Panel is of the opinion that it is not necessary to address issues of rights or legitimate interests under paragraph 4(a)(ii) of the Policy in accordance with his determination below under paragraph 4(a)(iii) of the Policy.

The Panel refers to the following WIPO cases, in which the Panels found unnecessary to address the requirement under paragraph 4(a)(ii) of the Policy with the same reason: *Food and Wine Travel Pty Ltd v. Michael Keriakos, Keriakos Media Ventures*, WIPO Case No. [D2016-1953](#); *Amit Patel, Xclusive Boats Charter LLC v. Indopak Tourism LLC and xclusive charters, Fahad Hameed*, WIPO Case No. [D2013-1284](#); *Association for Educational Communications and Technology (AECT) v. InterAd.com, Inc.*, WIPO Case No. [D2019-1429](#).

C. Registered and Used in Bad Faith

As explained above under paragraph 4(a)(i) of the Policy, the Panel reached the conclusion that the disputed domain name is confusingly similar to the Complainant's trademark and the first element of the Policy has been met, however the relative weakness of the Complainant's trademark and chronological priority of the disputed domain name should be taken into consideration in terms of bad faith pursuant to Paragraph 4(a)(iii).

According to the Complainant as per Procedural Order No.1, the Panel notes that the Complainant owned the disputed domain name between the years 2012 and 2019. It is understood that the Respondent registered the disputed domain name, which used to belong to the Complainant, a few months after its lapse. In general, registering a domain name following the Complainant's failure to renew its domain name registration may be held as a bad faith consideration factor by a panel, however the Panel is of the opinion that the particular circumstances of the case should be also considered before finding bad faith of the Respondent with only this basis.

In order to determine whether the Complainant acted in bad faith, the Panel evaluated all the circumstances of the case and makes the following determinations:

As explained above under paragraph 4(a)(i) of the Policy, the disputed domain name contains the term "enuygun", which may be used descriptively in the field of commerce or registered with additional terms or designs by different proprietors in various classes. Considering the field of airline ticket sales, bus ticket sales, hotel reservation etc., any ticket or reservation provider may use these words in order to describe its goods/services and to attract the Internet users to buy the ticket or make the reservation through its website.

The Complainant registered its first trademark with the term "enuygun.com" before the TURKPATENT on June 6, 2021, (which is later than the Respondent's registration date of the disputed name) and it has not submitted any evidence demonstrating acquired distinctiveness that would mean the Respondent sought to take unfair advantage of the Complainant's trademark – which the Panel also finds is a descriptive term in the Parties' industry – at the time of the registration of the disputed domain name.

Further, the fact that the Respondent redirected the disputed domain name to the official website of the Turkish Competition Authority does not support a finding of bad faith, since redirecting the disputed domain name to the website of a governmental institution, which is not related to the Complainant, shows that the Respondent is not unfairly targeting the Complainant's rights in bad faith. Furthermore, such use cannot be considered for the Respondent to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's mark.

The Panel evaluated all the circumstances in this respect and concluded that it is not possible without any evidence for the Panel to determine whether the Respondent sought to take unfair advantage of the Complainant's mark when it registered the disputed domain name. From the point of view of the Panel, if the Complainant had proved that the trademark was distinctive or obtained distinctiveness and also had proved that the Respondent was most likely aware of – and sought to take unfair advantage of the Complainant, the Complainant may have established the third element of the Policy. It is the Complainant's responsibility to present those evidence in this case where its trademark is descriptive and – at least as far as registration as a mark is concerned – postdates the registration of the disputed domain name. Therefore, the Panel agrees with the Panel's evaluations in *Food and Wine Travel Pty Ltd v. Michael Keriakos, Keriakos Media Ventures*, WIPO Case No. [D2016-1953](#), indicating that "That will no doubt disappoint the Complainant but is a consequence of its failure (for whatever reason) to renew the Disputed Domain Name. The Policy is not intended to provide a remedy for that sort of mistake, save in the narrow circumstances where it can be shown that such a mistake has been capitalized on by a respondent who has acted in bad faith."

Having considered all the facts in this case, the Panel finds that the Complainant has not sustained its burden of proof in showing that the disputed domain name was registered and is being used in bad faith.

The Panel notes that the present decision does not stop the Complainant from submitting a claim to a court of competent jurisdiction if it feels it has a case e.g., for unfair competition or trademark infringement; those are matters however, outside the scope of the Policy.

7. Decision

For the foregoing reasons, the Complaint is denied.

/Ugur G. Yalçiner/

Ugur G. Yalçiner

Sole Panelist

Date: April 28, 2023