

## ADMINISTRATIVE PANEL DECISION

### DSM Grup Danışmanlık İletişim ve Satış Ticaret Anonim Şirketi v. John Doe Case No. D2022-1493

#### 1. The Parties

The Complainant is DSM Grup Danışmanlık İletişim ve Satış Ticaret Anonim Şirketi, Turkey, represented by Basar Sayin, Turkey.

The Respondent is John Doe, Turkey.

#### 2. The Domain Names and Registrar

The disputed domain names <trendyolarac.com> and <trendyolvasita.com> are registered with Launchpad.com Inc.

#### 3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on April 26, 2022. On April 26, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On April 26, 2022, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that the Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the "Policy" or "UDRP"), the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules"), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the "Supplemental Rules").

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on April 28, 2022. In accordance with the Rules, paragraph 5, the due date for Response was May 18, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on May 19, 2022.

The Center appointed Ugur G. Yalçiner as the sole panelist in this matter on May 23, 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.

#### **4. Factual Background**

The Complainant is one of the biggest e-commerce companies in Turkey and owner of more than 50 trademark registrations containing the term “Trendyol” before the Turkish Patent and Trademark Office (“TURKPATENT”) including the earliest trademark TRENDYOL with no. 2009 55631 and registered on October 1, 2010. The Complainant’s trademark TRENDYOL is also protected as well-known trademark with no. T/02568 before the TURKPATENT.

The Complainant owns the domain name <trendyol.com>, registered on October 7, 2009.

The disputed domain names were registered on June 23, 2020, and do not resolve to any active websites.

#### **5. Parties’ Contentions**

##### **A. Complainant**

The Complaint includes the following contentions:

###### **(i) Identical or Confusingly Similar**

The Complainant states that trademark TRENDYOL is registered before the TURKPATENT on behalf of the Complainant since October 20, 2009, the Complainant has more than 50 registered trademarks with the term “trendyol” including the well-known trademark with no. T/02568, the domain name <trendyol.com> was registered on behalf of the Complainant on October 7, 2009, since the Respondent used the identical word “trendyol” in the disputed domain names, these disputed domain names are being used in violation of the Complainant’s trademark rights.

###### **(ii) Rights or legitimate interests**

The Complainant asserts that the Respondent has no right or legitimate interest to use the term “trendyol”, as this term is registered as a trademark on behalf of the Complainant and the Complainant has not given any authorization/license with regards to use of this trademark to the Respondent.

The Complainant also states that “trendyol” is not a common word or a generic name commonly used by third parties with regards to any goods and/or services, therefore using, while having several other options, the identical word with the Complainant’s trademark proves the Respondent’s bad faith.

###### **(iii) Registration and Use in Bad Faith**

The Complainant states that the Respondent has registered and used the disputed domain names in bad faith, the existence of those web sites dilutes the trademark and harms the Complainant’s commercial standings and the market recognition of the Complainant.

The Complainant also contends that the Respondent is from Turkey and he must have been well aware of the Complainant’s trademark TRENDYOL, which is clear evidence of the registration and use of the disputed domain names in bad faith.

##### **B. Respondent**

The Respondent did not reply to the Complainant’s contentions.

## 6. Discussion and Findings

In accordance with paragraph 4(a) of the Policy, the Complainant must prove that each of the three elements are present:

- (i) the disputed domain name registered by the Respondent 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.

### A. Identical or Confusingly Similar

The Complainant submits evidence for its registered trademarks in Turkey. The Panel also confirms that trademark TRENDYOL is registered to the well-known trademarks registry of the TURKPATENT. Accordingly, the Panel is satisfied that the Complainant is the owner of the trademark TRENDYOL.

The disputed domain names entirely incorporate the Complainant's trademark and the term "trendyol" is the distinctive term in the disputed domain names. The Panel notes that the mere additions of the Turkish terms "arac" or "vasita", which translate as "vehicle" in English, do not avoid the confusing similarity with the Complainant's trademarks. As the trademark is recognizable within the disputed domain names, the addition of other terms would not prevent a finding of confusing similarity under the first element. (WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") Section 1.8) As numerous prior UDRP panels have held, the fact that a domain name wholly incorporates a complainant's registered mark is sufficient to establish identity or confusing similarity.

It is an accepted principle that generic Top-Level-Domains ("gTLDs"), in this case ".com", are to be typically disregarded in the consideration of the issue of whether a domain name is identical or confusingly similar to a complainant's trademark. Disregarding the gTLD ".com", the Panel notes that the disputed domain names are confusingly similar to the Complainant's trademark.

In the light of the above, the Panel finds that the disputed domain names are confusingly similar to the Complainant's registered trademark and that the requirements in paragraph 4(a)(i) of the Policy are fulfilled.

### B. Rights or Legitimate Interests

Once the Complainant makes out a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name, the burden of production shifts to the Respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain name. ([WIPO Overview 3.0](#), section 2.1.)

The Panel confirms that the Complainant has made out a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name. The Respondent has neither replied to the Complainant's contentions formally nor presented any evidence to support his rights or legitimate interests in the disputed domain name. As the Respondent has failed to rebut this case, the Panel concluded that the Complainant has established the second element of paragraph 4(a) of the Policy. See *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#); *Spenco Medical Corporation v. Transure Enterprise Ltd*, WIPO Case No. [D2009-1765](#); *Swarovski Aktiengesellschaft v. blue crystal*, WIPO Case No. [D2012-0630](#); *Pomellato S.p.A v. Richard Tonetti*, WIPO Case No. [D2000-0493](#).

The Panel notes that the Respondent does not have any registered trademarks or trade names and no license or authorization of any other kind has been given by the Complainant to use its registered trademark. There is no evidence of the Respondent's demonstrable preparations to use the disputed domain names or a name corresponding to the disputed domain names in connection with a *bona fide* offering of goods or

services, neither. The Panel points out that holding the disputed domain name passively does not constitute rights or legitimate interests to the Respondent in the disputed domain names in the circumstances of this case. Moreover, the full inclusion of the Complainant's well-known mark along with the generic terms "arac" and "vasita", meaning "vehicle" in Turkish language, might carry a risk of implied affiliation with the Complainant.

As a result, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain names, and the requirements of paragraph 4(a)(ii) of the Policy are therefore fulfilled by the Complainant.

### **C. Registered and Used in Bad Faith**

The Panel is satisfied with the relevant evidence filed by the Complainant showing that it owns trademark registrations for TRENDYOL, which have been registered long before the registration of the disputed domain names and the Panel confirms the Complainant's trademark TRENDYOL is widely-known especially in the e-commerce sector in Turkey and also protected as well-known trademark before the TURKPATENT.

As the Respondent is located in Adana, Turkey and uses Turkish "arac" and "vasita" terms in the disputed domain names, the Panel is in the opinion that it is not possible for the Respondent to be unaware of the well-known trademark of the Complainant when the disputed domain names were registered and the Respondent's aim of the registration was to take advantage of the possible confusion between the disputed domain names and the Complainant's well-known trademark. Therefore, the Panel is satisfied that the defaulting Respondent likely has the intention of misleading the public to believe that there was some affiliation or business relationship with the Complainant. Several UDRP panels have held that registering and using the domain names which correspond to widely-known trademarks suggests bad faith. (*Philip Morris USA Inc. v. Luca Brignoli*, WIPO Case No. [D2014-1180](#); *Chanel, Inc. v. Estco Technology Group*, WIPO Case No. [D2000-0413](#); *Educational Testing Service v. Eunho Hwang*, WIPO Case No. [D2017-0993](#); *Educational Testing Service v. Mohamed Ahmed Aljarwan*, WIPO Case No. [D2008-1073](#); *Parfums Christian Dior v. Javier Garcia Quintas and Christiandior.net*, WIPO Case No. [D2000-0226](#)).

The Respondent has also made no active use of the disputed domain names, however the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding as stated [WIPO Overview 3.0](#), section 3.3. The Panel evaluates all the circumstances in this respect: (i) distinctiveness and well-known character of trademark TRENDYOL, (ii) the intention of the Respondent that he would like to create a relationship with the Complainant's trademarks, (iii) lack of evidence proving the actual good-faith use, any rights or legitimate interests of the Respondent in the disputed domain names, (iv) impossibility to use the domain names by the Respondent that would be legitimate.

Having considered all the facts in this case, the Panel finds that the Complainant has sustained its burden of proof in showing that the disputed domain names were registered and are being used in bad faith.

### **7. Decision**

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain names <trendyolarac.com> and <trendyolvasita.com> be transferred to the Complainant.

*/Ugur G. Yalçiner/*

**Ugur G. Yalçiner**

Sole Panelist

Date: June 3, 2022