

## ADMINISTRATIVE PANEL DECISION

Çolakoğlu Metalurji A.Ş. v. Ilker Baburoglu  
Case No. D2024-1463

### 1. The Parties

The Complainant is Çolakoğlu Metalurji A.Ş., Türkiye, represented by Gün + Partners Avukatlık Bürosu, Türkiye.

The Respondent is Ilker Baburoglu, Türkiye, represented by Mr. Muharrem Küçük, Türkiye.

### 2. The Domain Name and Registrar

The disputed domain name <medtrade.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 April 7, 2024. On April 8, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 9, 2024, 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 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 amended Complaint on April 15, 2024.

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 April 16, 2024. In accordance with the Rules, paragraph 5, the due date for Response was May 6, 2024. The Response was filed with the Center on May 6, 2024.

The Center appointed Emre Kerim Yardımcı as the sole panelist in this matter on May 21, 2024. 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 company established in 1968 and it operates in the iron and steel industry. The Complainant has a subsidiary “Medtrade Inc.” established in United States of America (“US”) in 2003.

The Complainant owns the Turkish trademark MEDTRADE registration No. 2013 13765, registered on April 2, 2014, covering goods and services in classes 6, 35, and 40 and the US trademark MEDTRADE registration No. 5347228, registered on November 28, 2017, covering the services in class 35.

The Complainant’s website is linked to the domain name <medtradeinc.com> which was registered in 2012.

The disputed domain name was registered on August 30, 2017.

According to the current record, the Respondent appears to be an individual located in Türkiye. The disputed domain name does not now resolve to an active website. The Respondent owns “MedTrade LLC” established in United Arab Emirates and is operating in the gas and oil sector.

#### **5. Parties’ Contentions**

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

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant contends that that the disputed domain name is confusingly identical to the MEDTRADE trademark.

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 MEDTRADE 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 contends that the Respondent has registered and is using the disputed domain name in bad faith. The Complainant claims that MEDTRADE trademark is a well-known trademark, the Respondent had the Complainant’s trademark in mind when registering the disputed domain name and that the Respondent is passively holding the disputed domain name.

##### **B. Respondent**

The Respondent contends that the Complainant has not satisfied the elements required under the Policy for a transfer of the disputed domain name. The Respondent goes into considerable detail and cites numerous previous UDRP cases. In summary the Respondent contends that:

- there is another domain name <medtrade.com> which is registered and owned by a third-party operating in a different sector and which predates the registration of the Complainant's trademark and its domain name.
- there are several trademarks registered for MEDTRADE throughout the world covering different goods and services that are coexisting together with the Complainant's trademark. The term "MedTrade" as a shortened form of "Mediterranean Trade" and that is why it is used by different parties with no specific relation to the Complainant.
- The Complainant's trademark and activity is in relation with iron and steel industry whereas the Respondent is engaged in the trade of petroleum products.
- the Complainant's claim on the reputation of the Complainant's trademark is not substantiated with evidence,
- the Respondent is not active in any registered class of activity that the Complainant is engaged in; therefore, the Respondent never sought to create an impression of association with the Complainant. There is no single evidence showing that the Respondent was aware of the Complainant's trademark or its activity,
- the Respondent is not using the disputed domain name as a website and the Respondent is actively using the disputed domain name with 20 users in its communications.

The Respondent also requests, based on the evidence presented, that the Panel make a finding of Reverse Domain Name Hijacking.

## **6. Discussion and Findings**

Pursuant to paragraph 4(a) of the Policy, the Complainant is required to prove the presence of each of the following three elements to obtain the remedy it has requested:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (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.

Paragraph 4(a) of the Policy states that the Complainant bears the burden of proving that all these requirements are fulfilled.

It is further noted that the Panel has taken note of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)).

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

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. [WIPO Overview 3.0](#), section 1.7.

The Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is identical to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

The Panel finds the first element of the Policy has been established.

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

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult task of “proving a negative”, requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name (although the burden of proof always remains on the complainant).

The Complainant made out at least a prima facie case that the Respondent has no rights or legitimate interests in the disputed domain name, and it is then for the Respondent to rebut this case.

In this respect, the Panel accepts the submission of the Respondent whereby the Respondent has established a company called “MedTrade LLC” in the United Arab Emirates on August 30, 2017, which is certified by the Turkish Consulate of United Arab Emirates. Moreover, even though the disputed domain name has not been used for an active website, the Panel has accepted the submission of the Respondent that the Respondent is communicating via the disputed domain name with its clients or third parties, for petroleum products.

Therefore, the Panel finds that the Complainant has failed to establish that the Respondent lacks rights or legitimate interests in the disputed domain name.

The Panel finds the second element of the Policy has not been established.

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

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent’s registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

Having reviewed the available record, the Panel notes that the term “Medtrade” is registered and used as a trademark for different goods and services throughout the world by third parties. Moreover, Panel notices that nothing in the submissions of the Complainant shows that the Complainant’s trademark MEDTRADE is a well-known trademark in Türkiye where both Parties reside. As a matter of fact, the goods and services provided by the Complainant is with relation to iron and metal products which is operated as business to business through professional firms in the field of production and sales of iron and metal products.

Considering the above, the Panel notes that the Respondent is operating in the trade of petroleum products in the United Arab Emirates. The Panel finds the Respondent's statement as to the selection of the word "MedTrade" as plausible in the sense that nothing in the case file shows that the Respondent has registered the disputed domain name with the Complainant's trademark in mind. The Panel accepts the Respondent's submission that there are several trademarks for MEDTRADE from third parties and even a website at "www.medtrade.com" in a different sector.

In the present case, the Panel notes that nothing in the Parties' submissions show that the Respondent has registered the disputed domain name in bad faith.

As to the bad faith use, it is accepted by both Parties that the disputed domain name does not resolve to an active website. However, the Panel notes that the Respondent claims to be using the disputed domain name in its communications and nothing in the file shows that the use of the Respondent is targeting the Complainant's activities and its communications with its clients and third parties.

Therefore, the Panel, on the balance of probabilities, concludes that the Complainant has failed to establish that the Respondent registered and used the disputed domain name in bad faith.

In the Panel's opinion, the evidence in the case file as presented does not indicate that the Respondent's aim in registering the disputed domain name was to profit from or exploit the Complainant's trademark.

The Panel finds the third element of the Policy has not been established.

#### **D. Reverse Domain Name Hijacking**

Paragraph 15(e) of the Policy provides that, 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 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. The mere lack of success of the complaint is not, on its own, sufficient to constitute Reverse Domain Name Hijacking. [WIPO Overview 3.0](#), section 4.16.

The Respondent believes that the case at hand constitutes an attempt at Reverse Domain Name Hijacking ("RDNH").

RDNH is defined in paragraph 1 of the Rules as using the Policy in bad faith to attempt to deprive the domain name holder of a domain name.

In *Ville de Paris v. Salient Properties LLC*, WIPO Case No. [D2009-1279](#) (citing *Jazeera Space Channel TV Station v. AJ Publishing aka Aljazeera Publishing*, WIPO Case No. [D2005-0309](#)) "[a]llegations 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 also *Goldline International, Inc. v. Gold Line*, WIPO Case No. [D2000-1151](#)).

The Panel does not share the view of the Respondent and does not see sufficient indication to assess an attempt at RDNH by the Complainant. In particular, this is not a proceeding in which the Complainant lacked relevant trademark rights, or had clear knowledge of the Respondent's rights or legitimate interests, or clear knowledge of the Respondent's lack of bad faith (see *Canadian Wear Technologies Ltd. v. Privacy Administrator, Anonymize Inc*, WIPO Case No. [D2021-1572](#)).

It needs to be pointed out that the decision is based on the available record. Moreover, the Panel recalls that the Complainant may commence proceedings in a court of competent jurisdiction if it considers that it has valid grounds to allege trademark infringement or unfair competition (see *Tata Sons Pvt. Ltd. v. Victor TSB*, WIPO Case No. [D2021-1084](#)).

Consequently, the Panel is of the opinion that the present case does not qualify as an attempt at RDNH.

## **7. Decision**

For the foregoing reasons, the Complaint is denied.

*/Emre Kerim Yardimci/*

**Emre Kerim Yardimci**

Sole Panelist

Date: June 10, 2024