Panel Decision for dispute CAC-ADREU-005837

Case number	**CAC-ADREU-005837**
Time of filing	**2010-10-22 10:02:22**
Domain names	**turkcell.eu**

Case administrator

Name	**Tereza Bartošková**

Complainant

Organization / Name	**Turkcell Iletisim Hizmetleri AS, turkcell**

Respondent

Organization / Name	**dilek TANIK**

INSERT INFORMATION ABOUT OTHER LEGAL PROCEEDINGS THE PANEL IS AWARE OF WHICH ARE PENDING OR DECIDED AND WHICH RELATE TO THE DISPUTED DOMAIN NAME

N/A

FACTUAL BACKGROUND

TURKCELL ILETISIM A.S. is the Turkey's leading mobile telecommunications operator and is also one of the biggest GSM operator in Europe. Turkcell has also established a registered subsidiary in Germany, Turkcell Europe GmbH. Tukcell is therefore a protected corporate name within EU. In addition, the complainant's trade/service mark TURKCELL was registered as Community Trademark (CTM) with priority from 2002. The Complainant has a number of other trade marks registered in various countries worldwide and also holds several domain name registrations containing the "turcell" brand.

The Respondent is a physical person residing in Germany.

A. COMPLAINANT

The Complainant argues in its Complaint that the disputed domain name tukcell.eu (i) is identical or confusingly similar with the protected name (TURKCELL), (ii) was registered without any rights or legitimate interest in the name and (iii) is being used in bad faith.

1. Identicality of the disputed domain name

The Complainant argues that the disputed domain name is identical to the protected name.

2. Registration without rights or legitimate interest

The Complainant based its Complaint on the following principle arguments:

a) The Complainant has not licensed or otherwise permitted the Respondent to use the mark “TURKCELL” or to apply for, or use any domain name incorporating that mark. The Respondent has no relationship with or permission from the Complainant for use of its mark. The Complainant has prior rights in the mark, which predates Respondent’s registration of the domain name.

b) The Respondent must have been aware of the Complainant’s extensive goodwill and reputation in its brand “TURKCELL”. As the Complainant mentions in its Complaint, "the Complainant is the biggest wireless telecommunication services provider in Turkey. It has advertisements all over Turkey, from subways to advertisement spaces on the side of the roads, streets and buildings. Its thousands of commercials appear on almost all TVs and radios in everyday." The Complainant also operates internationally through its branch office and business-partners.

Since the TURKCELL mark is famous, and Respondent is apparently a Turkish individual (dilek tanik is a Turkish name-last name), it is not likely that the Respondent was not aware of one of the most recognized and advertised trademarks –Turkcell- in Turkey. The Complainant argues that the reasons why Respondent wanted to register the disputed domain name were either to use it to confuse Internet users for the Respondent's own benefit and profit or to sell it to TURKCELL.

c) The domain name in question is not a mark by which the Respondent is commonly known. The Respondent has acquired no trademark or service mark rights and, there is no common knowledge (as an individual, business, or other organization) that the Respondent is known by the domain name. The Respondent has never been licensed or granted permission from the Complainant to use its mark. The Complainant refers, among others, to WIPO UDRP Decision in case Compangnie de saint Gobain v. Vcom-Union Corp., D 2000-0020 (WIPO Mar.14, 2000), in which the Panel found no rights or legitimate interest where Respondent was not commonly known by the mark or never applied for a license or permission from the Complainant to use the trademarked name.

d) The Respondent appears to have made no substantive use of the Domain Name whether in connection with a business or otherwise.

3. Respondent‘s bad faith

According to the Complainant, the domain name has been registered for abusive speculative purposes, i.e., in order to prevent the holder of corresponding trademark rights to register and use the domain name.

Complainant argues that the Respondent registered and is using the disputed domain name in bad faith, because she had knowledge of a well known trademark owner specifically using that name already. As the Complainant mentions in its Complaint, "Registration and use of a domain name incorporating a famous mark is necessarily in bad faith where a Respondent knew at the time of the registration that he could not make any actual use of the registered domain name without infringing on the trademark owner’s rights."

B. RESPONDENT

As mentioned above, Respondent failed to submit a Response. The Panel verified from the Case File that the Respondent was properly notified of the Response in accordance with the ADR Rules. Despite the fact that the Respondent failed to submit its Response, the Panel decided to consider the present case on its merits, i.e. without exercising the option given to the Panel by Par. B10(a) of the ADR Rules to decide in favour of the Party not in default – i.e. the Complainant.

DISCUSSION AND FINDINGS

The Panel agrees with the Complainant that the disputed domain name "turkcell.eu" is identical with the Complainant's protected brand TUKCELL.

Then the Panel considered whether Respondent's rights or legitimate interest in the disputed domain name have been demonstrated. Here the Panel refers to a Panel decision ADR 2035 (WAREMA) in which the Panel stated in relation to demonstrating a right or legitimate interest in the disputed domain name according to Art. 21(2)(a) and (b) of the Regulation EC/874/2004: “Furthermore, the Panel holds that although the burden of proof lies with the Complainants, the existence of a right or legitimate interest is difficult to prove since the relevant facts lie mostly in the sphere of the holder. Hence, the Panel holds that it is sufficient that the Complainants contend that the obvious facts do not demonstrate a right or legitimate interest of the Respondent in the Domain Name. The onus then shifts to the Respondent to produce factual evidence for a right or legitimate interest”.

The Panel agrees with this approach. The Complainant complied with the stated requirements and the Respondent failed to file a Response, therefore the Panel agrees with the Complainant that the Respondent does not have any rights or legitimate interest in the disputed domain name.

Finally the Panel also confirms the Complainant's arguments with respect of the Respond's bad faith. The Panel finds it proven by the Complainant that the Respondent, a Turkish individual living in Germany, must have known about the protected name TURKCELL before registering it as a domain name and that Respondent must have intended to get an unfair gain from such registration and subsequent use of the disputed domain name.

The Complainant requested transfer of the disputed domain name. The Complainant mentioned in its Complaint its EU branch, Turkcell

Europe GmbH, seated in Germany, and clarified subsequently that it requests the disputed domain name to be transferred to the Complainant's EU branch - Turkcell Europe GmbH.

The Panel's view is that by nominating its EU branch as the transferee of the disputed domain name the Complainant through its branch incorporated in Germany is an entity eligible to be the holder of .eu domain name in accordance with Par. 4(2) b) of Regulation 733/2002.

Therefore the Panel orders that the domain name turkcell.eu be transferred to Turkcell Europe GmbH.

DECISION

For all the foregoing reasons, in accordance with Paragraphs B12 (b) and (c) of the Rules, the Panel orders that the domain name TURKCELL be transferred to the Complainant's branch within EU:

Turkcell Europe GmbH, seated at c/o DLA Piper, Hohenzollernring 72, 50672 Köln, Germany, Registration Number: HR B 70098.

PANELISTS

Name	**Zbynek Loebl**

DATE OF PANEL DECISION 2011-01-30

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant, a large Turkish company with international business, requested transfer of the disputed domain name from the Respondent, a Turkish individual living in Germany. The Complainant has proven all the necessary issues for the transfer. The Respondent failed to file the Response. The Complainant mentioned in its Complaint its EU branch, seated in Germany, through which it conducts it business operations within EU. The Complainant clarified subsequently that it requests the disputed domain name to be transferred to the Complainant's EU branch.

The Panel's view is that by nominating its EU branch as the transferee of the disputed domain name the Complainant through its branch incorporated in Germany is an entity eligible to be the holder of .eu domain name in accordance with Par. 4(2) b) of Regulation 733/2002.

Therefore the Panel orders that the domain name turkcell.eu be transferred to the Complainant's German branch.