

ADMINISTRATIVE PANEL DECISION

Instakart Services Private Limited v. Ozguc Bayraktar, RS DANISMANLIK
Case No. D2024-4345

1. The Parties

The Complainant is Instakart Services Private Limited, India, represented by Cyril Amarchand Mangaldas, India.

The Respondent is Ozguc Bayraktar, RS DANISMANLIK, Australia.

2. The Domain Name and Registrar

The disputed domain name <ekart.com> 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 October 22, 2024. On October 22, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 23, 2024, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

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 October 23, 2024. In accordance with the Rules, paragraph 5, the due date for Response was November 12, 2024. The Response was filed with the Center on October 29, 2024.

The Center appointed Steven A. Maier as the sole panelist in this matter on November 1, 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 company registered in India. It commenced operations in 2009, originally under the name Flipkart, and currently offers courier delivery services under the names Ekart and Ekart Logistics.

The Complainant is the owner of India trademark registrations, numbered 2425143 to 2425149 inclusive, for the word mark E-KART, registered on November 7, 2012, in International Classes 9, 16, 35, 38, 39, 40 and 42 respectively.

The Complainant operates websites at “www.ekartlogistics.com” and “www.ekartlogistics.in”.

The disputed domain name was registered on December 29, 1999.

The Complainant provides evidence that the disputed domain name has redirected to a website at “www.emlakilan.com”, offering various domain names for sale.

5. Parties' Contentions

A. Complainant

The Complainant submits that it commenced operations in 2009. It asserts that it has used the trademarks E-KART and EKART continuously in commerce since that date, and that the marks have acquired “unparalleled goodwill and impeccable reputation” around the world.

The Complainant submits that the disputed domain name is identical or confusingly similar to its trademarks E-KART and EKART.

The Complainant submits that the Respondent has no rights or legitimate interests in respect of the disputed domain name. It states that it has no relationship with the Respondent and has never authorized it to use its E-KART or EKART trademarks, that the Respondent has not commonly been known by the disputed domain 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, in particular, that the use of the disputed domain name to redirect to a website offering other domain names for sale does not amount to legitimate use of the disputed domain name, since it unfairly targets the goodwill attaching to the Complainant's trademarks.

The Complainant submits that the disputed domain name was registered and is being used in bad faith. It reiterates that its trademark rights date back to 2009, while the Respondent does not appear to have any trademark rights at all. The Complainant contends in particular that, by registering the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's trademarks. It further contends that the disputed domain name was registered merely to trade upon the Complainant's reputation and business goodwill.

The Complainant requests the transfer of the disputed domain name.

B. Respondent

The Respondent states that it registered the disputed domain name in 1999. It asserts that “kart” is the Turkish word for “card”, and that a domain name referring to electronic cards is generic in nature. The Respondent submits that the Complainant did not commence any business activities until 2010, and that it cannot therefore have been aware of the Complainant's trademarks when it registered the disputed domain name.

6. Discussion and Findings

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 that:

- (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.

A. Identical or Confusingly Similar

The Complainant has established that it is the owner of registered trademark rights for the mark E-KART. The disputed domain name is identical to that trademark, but for the omission of the hyphen. That omission is insignificant for the purpose of comparison, and the Panel therefore finds that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights.

B. Rights or Legitimate Interests

In the light of the Panel's findings under the third element, below, it is unnecessary for the Panel to reach any determination on the issue of rights or legitimate interests.

C. Registered and Used in Bad Faith

It is well-established under the UDRP that the registrant of a domain name cannot have targeted a trademark that was not in existence at the date that domain name was registered (see e.g. section 3.8 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"). This is subject only to an exception in respect of "nascent" or otherwise forthcoming trademark rights of which the Respondent was aware, which exception has no possible application to this case. In this case the disputed domain name was registered some ten years before the Complainant, on its own submissions, first commenced any use of the E-KART or EKART marks. The Respondent cannot therefore have had the Complainant's trademark in mind when it registered the disputed domain name, and the Complainant must necessarily fail.

D. Reverse Domain Name Hijacking

Paragraph 15(e) of the Rules 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 Panel considers this to be a clear case of attempted Reverse Domain Name Hijacking. The Complainant is represented by counsel who must be taken to have been aware that the Complaint could not succeed in circumstances where the disputed domain name was registered some ten years before the Complainant's first use of any corresponding trademark. Despite the Complainant's certificate "that the assertions in this Complaint are warranted under the Rules and under applicable law..." there is no basis upon which the Complainant could properly have asserted that the Respondent registered the disputed domain name to create a likelihood of confusion with its (then non-existent) trademarks, or otherwise to trade off its goodwill attaching to those trademarks.

The Panel therefore finds that the Complaint was brought in bad faith and constitutes an abuse of the administrative proceeding.

7. Decision

For the foregoing reasons, the Complaint is denied. Moreover, the Panel finds that the Complaint has been brought in bad faith and constitutes an attempt at Reverse Domain Name Hijacking.

/Steven A. Maier/

Steven A. Maier

Sole Panelist

Date: November 7, 2024