

## **ADMINISTRATIVE PANEL DECISION**

Bugatti International S.A. v. Nesim Argun

Case No. D2023-2028

### **1. The Parties**

The Complainant is Bugatti International S.A., Luxembourg, represented by UNIT4 IP Rechtsanwälte, Stolz Stelzenmüller Weiser Grohmann Partnerschaft mbB Rechtsanwälte, Germany.

The Respondent is Nesim Argun, Türkiye.

### **2. The Domain Name and Registrar**

The disputed domain name <trbugatti.com> (the “Domain Name”) is registered with PDR Ltd. d/b/a PublicDomainRegistry.com (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 5, 2023. On May 8, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On May 9, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name, which differed from the named Respondent (GDPR Masked) and contact information in the Complaint. The Center sent an email communication to the Complainant on the same day, 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 May 12, 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 May 12, 2023. In accordance with the Rules, paragraph 5, the due date for Response was June 1, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 2, 2023.

The Center appointed Gregor Vos as the sole panelist in this matter on June 6, 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 Complainant is a manufacturer of luxury sports cars with its principal office in Luxemburg. The Complainant has been active since the beginning of the 20<sup>th</sup> century and currently sells its vehicles worldwide.

The Complainant is the owner of, *inter alia*, the following European Union and international trademark registrations (hereinafter jointly referred to as: the “Trademarks”)

- European Union Trade Mark reg. No. 1394154 for BUGATTI registered on February 16, 2001;
- European Union Trade Mark reg. No. 5083258 for BUGATTI, registered on December 23, 2008;
- International Trademark reg. No. 820673 for BUGATTI, registered on January 23, 2004, with designation of, *inter alia*, Türkiye;
- Turkish Trademark reg. No. 2012 78543 for BUGATTI, registered on November 29, 2013.

Further, it is undisputed that the Complainant is the owner of the domain name <bugatti.com>.

The Domain Name was registered on July 16, 2022, and currently resolves to a website on which links to third party websites are depicted relating to car services and related goods. The Complainant’s Trademarks are prominently depicted on the website connected to the Domain Name.

#### 5. Parties’ Contentions

##### A. Complainant

With the Complaint, the Complainant seeks that the Domain Name is transferred to the Complainant. The Complaint is based on the following factual and legal grounds: the Domain Name is identical or confusingly similar to the Trademarks of the Complainant, the Respondent has no rights or legitimate interests in the Domain Name, and the Domain Name has been registered and is being used in bad faith.

Firstly, according to the Complainant, the Domain Name is confusingly similar to the Trademarks. The Trademarks are incorporated in the Domain Name in their entirety, with only the addition of the element “tr”. The letters “tr” are a country code for Türkiye, which addition does not prevent a finding of confusing similarity with the Trademarks.

Secondly, according to the Complainant, the Respondent has no rights or legitimate interests in the Domain Name. There does not exist a business relationship between the parties and the Complainant has not licensed or otherwise authorized the Respondent to use the Trademarks. The Respondent is not commonly known under the name “trbugatti” and also did not use the Domain Name in connection with a *bona fide* offering of goods or services in line with the Oki Data test. According to the Complainant, the Respondent is deliberately creating confusion with the Complainant’s business by using the Trademarks in the Domain Name and reproducing its Trademarks without authorization.

Finally, according to the Complainant, the Respondent has registered and uses the Domain Name in bad faith. Due to the fact that the Complainant’s Trademarks are well known, the Respondent must have known about the reputation of the Complainant and the Trademarks at the time of registration of Domain Name. The Respondent deliberately uses the Trademarks in the Domain Name and on the website to let Internet users mistakenly believe that there is a connection between the Complainant and the Respondent. According to the Complainant, it is inconceivable that the Respondent had no knowledge of the Complainant’s trademarks and registered the Domain Name without the intention to benefit from the confusion with Complainant’s trademarks. Furthermore, the Respondent is purposefully trying to “corner the market” by using the Domain Name with the country code of Türkiye, potentially disrupting the business of the Complainant in that country.

## B. Respondent

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

## 6. Discussion and Findings

In view of the lack of a response filed by the Respondent as required under paragraph 5 of the Rules, this proceeding has proceeded by way of default. Hence, under paragraphs 5(f), 14(a), and 15(a) of the Rules, the Panel is directed to decide this administrative proceeding on the basis of the Complainant's undisputed factual presentations.

For the Complainant to succeed, it must prove, within the meaning of paragraph 4(a) of the Policy and on the balance of probabilities that:

- i. the Domain Name is identical or confusingly similar to a trademark or a 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 has been registered and is being used in bad faith.

Only if all three elements have been fulfilled, the Panel is able to grant the remedy requested by the Complainant. The Panel will deal with each of the requirements in turn.

### A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires the Complainant to show that the Domain Name is (i) identical or confusingly similar to a trademark or service mark, (ii) in which the Complainant has rights.

With respect to having rights pursuant to paragraph 4(a)(i) of the Policy, it is noted that the Complainant is registered as the owner of the Trademarks. Consequently, the Panel finds that the Complainant has proven that it has rights in the Trademarks.

With regard to the assessment of identity or confusing similarity of the Domain Name with the Trademarks, it is generally accepted that this test involves a reasoned but relatively straightforward comparison between the Complainant's Trademarks and the Domain Name (see section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"). In cases where a domain name incorporates the entirety of a trademark, the domain name will normally be considered confusingly similar to that mark.

In the present case, the Trademarks are incorporated in the Domain Name in their entirety. The addition of the generic Top-Level Domain ".com" and the letters "tr", which is the country code for Türkiye, does not prevent a finding of confusing similarity with the Trademarks (see sections 1.8 and 1.11.1 of the [WIPO Overview 3.0](#)). Consequently, the Panel finds that the requirement under paragraph 4(a)(i) of the Policy has been 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 Domain Name. The onus of proving this requirement, like each element, falls on the Complainant. Given the difficulty in proving a negative, however, it is usually sufficient for a complainant to make out a *prima facie* case that a respondent lacks rights or legitimate interests. If a complainant does establish a *prima facie* case, the burden of production shifts to the respondent (see, e.g. [WIPO Overview 3.0](#), section 2.1; *Sanofi v. Cimpress Schweiz GmbH*, WIPO Case No. [D2017-0522](#)).

Paragraph 4(c) of the Policy lists three non-limitative examples of instances in which a respondent may establish rights or legitimate interests in a disputed domain name.

The Complainant has substantiated that none of these circumstances apply in this case. By defaulting, the Respondent has failed to rebut the *prima facie* case established by the Complainant. Furthermore, based on the record before it, the Panel does not see an indication that any of the circumstances of paragraph 4(c) of the Policy is present. More specifically, the Complainant has substantiated that the Respondent fails to meet the so-called Oki Data test (see section 2.8.1 of the [WIPO Overview 3.0](#)). In particular, the Respondent does not use the site connected to the Domain Name to only sell the trademarked goods and services by displaying links to third-party websites, and does not accurately and prominently disclose its (lack of) relationship with the Complainant. In addition, the nature of the Domain Name (the additional abbreviation of “tr” for Türkiye” followed by the Trademarks) cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the Complainant (see section 2.5.1 of the [WIPO Overview 3.0](#)).

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in respect of the Domain Name. Paragraph 4(a)(ii) is thereby fulfilled.

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

Under paragraph 4(a)(iii) of the Policy, a complainant must show that the disputed domain name has been registered and is being used in bad faith. Paragraph 4(b) of the Policy lists four non-limitative circumstances which may be considered as evidence of registration and use in bad faith of a domain name.

In the present case, the Trademarks are registered by the Complainant and have been used for many years. The Complainant’s rights to the Trademarks predate the registration date of the Domain Name by, at least, more than 20 years. In light of the well-known character of the Trademarks, the Panel agrees with the Complainant that it is not conceivable that the Respondent chose the Domain Name without knowledge of the Complainant’s activities and its Trademarks under which the Complainant is doing business. This well-known character of the Trademarks of the Complainant has been confirmed by earlier UDRP panels (see *e.g. Bugatti International S.A. v. Ruanxiaojiao*, WIPO Case No. [D2017-2555](#); and *Audi AG, Lamborghini Holding S.p.A., Volkswagen AG, Bentley Motors Limited, Bugatti International S.A. and Dr. Ing. h.c. F. Porsche AG v. Andrew Vilcauskas*, WIPO Case No. [D2015-1397](#)).

Further, since there the Respondent does not have any rights or legitimate interest in the Domain Name and in the absence of any conceivable good faith in use of the Domain Name, the Panel finds from the present circumstances that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website. The Trademarks are used in the Domain Name and depicted on the website connected to it thus suggesting a relationship between the Respondent and the Complainant.

With regard to use of the Domain Name in bad faith, the Panel finds that the use of the Trademarks in the Domain Name signals an intention of the Respondent to confuse Internet users into thinking that the Domain Name is connected to the Complainant (section 3.2.1, [WIPO Overview 3.0](#)). Therefore, the Panel finds that the Domain Name has been registered and is being used in bad faith and that the third element 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 Domain Name, <trbugatti.com>, be transferred to the Complainant.

/Gregor Vos/

**Gregor Vos**

Sole Panelist

Date: June 21, 2023