

ADMINISTRATIVE PANEL DECISION

Sütaş Süt Ürünleri Anonim Şirketi v. Privacy Administrator, Anonymize, Inc. /
Independent Digital Artists
Case No. D2022-0615

1. The Parties

The Complainant is Sütaş Süt Ürünleri Anonim Şirketi, Turkey, represented by Turkticaret.net Yazılım Hizmetleri Sanayi ve Ticaret A.Ş., Turkey.

The Respondent is Privacy Administrator, Anonymize, Inc. / Independent Digital Artists, United States of America (“United States”).

2. The Domain Name and Registrar

The disputed domain name <yovita.com> is registered with Epik, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 22, 2022. On February 22, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 23, 2022, 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 February 24, 2022, 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 February 24, 2022.

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 February 25, 2022. On March 4, 2022, the Registrar sent an email communication to the Center indicating that the registrant would like to unmask their information and disclosing underlying registrant information. On March 8, 2022, the Center forwarded the Notification of Complaint and Commencement of Administrative Proceeding email to the newly disclosed alleged underlying registrant. In accordance with the Rules, paragraph 5, the due date for Response was March 17, 2022. On

March 17, 2022, the Center received a filing and an email communication from the alleged underlying registrant. On March 23, 2022, the Center informed the Parties that it will proceed to panel appointment.

The Center appointed Andrew D. S. Lothian as the sole panelist in this matter on March 25, 2022. 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. On April 5, 2022, the Panel issued Procedural Order No. 1 to the Parties, described below, whereby the Complainant was invited to submit a supplemental filing by no later than April 12, 2022 and the Respondent was invited to comment by no later than April 17, 2022, and the decision due date was extended to at least April 24, 2022. On April 12, 2022, the Complainant filed a supplemental filing in accordance with Procedural Order No. 1. The Respondent did not file any comments ahead of the related deadline in Procedural Order No. 1.

4. Factual Background

The Complainant is a provider of milk and dairy products, claiming to process 900 million liters of milk per year in four production facilities located in Turkey, North Macedonia¹ and Romania, and to offer 78 different products to its consumers. According to the Complainant, it has focused on milk and dairy products since 1975, and eight out of every ten households in Turkey receives at least one of the Complainant's offerings. The Complainant also asserts that it employs 5,000 people and has revenues of TRY 3.8 billion. The Complainant notes that it operates a "Farm to Table" business which audits all processes from the farm to the consumer, adding that in 2019 it exported goods to the value of USD 16.5 million to 29 countries, including the United States of America, Japan, United Arab Emirates, Qatar, Libya, Iraq, Kuwait, and Egypt.

According to the Complainant, "Yovita" is the name of one of its most prominent products, which is a natural yogurt containing probiotic bacteria and traditional yogurt yeast. The Complainant is the owner of several registered trademarks for the mark YOVITA covering a wide variety of jurisdictions, the earliest of which appears to be Turkish Registered Trademark No. 2005 04044, registered on October 18, 2005 in Classes 29, 30, and 32. The Complainant does not appear to own a corresponding trademark in the territory where the Respondent is based.

The disputed domain name was registered on January 27, 2005. On February 23, 2022, the Registrar's verification response disclosed the registrant as "a client of [the Registrar]" which was "utilizing Anonymize as a private proxy". However, on March 4, 2022, the Registrar wrote to the Center indicating that "[...] the Registrant would like to unmask their information". In said communication, the Registrar disclosed that the underlying registrant was Independent Digital Artists of California, United States of America. A person apparently acting on behalf of that entity then proceeded to file the Response. According to a screenshot produced with the Response, the disputed domain name points to a website provided by the Registrar in which the disputed domain name is offered for sale or lease and "reasonable offers" are solicited for consideration. According to the website associated with the domain name which is used for the contact email address named in the Response, the Respondent's organization is "a collaborative digital media environment where commercial and creative projects are developed".

The Complainant was the original registrant of the disputed domain name until January 27, 2011, when the disputed domain name was allowed to lapse, although the wording of the Complaint suggests that the Complainant or its representative is presently unaware of this fact.² Although the Panel cannot tell for certain, the disputed domain name was most probably auctioned by its then registrar upon expiry. At some point thereafter, the Respondent acquired the disputed domain name, although the date of such acquisition is unknown to the Panel.

¹ The Complaint references "Macedonia" only and, based on evidence supplied by the Complainant, the Panel has assumed that this refers to North Macedonia.

² The Panel made a search of historic Whois records, from which this information was obtained, by way of conducting limited factual research into matters of public record. On the topic of a panel conducting independent research, see section 4.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

5. Parties' Contentions

A. Complainant

In summary, the Complainant contends as follows:

Identical or confusingly similar

The Complainant has several registered trademarks in the world which bear the YOVITA term as the only or essential element. The Complainant also owns 20 domain names including this term.

Rights or legitimate interests

The Respondent registered the disputed domain name on January 27, 2005. The disputed domain name is not active. The disputed domain name is offered for sale and the Complainant is unable to determine that the Respondent has any registered trademark or trade name corresponding thereto.

Registered and used in bad faith

The disputed domain name is not being used in connection with a *bona fide* offering of goods or services. The Complainant has no choice but to file this Complaint to stop the unauthorized use of its trademark as a domain name.

Complainant's supplemental filing

The Complainant is prevented from trading by registering and holding the disputed domain name consisting of its trademark. It may harm the Complainant's trade if the Respondent sells the disputed domain name to someone else. The brand is a world-famous brand, which is actively used. Google searches for "yovita" suggest searches in the form of "Sütaş yovita". Evidence is presented to show that this is a world-class brand in active use by the Complainant.

B. Respondent

In summary, the Respondent contends as follows:

The Complaint should be denied and constitutes Reverse Domain Name Hijacking.

Identical or confusingly similar

The Respondent accepts the validity of the Complainant's trademarks and recognition as a dairy farming company.

Rights and legitimate interests

The Complainant cannot plausibly claim exclusive rights to YOVITA since there are other trademarks that use the same term. The Complainant claims that the Respondent does not have legitimate rights to the disputed domain name and that it should give this up despite the fact that the Respondent did not infringe on the Complainant's goods or services. In order to infringe on a mark one must offer similar goods or services. Offering the disputed domain name for sale is not a *bona fide* reason to make such claims.

The Respondent has a portfolio of brand names that are set aside for clients or potential new clients that are looking to rebrand or develop new identities. Such portfolio is also used for certain future projects which it seeks to pursue. The Respondent does not use similar marks with competing goods or services. The Respondent is established in the United States and is unfamiliar with the Complainant's brand and company. The Complainant has no registered trademarks for YOVITA in the United States and is not famous there.

There are similar YOVITA trademarks in other countries not owned by the Complainant. The name "Yovita" is used as a first name for many people. A search on "www.linkedin.com" verifies that there are thousands of people that use that name. None of domain names on the list supplied by the Complainant resolve to a working site or to the product that it sells. The Complainant filed the Complaint after the Complainant had been unsuccessful in multiple unsolicited attempts to purchase the disputed domain name.

Registration and use in bad faith

There is no evidence of bad faith registration or use. The Respondent registered the disputed domain name simply because it is used as a first name which became available when the prior owner apparently allowed the disputed domain name to expire. This is not a case of a cybersquatter looking for trademarks upon which to prey. The Respondent registered the disputed domain name along with numerous others with the intent to sell those registrations to willing purchasers, because of the inherent value in a generic or descriptive domain name. The Complainant has offered no evidence demonstrating that the Respondent has targeted its trademark.

Reverse Domain Name Hijacking

The Respondent seeks a finding of Reverse Domain Name Hijacking because the Complainant filed the Complaint after the having been unsuccessful in multiple unsolicited attempts to purchase the disputed domain name.

6. Discussion and Findings

To succeed, the Complainant must demonstrate that all of the elements listed in paragraph 4(a) of the Policy have been satisfied:

- (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. Preliminary Matters: Identity of the Respondent and Procedural Order

The Rules define the respondent as "the holder of a domain name registration against which a complaint is initiated". The Panel does however have discretion to substitute or join another entity as a respondent by way of its general powers as set out in paragraph 10(a) of the Rules. In the present case, the holder of the disputed domain name was originally verified by the Registrar as Anonymize, Inc., a privacy service. Nevertheless, the Registrar indicated in its verification that there was an underlying registrant of which it was aware, by way of its statement, "The registrant of the domain is a client of Epik and is utilizing Anonymize as a private proxy". It went on to add, "Anonymize a Whois privacy service provider [sic], which this domain is currently using. Thus, the current registrant is: Anonymize, Inc."

The Center proceeded to inform the Complainant that the registrant was Anonymize, Inc. in accordance with the Registrar's verification. The Complainant duly filed an amendment to the Complaint and the notification procedure commenced. One week later, the Registrar contacted the Center stating that "the Registrant would like to unmask their information" and disclosing details of what was claimed to be the underlying holder of the disputed domain name.

Paragraph 4(b) of the Rules states that within two business days of receiving the UDRP provider's verification request, the registrar shall provide the information requested in the verification request. That

paragraph also notes that any updates to respondent data, such as through the result of a request by a privacy or proxy provider to reveal the underlying customer data, must be made before the two business day period concludes or before the registrar verifies the information requested. Appendix E to the ICANN Temporary Specification for gTLD Registration Data (“Temporary Specification”) requires a registrar to provide the UDRP provider with the full registration data for the specified domain name(s) upon the UDRP provider notifying the registrar of the existence of a complaint.

Accordingly, if it is aware of the underlying customer data at the point of registrar verification, no discretion is reserved to the Registrar in terms of the Rules or the Temporary Specification to withhold this information from the UDRP provider. Difficulties are likely to ensue, not least in connection with notification of a complaint under the Policy, if registrars willfully disclose the holder of a domain name as a privacy service in circumstances where they are aware of the existence and identity of an underlying holder. For example, uncertainties may arise concerning whether such underlying holder has received notification of a complaint should their existence and/or identity be revealed at a later stage. Complainants may not be able to make appropriate investigations and amendments to their complaints in a timely manner, or at all. Either or both of the parties to an administrative proceeding under the Policy may be inconvenienced or prejudiced by such action of a registrar.

The Panel notes that this is not the first time that there have been concerns arising from the actions of the Registrar in recent years (see, for example, the issues surrounding registrar verification described in *Rubis Energie v. Privacy Administrator, Anonymize, Inc.*, WIPO Case No. [DCO2019-0033](#) (insofar as relating to UDRP cases involving generic Top-Level Domains), *Nationwide Mutual Insurance Company v. Privacy Administrator, Anonymize, Inc. / “Manu Miglani”*, *Privacy Gods Limited / Epik Inc.*, WIPO Case No. [D2019-1816](#) and in *Creatd, Inc. v. Privacy Administrator, Anonymize, Inc. / Robert Monster*, WIPO Case No. [D2021-1050](#)).

In these circumstances, the Panel requests that the Center share this decision with ICANN so that ICANN may consider what actions it may wish to take, in the context of the Registrar’s contractual compliance or otherwise.

In the present case, notwithstanding its general concerns as outlined above, the Panel considers that it is appropriate to join the underlying holder that was ultimately disclosed by the Registrar on March 4, 2022 as a Respondent in the present case. Notably, it appears that such Respondent received due notice of the Complaint, as it filed a timely Response. The Panel will however retain the name of the privacy service in the instance of this decision in order that the Registrar may implement any remedy that may be ordered. Both the privacy service and the underlying registrant shall be referred to as “the Respondent” throughout the decision, unless the context otherwise requires, for convenience.

Having determined that the underlying holder of the disputed domain name now disclosed by the Registrar should be treated as the Respondent in this case, the Panel issued Procedural Order No. 1, in order to put the Parties back into the position that they would have been in (in procedural terms) had the identity of the underlying registrant been disclosed by the Registrar at the time of verification. In other words, the Complainant would have been able to address any matters arising in the amended Complaint and the Respondent would have been able to reply to these in the Response. Had the Registrar disclosed the underlying registrant at the time of verification, this additional procedure would not have been necessary.

B. Identical or Confusingly Similar

There are two parts to the inquiry under this element of the Policy. First, the Complainant must demonstrate that it has UDRP-relevant rights in a trademark. Secondly, any such trademark is compared to the disputed domain name, typically in a straightforward side-by-side manner, usually disregarding the Top-Level Domain as required for technical purposes only. The purpose of the comparison is to determine identity or confusing similarity between the trademark and disputed domain name. If the former is recognizable in the latter, confusing similarity will generally be found, while if the former is identical to the latter, identity will generally be found.

In the present case, the Panel finds that the Complainant has UDRP-relevant rights in its YOVITA registered trademark as described in the factual background section above. Comparing this to the Second-Level Domain of the disputed domain name, it may be seen that these are alphanumerically identical. The trademark is fully recognizable in the disputed domain name. Furthermore, the Response effectively concedes this point.

In all of these circumstances, the Panel finds that the disputed domain name is identical to the Complainant's trademark and that the Complainant has carried its burden with regard to paragraph 4(a)(i) of the Policy.

C. Rights or Legitimate Interests

The requirements of paragraph 4(a) of the Policy are conjunctive. A consequence of this is that failure on the part of a complainant to demonstrate one element of the Policy will result in failure of the complaint in its entirety. Accordingly, in light of the Panel's finding in connection with registration and use in bad faith, it is unnecessary for the Panel to address the issue of the Respondent's rights or legitimate interests in the disputed domain name.

D. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy provides four, non-exclusive, circumstances that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

“(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out of pocket costs directly related to the domain name; or

(ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location”.

Panels under the Policy typically find that, for bad faith registration and use to be made out, a degree of targeting of the Complainant or its mark by the Respondent must be evident from the record, or at the very least that there must be sufficient grounds to infer that the Respondent had the Complainant or its trademark in mind when the disputed domain name was created (see, for example, *The Perfect Potion v. Domain Administrator*, WIPO Case No. [D2004-0743](#)). In the present case, the Panel has been provided with no information by the Complainant which would suggest on the balance of probabilities that the Respondent was targeting it or its rights when the disputed domain name was registered.

As set out in the factual background section, the Panel has noted that the Complainant was the original registrant of the disputed domain name, a matter of which the Complainant currently appears to somehow have been unaware. The disputed domain name was acquired by the Respondent at some point after its original expiration date in January 27, 2011. There is no evidence before the Panel as to the prominence of the Complainant's YOVITA brand and trademark on or after that date which might have suggested that the Respondent would have been aware of the Complainant and/or its rights when it acquired the disputed domain name. This might have been demonstrated, for example, by way of evidence of significant sales

volumes for the branded product in the market where the Respondent is based. While the Complainant says that it exported goods to the value of USD 16.5 million to 29 countries including the United States, where the Respondent is based, it does not break this figure down and, more importantly, does not indicate what (if any) volume of YOVITA branded products are included or how this figure is allocated across the years from 2011 to date. Equally, the Complainant might have shown that it has a significant online presence in connection with the YOVITA trademark which could have come to the Respondent's attention (see the discussion in *Fakir Elektrikli EV Aletleri Diş Ticaret Anonim Şirketi v. Development Services, Telepathy, Inc.*, WIPO Case No. [D2016-0535](#)). It has not done so. In any event, the Respondent points out that the related "yovita" domain names listed by the Complainant do not point to active websites.

Furthermore, the materials produced with the Complainant's supplemental filing, which were supplied with no translations or additional explanatory information, do nothing to support the Complainant's submission that its YOVITA brand is world-famous (and that therefore, by implication, it would have come to the notice of the Respondent). Five promotional images have been produced, the first and second of which show the Complainant's products on a shelf in an unspecified retail location possibly named "BEPO" ("Vero"). By studying the legends on the shelves, which are in Cyrillic, the Panel has noted that they appear to be in the Macedonian language and are priced in "ДЕН", suggesting the Macedonian Denar. The third, fourth and fifth images consist of people consuming the Complainant's product in unspecified locations. Where visible in two of the images, the product packaging is partly in Cyrillic.

Two slide presentations were also produced by the Complainant. The first of these is entitled "Yovita Campaign - Gaçikhava reklam" and shows a bus liveried in Cyrillic script which appears to be in the Macedonian language apparently promoting the Complainant's YOVITA mark. In any event, the domain name on the back of the bus and the vehicle registration number are consistent with this being a North Macedonian vehicle. Secondly, three billboards are shown in unspecified locations, although one of these appears to be 11th October Street, Skopje, North Macedonia, based upon the presence of the Porta Macedonia and the Monument of Nikola Karev in the background. All such billboards are in Cyrillic and appear to the Panel to be in the Macedonian language. A second slide presentation entitled "Yovita Influencers' Posts" dated October 2018 consists of promotional materials named an "Influencer's Kit" which appears to have been sent to social media influencers. Recipients of the kit have shown it to be accompanied by a promotional message in Cyrillic which again appears to the Panel to be in the Macedonian language. In any event, none of the additional material produced by the Complainant is evidence of activity outside North Macedonia, which the Complainant has stated to be one of its primary markets. It would not be reasonable to infer that the Respondent would have had any awareness of the Complainant's YOVITA mark arising from these localized promotional activities and retail sale of the Complainant's products.

In these circumstances, there is no material before the Panel suggesting that the Respondent might have had knowledge of the Complainant or its rights when it acquired the disputed domain name. The Panel does not know, for example, whether the Respondent acquired the disputed domain name by "drop catching", whereby it would have been prudent for it to have ascertained the identity of a prior registrant such as the Complainant. In that scenario, the Respondent would not have been acting in good faith if, for example, its acquisition of the disputed domain name was undertaken with a view to forcing the former registrant to pay a premium to correct its mistake in allowing the disputed domain name to lapse (see, for example, the discussions in *Supermac's (Holdings) Limited v. Domain Administrator, DomainMarket.com*, WIPO Case No. [D2018-0540](#) and *Photomaton v. Domains By Proxy, LLC / Ehren Schaiberger*, WIPO Case No. [D2022-0593](#)). In any event, from the record before the Panel, it cannot be established that any such due diligence on the Respondent's part would necessarily have alerted the Respondent to the possibility of the Complainant staking a claim to the disputed domain name.

Turning to the Respondent's case, the Panel notes that the Respondent has credibly asserted, with evidence, that it acquired the disputed domain name because it corresponds to a first or given name and could have a variety of possible applications unrelated to the Complainant's trademark. With regard to trademark usage of the term, the Respondent submits, with evidence, that the mark YOVITA is by no means exclusively or particularly referable to the Complainant, such that it would not be reasonable for the Panel to

infer that the Respondent had the Complainant in mind (or had any intent to target the Complainant) when it acquired the disputed domain name.

The Respondent has proceeded to offer the disputed domain name for general sale, although it also says that it may deploy the disputed domain name as a new brand in an area of business unrelated to that of the Complainant. In the circumstances of the present case, where there is no evidence (as opposed to assertion) that the Complainant's mark is well-known other than potentially in its main markets in Turkey and south east Europe, and no evidence in particular of any online prominence of such mark which would more probably than not have come to the Respondent's attention, the fact that the disputed domain name has been registered for subsequent resale does not by itself support a claim that the Respondent probably registered the disputed domain name in bad faith with the primary purpose of selling it to the Complainant (see, generally, the considerations listed in section 3.1.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

In all of these circumstances, the Panel finds that the Complainant has not carried its burden in connection with paragraph 4(a)(iii) of the Policy and the Complaint therefore fails.

E. Reverse Domain Name Hijacking

The Respondent requests the Panel to make a finding of Reverse Domain Name Hijacking ("RDNH"). Paragraph 1 of the Rules defines Reverse Domain Name Hijacking as "using the Policy in bad faith to attempt to deprive a registered domain-name holder of a domain name". 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 was brought primarily 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".

A commentary on the nature of RDNH together with examples of previous cases under the Policy in which it has been found is detailed in section 4.16 of the [WIPO Overview 3.0](#). It should be noted in particular that lack of success of a complaint is typically not sufficient on its own for a finding of RDNH.

In the present case, the Respondent's submissions on this topic focus on its allegation that the Complaint was only filed after the Complainant had been unsuccessful in multiple unsolicited attempts to purchase the disputed domain name. The Respondent however does not provide any evidence of such attempts and the Complaint itself and Complainant's supplemental filing are also silent regarding this matter. Accordingly, the Panel can ascribe no weight to this assertion on the basis of the present record.

Considering the case as a whole, the Panel finds that the Complaint was not necessarily doomed to fail from the outset and that despite its ultimate failure, the Complainant was justified in pursuing it. Based on the Complainant's assertions (not however backed up sufficiently by evidence), the Complainant has a brand that is likely to be a household name in Turkey, and it is also potentially well-known in certain of its other principal markets, not least of which is North Macedonia, which appears to be the main focus of the Complainant's evidence. The brand has been registered as a trademark in a wide variety of jurisdictions. The disputed domain name had been acquired and was being offered for general sale in circumstances where it might have been targeting the Complainant's trademark. In the specific circumstances of this case, the Panel considers that the Complainant was entitled to put the Respondent to the proof regarding its asserted lack of knowledge of the Complainant or its mark.

In all of these circumstances, there is nothing before the Panel which suggests that the Complaint was brought in bad faith and the Respondent's request for a finding of RDNH is therefore denied.

7. Decision

For the foregoing reasons, the Complaint is denied.

/Andrew D. S. Lothian/

Andrew D. S. Lothian

Sole Panelist

Date: April 24, 2022