

ADMINISTRATIVE PANEL DECISION

Toros Tarım Sanayi ve Ticaret Anonim Şirketi v. Rosa Maria Vicente Casado,
Bulevar Informatica, S.L.

Case No. D2023-5383

1. The Parties

The Complainant is Toros Tarım Sanayi ve Ticaret Anonim Şirketi, Türkiye, represented by Moroğlu Arseven, Türkiye.

The Respondent is Rosa Maria Vicente Casado, Bulevar Informatica, S.L., Spain represented by John Berryhill, Ph.d., Esq., United States of America.

2. The Domain Name and Registrar

The disputed domain name <toros.com> is registered with DNC Holdings, Inc. (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on December 28, 2023. On December 28, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 3, 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 (REDACTED FOR PRIVACY) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 4, 2024, 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 January 5, 2024.

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 January 11, 2024. In accordance with the Rules, paragraph 5, the due date for Response was January 31, 2024. The Respondent requested a four-day extension of the deadline for filing a response under paragraph 5(b) of the Rules. The due date for Response was extended to February 4, 2024. The Response was filed with the Center on February 1, 2024.

The Center appointed Warwick A. Rothnie, Nathalie Dreyfus, and Nick J. Gardner as panelists in this matter on February 16, 2024. 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 Complainant was established in Türkiye in 1974, operating mainly in the agricultural sector. In 1981, it began operations producing fertilizer. By 2019, the Istanbul Chamber of Commerce ranked it as the 52nd largest industrial enterprise in its list of 500 Largest Enterprises of Türkiye.

According to the Complaint, the Complainant accounts for some 38 per cent of total installed production capacity for fertilizer in Türkiye. It is the largest producer of fertilizer in Türkiye.

The Complainant registered the domain name <toros.com.tr> on June 30, 1997. It resolves now to a website providing news and information about the activities of the Complainant's corporate group.

According to the Complaint, the Complainant has filed for protection for 60 trademarks featuring the word "toros" in Türkiye. It appears, however, that some at least are no longer registered. Before 2021, the registered trademarks were in various classes for the following device:



One such registration is Registered Trademark No T/03220, which the Complainant says is its registration as a well-known mark and which was filed on August 11, 2017. An earlier registration, apparently now lapsed, was Registered Trademark No. 87/099446, which was filed on September 5, 1997, and registered on December 31, 1997, in International Class 1 but is now described by the Complainant as "currently abandoned". However, according to the Turkish Patent and Trademark Office's records, the trademark was renewed in 2017.

The Complainant also held a registration, Turkish Registered Trademark No. 78/060391 in International Class 1 which was filed and registered in 1978. The trademark that was the subject of that registration is not clear from the Complaint and the registration itself lapsed at some point.

The Complainant also has three International Registrations for, or featuring, the above device designating Romania, Ukraine or both including:

- (a) International Registration No. 1492877, which was registered on August 7, 2019, from the basic registration Turkish Registered Trademark No. 99446; and
- (b) International Registration No 1514505, which was based on Turkish Registered Trademark Nos 2003/18704 and 2005/52065.

Both of these International Registrations were registered on August 7, 2019. The third registration, International Registration No. 1551640, includes the words "agroport romania" under the device and was registered on April 1, 2020.

The Second-named Respondent, Bulevar Informatica, S.L., is a limited liability company based in Spain. According to the Response, the first-named Respondent is the "Administrador único" of the Second-named Respondent (which the Panel understands to mean the First-named Respondent is in effect the sole director of the company).

The Second-named Respondent was formed in September 1995.

According to the Response, the Second-named Respondent is the family company of Rosa Maria Vicente Casado and her two brothers: Francisco Javier Vicente Casado and Enrique Vicente Casado. Ms. Vicente Casado has submitted a declaration in which she states the three of them formed the company to provide various information technology services and sales of equipment.

Ms. Vicente Casado's brother, Francisco Javier Vicente Casado, is the owner of Spanish Registered Trademark No. M2648721 for:



in respect of advertising, commercial business management and retail sales services in International Class 35. The application to register this trademark was filed on April 27, 2005.

The disputed domain name was registered on January 19, 1997.

The Wayback Machine at "www.archive.org" has saved 562 captures of the website at the disputed domain name between December 12, 1998, and December 25, 2023.

The December 12, 1998 capture shows a page "Under Construction".

From December 15, 2000, until at least February 2011, the Wayback Machine captures saved websites of various designs providing information related to bull-fighting. From at least July 2001 until around July 2011, the websites have displayed Spanish Registered Trademark No. M2648721 or very close versions of it.

In July 2011, however, the disputed domain name resolved to a website stating that the website had been taken down for remodelling. The remodelling does not appear to have been completed and, since June 2018, the disputed domain name has been parked with the hosting provider.

When the Complaint was filed, the disputed domain name resolved in Türkiye to a website showing pay-per-click links one of them pointing to an online gambling site, which is illegal in Türkiye. When the disputed domain name was accessed from Spain, however, a page stating "No sponsors. ww01.toros.com currently does not have any sponsors for you." was displayed to the viewer.

5. Discussion and Findings

Paragraph 4(a) of the Policy provides that in order to divest the Respondent¹ of the disputed domain name, the Complainant must demonstrate each of the following:

- (i) the disputed domain name 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.

¹ Unless it becomes necessary to distinguish between them, the Panel will refer to the two Respondents jointly as "the Respondent" for simplicity.

Paragraph 15(a) of the Rules directs the Panel to decide the Complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable.

A. Identical or Confusingly Similar

The first element that the Complainant must establish is that the disputed domain name is identical with, or confusingly similar to, the Complainant's trademark rights.

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 of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

There are two parts to this inquiry: the Complainant must demonstrate that it has rights in a trademark at the date the Complaint was filed and, if so, the disputed domain name must be shown to be identical or confusingly similar to the trademark.

There is a dispute between the parties over how many currently registered trademarks the Complainant holds. For the purposes of the Policy, however, it is sufficient if the Complainant owns one registered trademark (or has accrued rights in a sign as an unregistered trademark).

Even on the Respondent's case, the Complainant has proven ownership of at least one registered trademark for the T Toros device shown above.

The Respondent points out that "toros" is an ordinary Spanish word meaning "bulls" in English. The Respondent has also provided evidence that there are numerous other registered trademarks both in Türkiye and around the world which feature "Toros" which are held by third parties.

The Respondent's arguments misunderstand the nature of the inquiry under the Policy at this stage. The second stage of this inquiry simply requires a visual and aural comparison of the disputed domain name to the proven trademark(s). This test is narrower than and thus different to the question of "likelihood of confusion" under trademark law. Therefore, questions such as the scope of the trademark rights, the geographical location of the respective parties, the date they were acquired and other considerations that may be relevant to an assessment of infringement under trademark law are not relevant at this stage. Such matters, if relevant, may fall for consideration under the other elements of the Policy. See e.g. [WIPO Overview 3.0](#), section 1.7.

In undertaking that comparison, it is permissible in the present circumstances to disregard the generic Top-Level Domain ("gTLD") component as a functional aspect of the domain name system. [WIPO Overview 3.0](#), section 1.11.

It is also usual to disregard the design elements of a trademark under the first element as such elements are generally incapable of representation in a domain name. Where the textual elements have been disclaimed in the registration or cannot fairly be described as an essential or important element of the trademark, however, different considerations may arise. See for example, [WIPO Overview 3.0](#), section 1.10.

The figurative elements of the Complainant's trademarks are not so dominating that the verbal element cannot arguably be considered an essential or important part of the trademarks in this case. Accordingly, it is appropriate to apply the usual rule.

Disregarding the ".com" gTLD, the disputed domain name consists of the Complainant's registered trademark and the initial "T". The Panel accepts that in some contexts, where a verbal element is an ordinary dictionary word, the presence of the capital T could be seen as constituting "T Toros" as a (potentially) distinctive mark. In the present context, however, the separate capital "T" draws attention to,

and emphasizes, the initial “t” of “toros”. As a result, the Complainant’s trademark remains visually and aurally recognisable within the disputed domain name.

Accordingly, the Panel finds that the Complainant has established that the disputed domain name is confusingly similar to the Complainant’s trademark and the requirement under the first limb of the Policy is satisfied.

B. Registered and Used in Bad Faith

In the circumstances of this case, it is appropriate to consider next the third requirement under the Policy.

Under the third requirement of the Policy, the Complainant must establish that the disputed domain name has been both registered and used in bad faith by the Respondent. These are conjunctive requirements; both must be satisfied for a successful complaint: see e.g. *Burn World-Wide, Ltd. d/b/a BGT Partners v. Banta Global Turnkey Ltd*, WIPO Case No. [D2010-0470](#).

Generally speaking, a finding that a domain name has been registered and is being used in bad faith requires an inference to be drawn that the respondent in question has registered and is using the disputed domain name to take advantage of its significance as a trademark owned by (usually) the complainant.

The Complainant contends that this knowledge should be inferred from the fact that the Complainant was established and began trading under its name in 1974 and commenced production of fertilizer in 1981 and also owned at least Turkish Registered Trademark No. 78/060391 from 1978 (until the registration ceased).

The Complainant further contends that registration and use in bad faith should be presumed from the resemblance of the disputed domain name to the Complainant’s trademark (citing [WIPO Overview 3.0](#), section 3.1.4) and contends that the registration and use of the disputed domain name which is “so obviously connected with the Complainant” to resolve to a parking page with PPC links shows “opportunistic bad faith”. Contending that the Respondent has no rights or legitimate interests in the disputed domain name and its manner of use cannot confer such rights, the Complainant relies on its asserted reputation to argue that “it is indeed not explainable for the Respondent to choose the disputed domain name”. In these circumstances, the Complainant contends that the registration of the disputed domain name in the Respondent’s hands is an abusive threat hanging over the head of the Complainant. Finally, the Complainant alleges that the Respondent approached the Complainant through the domain broker, Saw.com, offering to sell the disputed domain name to the Complainant for USD37,000.

The Respondent denies knowledge of the Complainant or its trademark before the commencement of this dispute. Instead, the Respondent claims it registered the disputed domain name in connection with a company project to provide a directory and search website for information, media and other goods and services relating to bullfighting.

The Panel considers that the circumstances of this case do not lead to a finding of registration in bad faith.

First, given the evidence in the Complaint about the length of the Complainant’s operations and the size and scale of its business in Türkiye, the Panel is willing to accept in the Complainant’s favour that it has a reputation associated with its name and trademark at least in Türkiye. Even in Türkiye, however, it appears that there are numerous other registered trademarks by third parties for, or which feature, “toros”.

The Complaint also includes evidence that the Complainant has trademark registrations in Romania and Ukraine.

The Complaint does not include evidence that the Complainant’s trademark is used in Spain or is so well known there or, for that matter, outside Türkiye that it can simply be assumed the Respondent must have been aware of the Complainant’s trademark especially when taking into account the next point.

Secondly, as already noted and whatever may be the case in Turkish, “toros” is an ordinary Spanish word (translating in English to “bulls”). It is not, at least for someone who speaks Spanish, an invented term which only has significance as the Complainant’s trademark.

Here, the Respondent is Spanish and has claimed it registered the disputed domain name in connection with a planned project relating to bullfighting. Moreover, the Respondent has provided through the Wayback Machine evidence that for many years it did in fact use the disputed domain name in connection with such a project. See [WIPO Overview 3.0](#), section 2.10.1 (in connection with rights or legitimate interests).

Further, the captures by the Wayback Machine feature a trademark which is the same as, or nearly the same as, a registered trade mark in Spain, Registered Trademark No. M2648721. This trademark is not registered in the name of the Respondent. However, it is registered in the name of Francisco Javier Vicente Casado – whose surname is the same as the first-named Respondent’s surname. Ms. Vicente Casado’s declaration states that he is one of her brothers and registered the trademark for use in the Second-named Respondent’s business. And, as the Wayback Machine captures show, it was in fact used in that way. There is no evidence contradicting Ms. Vicente Casado’s evidence on this point. On the contrary, such evidence as there is supports it.

Contrary to the Complainant’s contention that the Respondent offered to sell the disputed domain name to the Complainant through the domain broker, Saw.com, for USD37,000, the Respondent has submitted a declaration by the founder and chief executive officer of Saw.com, Mr. Gabriel, in which he declares that Saw.com was never engaged by the Respondent to offer the disputed domain name for sale to the Complainant. Instead, Mr. Gabriel declares that the Complainant approached his company to engage it to attempt to buy the disputed domain name on the Complainant’s behalf. In order to demonstrate that the price the Complainant proposed to offer was “unrealistically low”, Mr. Gabriel further declares that Saw.com provided the Complainant with an appraisal from the appraisal tool on the Saw.com website. When providing that “guide” to the Complainant, Saw.com specifically stated to the Complainant:

“It is difficult to estimate what price could be requested for the domain as the owner (we don’t own the domain) is the primary variable, but I’ve generated an appraisal for you to give you an idea of what it could sell for.”

The Complainant has not sought to dispute the matters set out in Mr. Gabriel’s declaration.

In these circumstances, the Panel cannot set aside the Respondent’s denial of knowledge of the Complainant’s trademark and adoption of the disputed domain name in connection with a project related to bullfighting and, hence, reasonably connected with the ordinary meaning of “toros” in Spanish.

The Complainant’s evidence about the PPC links on the website to which the disputed domain name resolved when the Complaint was filed does not assist it. This evidence relates to use many years after the disputed domain name was registered. Thus, it would be very difficult to infer the Respondent registered the disputed domain name for this purpose on this evidence alone.

Moreover, the Respondent appears to have been wholly unaware of this use and not in a position to be aware of it.

A respondent is not usually able to escape liability for use made by a registrar or host where the respondent has the means to control what, if any use, the domain name is put to. See e.g. [WIPO Overview 3.0](#), section 2.9.

In the present case, however, the Respondent has submitted evidence to show that a person in Spain seeking to navigate to “www.toros.com” would not be shown PPC links. Instead, they would be shown the “No sponsors” page described in section 4 above.

In these circumstances, the Respondent had no means of knowing the use being made of its disputed domain name. Accordingly, it is not appropriate to attribute to the Respondent liability for conduct which it could not know about. See e.g. *Admiral Insurance Services Limited v. Mr. Adam Dicker*, WIPO Case No. [D2005-0241](#) and *Consumer Reports, Inc. v. Thomas Munroe*, WIPO Case No. [D2023-0569](#).

Accordingly, the Complainant has failed to show that the Respondent registered the disputed domain name in bad faith. As the Complainant has failed to demonstrate this requirement, it cannot establish the third requirement under the Policy and the Complaint must fail.

C. Rights or Legitimate Interests

As the Complaint must fail, no good purpose would be served by considering this requirement further.

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.

It will often be the case that it would be unreasonable to describe a Complaint as abusive when it was filed in circumstances where the disputed domain name resolved to a website featuring PPC links competitive with the Complainant's trademark and the Respondent's identity was unknown because of the use of a privacy service.

The Panel considers that does not excuse the Complainant's conduct in this case.

First, the Complainant clearly asserted to the Panel that the Respondent had approached the Complainant with an offer to sell the disputed domain name to the Complainant for USD37,000. The Complainant did not disclose that it was the Complainant who had in fact approached the domain broker or that the "price" was the domain broker's own estimate of the value of the disputed domain name.

At no time has the Complainant sought to correct that misrepresentation, even after Mr. Gabriel's declaration was served as part of the Response.

This is a very serious misrepresentation which, if not challenged by the Respondent and corroborated through the evidence of Mr. Gabriel, could very easily have resulted in a finding of registration and use in bad faith.

Secondly, after the Registrar Verification Response disclosed the identity of the actual Respondent, the Complainant merely requested that the Respondent identified by the Registrar Verification Report be added to the Complaint. The Complainant therefore maintained its contentions that the Respondent held no trademark rights. It also maintained its claims that there was and could be no legitimate use of the disputed domain name.

The Complainant has not disclosed what searches, if any, it undertook before making the very serious allegations made in the Complaint against the Respondent. A simple search of the disputed domain name on the Wayback Machine, however, would have disclosed that for many years prior to the bringing of the Complaint the disputed domain name was being used in connection with bullfighting, albeit that use came to an end some time after 2011. In at least some cases, the operators of the website were identified as Toros International Business S.L. and Bulevar Informatica S.L. – the Respondent.

Given the Respondent's location in Spain, an allegation that the Respondent held no trademark rights could reasonably be expected to have been based on a search of trademark registers relevant to Spain. Plainly, such a search would not have revealed a trademark owned by the Respondent. Even a Quick Search on the Global Brand Database for TOROS marks designating Spain, however, discloses the registration of the device seen on many of the captures by the Wayback Machine and that it is registered in the name of a person having the same surname as the first-named Respondent, Francisco Javier Vicente Casado. In these circumstances, the Panel considers it appropriate to make a finding 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.

/Warwick A. Rothnie/

Warwick A. Rothnie

Presiding Panelist

/Nathalie Dreyfus/

Nathalie Dreyfus

Panelist

/Nick J. Gardner/

Nick J. Gardner

Panelist

Date: March 1, 2024