

ADMINISTRATIVE PANEL DECISION

Tiryaki Agro Gida A. Ş. v. Domain Hostmaster, Customer ID:
58391699245961 / Murat Yikilmaz
Case No. D2014-2136

1. The Parties

The Complainant is Tiryaki Agro Gida A. Ş. of Istanbul, Turkey, represented by Ceyda Akaydin, Turkey.

The Respondent is Domain Hostmaster, Customer ID: 58391699245961 of Fortitude Valley, Australia / Murat Yikilmaz of Istanbul, Turkey, represented by Muscovitch Law P.C., Canada.

2. The Domain Name and Registrar

The disputed domain name <tiryaki.com> is registered with Fabulous.com (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 8, 2014. On December 8, 2014, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 9, 2014, 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 December 11, 2014 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 December 13, 2014.

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(a) and 4(a), the Center formally notified the Respondent of the Complaint, and the proceedings commenced December 17, 2014. In accordance with the Rules, paragraph 5(a), the due date for Response was January 6, 2015. The due date for Response was later extended to January 13, 2015. The Response was filed with the Center on January 11, 2015. The Complainant submitted a supplemental filing on January 20, 2015.

The Center appointed Adam Taylor, Gökhan Gökçe and Nicholas Smith as panelists in this matter on February 17, 2015. The Panel finds that it was properly constituted. Each member of 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 Panel finds it helpful to set out the undisputed facts in the form of a chronology:

1980: Mr. Ali Tiryakioglu started a small scale lentil processing facility in Turkey.

December 28, 1993: The Complainant was incorporated in Turkey under the name “Oztiryaki Gida Sanayii ve Ticaret Limited Sirketi”. It succeeded Mr Tiryakioglu’s business.

June 17, 1998: The Complainant applied for Turkish trade mark no. 194503 for “ÖZTIRYAKI” in class 30 (registered May 25, 1999).

November 19, 2001: The Respondent registered the disputed domain name.

December 11, 2001: The Complainant applied for Turkish trade mark no. 2001/25725 for “TIRYAKI” in classes 29 and 30 (registered March 24, 2004).¹

July 30, 2007: The Complainant changed its registered name to “Tiryaki Agro Gida Sanayii ve Ticaret Anonim Sirketi”.

On or around April 26, 2012, the Complainant emailed the Respondent stating that it “would like to get our company domain name, Tiryaki.com” and that it was prepared “to pay some money”. The Respondent responded on April 26, 2012, saying simply: “Domain is not for sale”. The Complainant replied the same day offering USD 1,000 and it followed up with a chaser on May 4, 2012, to which the Respondent responded on the same day:

“Tiryaki.com is currently not for sale. I'm sorry I can't help you with that.

P.S.: So offers over [EUR] 80,000...will only be considered.”

As of December 13, 2014 the disputed domain name was used for a website with sponsored links related to “health care”.

5. Parties' Contentions

A. Complainant

A summary of the Complainant’s contentions is as follows:

¹ The Panel notes the Complainant’s contention below that the trade mark TIRYAKI was registered in Turkey in 2001 and that the trade mark application must therefore have been submitted in approximately 2000. The Panel is also aware of the Complainant’s annexed Trade Mark Renewal Certificate for TIRYAKI stating that “This Trademark has been registered for the first time in 11/12/2001...” However the Respondent has submitted evidence directly from the Turkish Patent Institute’s online trademark search showing clearly that the registration date for this mark is the one listed in the Factual Background and that the application date, not the registration date, is December 11, 2001. As such, the Panel adopts these dates as authoritative for this proceeding. The Renewal Certificate’s reference to registration as of the 2001 date perhaps can be taken to mean that trademark protection extends from this (application) date.

The Complainant's name is "Tiryaki Agro Gida". Tiryaki is the main part of the trade name and is a Turkish word with a meaning similar to "addictive".

The trade name and trade mark has been used by the Complainant since the early nineties. It acquired a business known as "Tiryaki Agro".

The disputed domain name is confusingly similar to the trade mark "ÖZTIRYAKI". The word "Öz" is a very common prefix, meaning "real" or "authentic".

The trade mark "TIRYAKI" was registered in 2001, the same year as the disputed domain name. The application process in Turkey is nearly one year and so this trade mark application must have been made in approximately 2000. Protection starts from the application date.

Also the Complainant registered the following marks, details of which are available at the Turkish Patent Office: "TIRYAKI" plus drawing mark no. 2000/28062, "TIRYAKIOGLU" mark no. 2000/21912 and "TIRYAKI BAKLIYAT" (meaning "Tiryaki pulse") mark no. 2001/15829.

Today, the Complainant is the largest company in Turkey involved in the supply of agricultural food products. The Complainant was ranked 63rd and 117th in Capital's survey "Top 500 Private Companies in Turkey" 2012 and in ISO's survey "Top 500 Industrial Enterprises in Turkey" 2012 respectively. The company produces and distributes and sells pulses and some other dry food. It is very well-known in Turkey and the Middle East.

The surnames of some of the partners are "Tiryakioglu", which means "son of Tiryaki". This is a commonly used suffix for surnames in Turkish.

The Complainant's current website is "www.tiryaki.com.tr".

The disputed domain name is identical to the Complainant's main trade mark and trade name "TIRYAKI" and confusingly similar to its other trade marks such as "TIRYAKIOGLU" and "ÖZTIRYAKI". The Complainant's trade marks and trade names were registered long before the disputed domain name was registered.

The Respondent's name and trade name does not comprise "Tiryaki" or similar. According to trade mark searches, the Respondent has no trade mark registrations or companies including this name. The Respondent is the partner in a company called "yeni internet teknolojileri Ticaret Ltd".

It is obvious that the Respondent registered the disputed domain name in bad faith for two reasons.

First the Respondent has never used the disputed domain name, which has been "parked" since the day of registration. The website links to nutrition and health-related sites. The Complainant is involved in the nutrition / wellness / ecological nutrition business. The disputed domain name is directed to the Complainant's competitors.

The Respondent is a well-known professional domain name trader in Turkey. There are twenty complaints against him in the WIPO database. He describes his company as an Internet media company, specialising in the acquisition and development of high-quality generic domain names including premier properties such as <best.com>, <tips.com>, <fungames.com>, <airplane.com>, <graph.com>, <poll.com>, <135.com>, and <165.com>.

When first contacted, the Respondent said that the disputed domain name was not for sale. He then tried to sell the disputed domain name to the Complainant for EUR 80,000.

The Respondent registered the disputed domain name to sell to the Complainant because the name "Tiryaki" was a very famous trade mark in Turkey and related countries at the date that it was registered. The disputed domain name is neither generic nor "special".

B. Respondent

A summary of the Respondent's contentions is as follows:

As well as meaning "addicted", the dictionary term "tiryaki" has an alternate meaning of "inveterate" in Turkish. It is commonly used to refer, for example, to an inveterate tea or coffee lover. Because of this positive meaning, the term is popular in Turkish business use. Some 381 companies in Istanbul and 104 companies in Ankara include the word in their registered company names, many pre-dating the Complainant's use of the term.

The term is a common surname in Turkey. There are over 200,000 listings of people and businesses in the "Super White Pages" and thousands of people on Facebook all using "Tiryaki" as part of their name. A Google search for the term, excluding the Complainant, brings up over 1.6 million results.

There are over 300 registered Turkish trade marks, with over 80 for "Tiryaki" alone, owned by persons unaffiliated with the Complainant.

According to newspaper articles, the Complainant's turnover in 2001 was only some USD 3 - 5 million, showing that it was then only a modest family business.

There is no evidence from the Complainant as to its reputation in 2001.

There is therefore no evidence that the Respondent registered the disputed domain name "because of" the Complainant, as claimed.

The key word in the company's name, registered in 1993, was "Oztiryaki". It only changed to "Tiryaki" in 2007. If the Respondent registered the disputed domain name with reference to the Complainant, one would have expected him to register a domain name which included the Complainant's then name and trade mark: "oztiryaki". As at the date of registration of the disputed domain name, the Complainant had not even applied for the "TIRYAKI" trade mark, contrary to the claim otherwise in the Complainant. There is no evidence of earlier common law rights.

The Complainant only acquired the domain name <tiryaki.com.tr> used for its current website in 2014.

The Respondent had never heard of the Complainant when he registered the disputed domain name in 2001. At around the same date, the Respondent registered 15 ".com" domain names corresponding to common dictionary terms in Turkish.

The Respondent has not used the disputed domain name in connection with the kind of goods distributed by the Complainant. The advertisements for healthcare services do not infringe upon marks for grains and lentils; rather, the advertisements are instead related to the term "addicted".

Dictionary word and surname domain names, particularly common ones, are highly sought after. The Respondent has rejected many offers from third parties for the disputed domain name over the years.

The Complainant offered to buy the disputed domain name from the Complainant and did not rely on trade mark rights. The Respondent clearly stated in response that he did not wish to sell. The Respondent refused the Complainant's repeated requests to sell the disputed domain name. The Complainant then audaciously claims bad faith when the Respondent finally relented and told the Complainant that he would reconsider his refusal to sell at any price.

There have only been three WIPO UDRP cases against the Respondent and he has won all of them.

The Respondent acknowledges that the disputed domain name is identical to the Complainant's trade mark for "TIRYAKI".

There is no basis to conclude that a respondent lacks rights where a complainant has failed to demonstrate its own rights as at the date of registration of the disputed domain name because the Respondent was not bound to license the mark from the Complainant.

In any event, the first person to register a “generic” domain name in good faith has a legitimate interest in that domain name.

The Respondent’s use for non-infringing advertising relating to healthcare services is an obvious and natural use relating to the term “addicted”.

Speculating and trading in generic domain names can itself constitute a legitimate interest under the Policy.

The Complainant has provided no explanation for its lengthy delay in challenging the registration. This implies that the Complainant was not confident in its case.

The Complainant claims that the Respondent registered the disputed domain name to sell to the Complainant because “Tiryaki” is famous in Turkey and related countries but, as of the date of registration of the disputed domain name, the Complainant had no registered trade mark for, and it was not even known by, that name.

It is well-established that in general a finding of bad faith registration cannot be made with respect to a trade mark that did not exist at the time of registration of the disputed domain name. If the Respondent had targeted the Complainant when registering the disputed domain name, it would have registered an “oztiryaki” domain name.

There is no evidence of fame of the term “Tiryaki” as of 2001 and, in any case, this would have been impossible given that the Complainant did not then own trade marks for the term or even trade under that name. In any event, the Complainant’s business, then called “Oztiryaki”, was relatively modest and unknown at that time.

There is no evidence that the Respondent registered the disputed domain name to specifically to sell to the Complainant. He registered it as a dictionary word and in conjunction with other dictionary words.

The Respondent’s pay-per-click website is in good faith and permissible as the advertising related to the dictionary meaning of the disputed domain name.

The Respondent’s willingness to reconsider his two previous refusals to sell the disputed domain name is not bad faith as responding to an offer is not bad faith and the Respondent possessed legitimate interests in the disputed domain name.

6. Discussion and Findings

A. Supplemental Filing

The Complainant has made an unsolicited supplemental filing.

Paragraphs 10 and 12 of the Rules in effect grant the Panel sole discretion to determine the admissibility of supplemental filings. Paragraph 10(d) states: “The Panel shall determine the admissibility, relevance, materiality and weight of the evidence”. Paragraph 12 states: “In addition to the complaint and the response, the Panel may request, in its sole discretion, further statements or documents from either of the Parties”.

The principles which the Panel should apply in deciding whether or not to admit supplemental filings have been considered in many cases under the Policy. See, e.g., *The E.W. Scripps Company v. Sinologic*

Industries, WIPO Case No. D2003-0447. The principles include: that additional evidence or submissions should only be admitted in exceptional circumstances, such as where the party could not reasonably have known of the existence or relevance of the further material when it made its primary submission; that if further material is admitted, it should be limited so as to minimize prejudice to the other party or the procedure; and that the reasons why the Panel is invited to consider the further material should, so far as practicable, be set out separately from the material itself.

The Panel has decided to disallow the Complainant's supplemental filing as the Complainant has not demonstrated exceptional circumstances justifying its admission and, in any case, the filing is of marginal relevance to the issues arising in this case.

B. Identical or Confusingly Similar

It is not in dispute that the Complainant owns a registered trade mark for "TIRYAKI" and that this is identical to the disputed domain name.

The Panel therefore finds that the Complainant has established the first element of paragraph 4(a) of the Policy.

C. Rights or Legitimate Interests

Paragraph 2.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Second Edition ("WIPO Overview 2.0") explains the consensus view concerning the burden of proof regarding lack of rights or legitimate interests in UDRP cases:

"While the overall burden of proof rests with the complainant, panels have recognized that this could result in the often impossible task of proving a negative, requiring information that is often primarily within the knowledge of the respondent. Therefore a complainant is required to make out a *prima facie* case that the respondent lacks rights or legitimate interests. Once such *prima facie* case is made, the burden of production shifts to the respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such appropriate allegations or evidence, a complainant is generally deemed to have satisfied paragraph 4(a)(ii) of the UDRP [...] If the respondent does come forward with some allegations or evidence of relevant rights or legitimate interest, the panel then weighs all the evidence, with the burden of proof always remaining on the complainant."

Here, the Complainant has not licensed or otherwise authorised the Respondent to use its trade mark.

As to paragraph 4(c)(i) of the Policy, the disputed domain name has been used for a parking page with "health care" links. See paragraph 2.6 of WIPO Overview 2.0, which states:

"Panels have generally recognized that use of a domain name to post parking and parking pages or PPC links may be permissible in some circumstances, but would not of itself confer rights or legitimate interests arising from a '*bona fide* offering of goods or services' ... especially where resulting in a connection to goods or services competitive with those of the rights holder. As an example of such permissible use, where domain names consisting of dictionary or common words or phrases support posted PPC links genuinely related to the generic meaning of the domain name at issue, this may be permissible and indeed consistent with recognized sources of rights or legitimate interests under the UDRP, provided there is no capitalization on trademark value (a result that PPC page operators can achieve by suppressing PPC advertising related to the trademark value of the word or phrase). By contrast, where such links are based on trademark value, UDRP panels have tended to consider such practices generally as unfair use resulting in misleading diversion."

In this case, the Respondent argues that links on the website at the disputed domain name are genuinely related to the term “addicted”, one of the dictionary meanings of the term “tiryaki”. On the other hand, the Complainant claims that it is involved in the “nutrition / wellness / ecological nutrition” business and that the links are to its competitors. As the status of the sponsored links is one of the issues to be considered below under “bad faith”, and in view of the majority conclusion concerning bad faith, the majority does not consider it necessary to reach any conclusion as regards the second element of paragraph 4(a) of the Policy.

D. Registered and Used in Bad Faith

Paragraph 3.1 of WIPO Overview 2.0 sets out the consensus view that, generally speaking, when a domain name is registered by a respondent before the complainant’s relied-upon trade mark right is shown to have been first established (whether on a registered or unregistered basis), the registration of the domain name would not have been in bad faith because the registrant could not have contemplated the complainant’s then non-existent right. However, in certain situations, when the respondent is clearly aware of the complainant, and it is clear that the aim of the registration was to take advantage of the confusion between the domain name and any potential complainant rights, bad faith can be found.

In this case, for the following reasons, a majority of the Panel considers that the Complainant has failed to demonstrate that the Respondent registered the disputed domain name either in awareness of the Complainant or in order to take advantage of confusion between the disputed domain name and any Complainant rights, be they potential or actual:

1. The chronology in section 4 above shows that the disputed domain name was registered in 2001, before the Complainant applied for its registered trade mark for “TIRYAKI” (as further explained in footnote 1 above)..
2. While it is not in dispute that, today, the Complainant operates a very substantial business in the agricultural sector, there is no evidence from the Complainant as to its reputation as of 2001. A majority of the Panel does not consider that it can make a retrospective assessment of the Complainant’s reputation some fourteen years ago based on its current status. Indeed, newspaper articles produced by the Respondent suggest that the Complainant has grown rapidly and that its turnover in 2001 was some USD 3-5 million, far less than it is now.
3. There is a lack of clarity from the Complainant regarding the exact name under which it has traded in the past. The Complainant is currently known as “Tiryaki Agro Gida”. However, according to the information before the Panel, in 2001 the Complainant’s corporate name started with “Oztiryaki...”, coinciding with the Complainant’s 1998 registered trade mark for “OZTIRYAKI”. There is no evidence whatever showing any use by the Complainant of the unadorned name “Tirkyaki” before registration of the disputed domain name. In saying this, the majority is conscious that the term “öz” means “real” in Turkish; but if it is the Complainant’s case that the Respondent’s selection of the disputed domain name was motivated by the “tiryaki” part of the name “Oztiryaki”, then the Complainant should have clearly explained its position and backed it up with supporting evidence. Whereas the Complainant is vague as to exactly what name was used when and there is no relevant evidence at all.
4. The Complainant concedes that the term “tiryaki” is a generic term in Turkish meaning “addictive”, as well as a Turkish surname. The Respondent builds on this by producing evidence that the term also means “inveterate” and that it is a common Turkish surname as well as a name used by Turkish businesses aside from the Complainant. The Respondent has produced a list taken from the Turkish Trade Registry Gazette showing Turkish companies which include the term “Tiryaki” in their company name. While the dissenting Panellist questions the total claimed by the Respondent on the grounds that the list includes multiple entries for some companies, nonetheless it is clear to the majority of the Panel that there are still a significant number of different Turkish companies whose name starts with “Tiryaki”, some pre-dating the Complainant’s business. There are also at least three Turkish trade mark registrations for the single word “TIRYAKI” which date from before the Complainant’s business.

5. The Respondent has produced evidence that, at around the same time as he registered the disputed domain name, he also acquired 15 single-word “.com” domain names reflecting an assortment of generic terms in Turkish.
6. The Complainant’s assertion that the Respondent holds himself out as specialising in the acquisition and development of high-quality generic domain names is of no assistance to the Complainant because dealing with generic domain names is not of itself proof of bad faith.
7. Contrary to the Complainant’s assertion, there have not been 20 UDRP complaints to WIPO regarding the Respondent; there have only been three and the Respondent has successfully defended all of them.
8. The Complainant provides no detail, let alone evidence, in support of its claim of involvement in the fields of nutrition / wellness / ecological nutrition and, in the absence of such evidence, a majority of the Panel do not consider that the sponsored links related to “health care” on the website at the disputed domain name are of any relevance to the question of bad faith. Whether or not, as the Respondent claims, those links reflect the generic meaning of the disputed domain name: “addicted”, a majority of the Panel does not consider that they have any bearing on the question of *mala fides* on the part of the Respondent as there is no evidence that they capitalise on trade mark value.
9. The Respondent’s offer to sell the disputed domain name to the Complainant for EUR 80,000 falls well short of establishing that the Respondent registered the disputed domain name for sale to the Complainant, given that the statement was made following an unsolicited approach by the Complainant to the Respondent some eleven years after registration of the disputed domain name and that the Respondent’s initial response was simply: “Domain is not for sale”.

Taking all of the above matters together, a majority of the Panel is inclined to accept the Respondent’s assertion that it was not aware of the Complainant when it registered the disputed domain name and that the Respondent did indeed select the disputed domain name for its generic qualities.

A majority of the Panel therefore finds that the Complainant has not established the third element of paragraph 4(a) of the Policy.

7. Decision

For the foregoing reasons, the Complaint is denied.

Adam Taylor
Presiding Panelist

Nicholas Smith
Panelist
Date: March 9, 2015

DISSENTING OPINION

The dissenting Panellist agrees with the conclusion of the majority of the Panel that the Complainant has trade mark rights to which the disputed domain name is identical.

The dissenting Panellist finds that the Respondent has failed to establish a right or legitimate interest in the disputed domain name based on the paragraph 2.2 of WIPO Overview 2.0:

“If the complainant makes a *prima facie* case that the respondent has no rights or legitimate interests, and the respondent fails to show one of the three circumstances under paragraph 4(c) of the UDRP, or any other basis for rights or legitimate interests, then the respondent may lack a legitimate interest in the domain name, even if it is a domain name comprised of a dictionary word or phrase. [...] In order to find rights or legitimate interests in a domain name based on the generic or dictionary meaning of a word or phrase contained therein, the domain name would need to be genuinely used or at least demonstrably intended for such use in connection with the relied-upon meaning.”

Although the disputed domain name has a generic meaning in Turkish (light addiction to anything), it would not be expected to associate such meaning with an offering of any goods or services or any other meaningful content. As a matter of fact, the Respondent has offered no evidence in support of any of the three methods provided in the Policy paragraph 4(c) and the disputed domain name is not used in connection with a purpose relating to its generic or descriptive meaning. The dissenting Panellist considers that the Respondent has demonstrated no convincing reason to own and operate the disputed domain name. Therefore, the dissenting Panellist finds in favor of the Complainant on the second element of the Policy.

Regarding the third element of the Policy, the dissenting Panellist finds that the Respondent had registered and is using the disputed domain name in bad faith.

Upon review of the Turkish trade registry records, the dissenting Panellist finds that the Complainant was established in 1994 with the trade name “Öztiryaki Gıda San. Tic. Ltd. Şti.” In 2007, the Complainant acquired Tiryaki Bulgur Gıda San. ve Tic. Ltd. Şti. which had been established back in the year 2000. Therefore, the mutual name of these two entities is “Tiryaki”. “Öz” means “real” in Turkish, and it is a common prefix to several names but, despite this, the main body of the name is known and recognised by the public. In light of the factual data available on the website of the Complainant, the dissenting Panellist is readily convinced that the Complainant is one of the leading commercial enterprises in the agriculture in Turkey, which is one of the most significant business areas of the country.

Further, the Complainant had a trade mark registration for OZTIRYAKI with a protection date of June 17, 1998. The Complainant also registered TIRYAKI with a protection date of December 11, 2001, which is only less than one month after the registration of the disputed domain name.

In light of the foregoing, it is clear that TIRYAKI was registered and has been used as a trade name at the time that the disputed domain name was registered.

It is established in prior panel decisions that “although there may be no obligation that a domain name registrant conduct trade mark or search engine searches to determine whether a domain name may infringe trade mark rights, a sophisticated domainer who regularly registers domain names for use as [pay-per-click] landing pages cannot be willfully blind to whether a particular domain may violate trade mark rights. In this context, a failure to conduct adequate searching may give rise to an inference of knowledge.” *mVisible Technologies, Inc. v. Navigation Catalyst Systems, Inc.*, WIPO Case No. D2007-1141.

As the Respondent also clearly points out in his Response, the Respondent is a sophisticated domainer who regularly registers domain names for use as (pay-per-click) landing pages. The Respondent argues that the Complainant does not have “exclusive” rights to the mark TIRYAKI. But the Respondent does not indicate that it explored the possibility of third-party rights in any way before registering the disputed domain name.

And the Complainant need not have an exclusive right to use TIRYAKI in every possible context in order to show a violation of the Policy.

Further, the dissenting Panellist has checked the Turkish Patent Institute's records and observed that the Respondent has artificially exaggerated the number of protected trade marks constituting the name TIRYAKI alone by including even the rejected trade mark applications and expired trade marks. According to the Turkish Patent Institute's records, there are only four companies other than the Complainant which have protected trade marks consisting of TIRYAKI alone.

The dissenting Panellist also observed that the Respondent has tried to mislead the Panel by submitting Trade Registry Gazette results as a list of trade names. For example, the Respondent stated that there are 104 registered companies in Ankara that include "Tiryaki" in their names. However 104 is the total number of Trade Registry Gazette results and not the number of registered companies. To give an example to the misleading nature of this claim, eleven of these results belong to one company named Tiryakiler Yatırım Holding A.Ş.

The dissenting Panellist is of the opinion that the fact that the Respondent has tried to mislead the Panel by incorrectly overstating the number of trade marks and trade names is a further inference of bad faith.

Furthermore, the Complainant has submitted proof that the Respondent asked for EUR 80,000 for the sale of the disputed domain name which is a price obviously in excess of the Respondent's cost of registering the disputed domain name. The Respondent first gave the untrue impression that he was not interested in selling the domain but later he stated that he would sell the disputed domain name for the said figure. As the Respondent is active in domain trade, he has been clever to manage the correspondence accordingly and in the end he was successful in arranging the evidence to work out in his favor as he was very well aware that the Complainant may initiate this UDRP proceeding. This fact suggests that the Respondent was aware of the value of the disputed domain name to the Complainant and was attempting to extract from the Complainant the highest amount of money that the Complainant was prepared to pay by suggesting that only offers above EUR 80,000 would be considered.

In light of the facts that:

- (i) the Complainant's trade mark has a strong reputation and is widely known in Turkey;
- (ii) the disputed domain name was registered after the registration of OZTIRYAKI and use of TIRKAYI and OZTIRYAKI by the Complainant and/or its affiliate;
- (iii) the Complainant is a leading business in the agriculture field;
- (iv) the Respondent has provided no evidence whatsoever of any rights or legitimate interests;
- (v) the Respondent is a sophisticated domainer who regularly registers domain names for use as (pay-per-click) landing pages and has not submitted any proof that it explored the possibility of third-party rights in any way before registering the disputed domain name;
- (vi) although "tiryaki" has a generic meaning in Turkish, this does not justify the bad faith registration and holding of the Respondent (the content at the Respondent's website has no relevance to such generic meaning);
- (vii) the Respondent attempted to mislead the Panel by incorrectly overstating the number of trade marks and trade names related to the disputed domain name; and
- (viii) the Respondent requested a price in excess of the Respondent's cost of registering the disputed domain name and established correspondence with the Complainant to submit as evidence in the likely UDRP proceedings,

the dissenting Panellist is of the opinion that the registration and use of the disputed domain name by the Respondent was in bad faith. Accordingly the dissenting Panellist finds in favor of the Complainant on the third element of the Policy.

Gökhan Gökçe

Panelist (Dissenting)

Date: March 9, 2015