

ADMINISTRATIVE PANEL DECISION

Cetin Family Tekstil Gida Pazarlama Sanayi Ve Ticaret Limited Sirketi v. Tom Lamboo, Intron Sport
Case No. D2022-3960

1. The Parties

The Complainant is Cetin Family Tekstil Gida Pazarlama Sanayi Ve Ticaret Limited Sirketi, Türkiye, represented by Arnold & Siedsma B.V., Netherlands.

The Respondent is Tom Lamboo, Intron Sport, Netherlands, self-represented.

2. The Domain Name and Registrar

The disputed domain name <exxe.com> is registered with Tucows Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 21, 2022. On October 24, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On the same day, 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 ([“unknown”]) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 28, 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 amended Complaint on November 1, 2022.

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 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on November 4, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 24, 2022. On November 1, 2022, the Center received an email communication from the Respondent. The Response was filed with the Center on November 23, 2022.

The Center appointed Steven A. Maier as the sole panelist in this matter on December 7, 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 December 8, 2022, the Complainant made an unsolicited supplemental submission to the effect that the Respondent had made changes to its relevant website after the commencement of this proceeding. The Respondent made a reply to that filing on December 12. While making no finding as to the admissibility of that unsolicited supplemental submission, the Panel takes no account in its Decision of the changes to the website which the Complainant refers.

4. Factual Background

The Complainant operates a number of luxury fashion retail outlets in Türkiye and an online store at “www.exxeselection.com”.

The Complainant is the owner of Türkiye trademark registration number 2000 22041 for a combined mark EXXE, registered on September 26, 2002 (with a filing date of October 13, 2000) in International Classes 25, 35, and 42. The trademark comprises the term “exxe” in lower case letters, coloured red and white, against a design featuring a vertical white streak.

The Complainant is also the owner of Türkiye trademark registration number 2012 97584 for a combined mark EXXE SELECTION, registered on May 26, 2016 (with a filing date of November 23, 2012) in International Classes 25 and 35. The trademark comprises the term “exxe” in lower case letters and underlined, with the upper case term “SELECTION” in smaller type below.

The disputed domain name was registered on April 27, 1998.

The disputed domain name has resolved to a website at “www.exxe.com”. The Complainant exhibits screenshots from the Internet Archive which suggest that the website has at all material times comprised a “holding” or “under construction” page. The website has since at least January 2020 included a logo comprising the term “exxe” in red against a yellow background. The term “exxe” appears in stylized text with the top left arms of the letters “x” extended.

5. Parties’ Contentions

A. Complainant

The Complainant submits that it opened its first physical store in Borsa, Türkiye, in 1997 and has used the trademark EXXE since that date. It refers to three other physical stores in Türkiye and its website. It also claims a social media presence with 19,312 followers on Facebook and 66,000 on Instagram.

The Panel notes that the Complainant does not submit any evidence in support of its claim to have traded under the name EXXE since 1997, or if its historical or current business profile or reputation, whether in Türkiye or elsewhere.

The Complainant submits that the mark EXXE is not descriptive but distinctive. It submits that the disputed domain name is identical to the corresponding textual elements of the Complainants trademarks.

The Complainant submits that the Respondent has no rights or legitimate interests in respect of the disputed domain name. It states that it has never permitted the Respondent to use its EXXE trademarks, that the Respondent has no relevant trademark and that it has not commonly been known by the disputed domain name. It points out that the Respondent is identified as Intron Sport. The Complainant further submits that

although the disputed domain name was registered in 1998, the Respondent has never used it in connection with any *bona fide* offering of goods or services, nor made any demonstrable preparations to do so.

The Complainant submits that the disputed domain name was registered and is being used in bad faith. It contends that the Respondent's conduct represents a "passive holding" of the disputed domain name, which has been held to constitute bad faith in previous cases under the UDRP, e.g., *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#).

The Complainant repeats that the Respondent has not made any *bona fide* offering of goods or services under the disputed domain name for a period of 24 years, nor made any preparations to do so.

The Complainant states that it has attempted to buy the disputed domain name from the Respondent on several occasions over the past 22 years. It exhibits an email to the Respondent dated April 12, 2017, which states:

"I hope this message finds you well. I am interested in your domain name, 'www.exxe.com'. Do you think to sell your domain? If yes, please let me know."

The Complainant further exhibits the Respondent's reply to the above email, which reads:

"This domain name is not for sale. On the other hand you can try to offer an amount I can't refuse."

The Complainant relies on the above email exchange as evidence that the Respondent was seeking to sell the disputed domain name to the Complainant for a sum well in excess of his out-of-pocket costs for obtaining and maintaining the disputed domain name.

The Complainant submits that, despite the Complainant's clear interest in buying the disputed domain name, the Respondent has not used it and is blocking the Complainant from using it.

The Complainant requests the transfer of the disputed domain name.

B. Respondent

The Respondent confirms that he registered the disputed domain name in 1998. He states that it was registered for the purpose of a global exchange platform. He concedes that the website has been "under construction" for some time but states that his project is ongoing and includes outside investment. He states in particular that the financial collapse of 2008 affected the progress of the venture.

The Respondent points out that the Complainant does not produce evidence of its first retail store or the name under which that store was operated. He submits that the Complainant's domain name <exxeselection.com> was not registered until 2012.

The Respondent denies that the disputed domain name represents a "passive holding". He states that even if that were the case, he has neither registered nor used the disputed domain name in bad faith.

The Respondent states that the disputed domain name has never been for sale in any manner. He contends that the Complainant is seeking to misrepresent the meaning of the email exchange referred to above.

6. Discussion and Findings

In order to succeed in the Complaint, the Complainant is required to show that all three of the elements set out under paragraph 4(a) of the Policy are present. Those elements are that:

- (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. Identical or Confusingly Similar

The Complainant has established that it has registered trademark rights in respect of two Türkiye combined trademarks which include the textual element EXXE. It is irrelevant for the purpose of paragraph 4(a)(i) of the Policy that the Complainant's relevant trademarks may have been registered after the date of registration the disputed domain name.

The Panel therefore finds that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights.

B. Rights or Legitimate Interests

In view of the Panel's findings concerning bad faith, below, it is unnecessary for the Panel to address the question of whether or not the Respondent has rights or legitimate interests in respect of the disputed domain name.

C. Registered and Used in Bad Faith

Paragraph 4(a)(iii) of the Policy contains a conjunctive requirement that the disputed domain name must have been both registered and used in bad faith.

In this case, the Complainant states that it opened a physical store in Türkiye in 1997. However it provides no evidence of the operation of that store or its trading name at that time. The Respondent registered the disputed domain name in 1998. The Complainant had no trademark registrations, or even applications, at that time and no Internet presence. The Complainant does not contend that the Respondent was or must have been aware of its use of any EXXE trademark at the date of registration of the disputed domain name, nor does it make any submissions as to why the Panel should infer that this was the case.

The Respondent cannot have registered the disputed domain name in bad faith unless he was aware of, and targeted, the Complainant's rights in the mark EXXE (if any existed) at the date of such registration, and the Complainant cannot therefore establish that the disputed domain name was registered in bad faith.

While the above is sufficient to dispose of this proceeding, the Panel also declines to find that the disputed domain name has been used in bad faith. The Respondent's explanation for his holding and use of the disputed domain name is credible, the logo used on his website does not resemble either of the designs used by the Complainant (and there is no evidence or suggestion that the addition of such logo signals any change in ownership of the disputed domain name) and there is no evidence upon which to conclude that the Respondent sought to sell the disputed domain name to the Complainant for an inflated price. On the contrary, the evidence is that the Complainant made numerous attempts to buy the disputed domain name from the Respondent on a commercial basis. The Respondent inviting an "offer he can't refuse" in these circumstances does not indicate bad faith. So far as any "passive holding" is concerned, the decision cited by the Complainant (and other similar decisions) indicate that a passive holding does not preclude a finding of bad faith if all the other circumstances of the case point to that conclusion. Whether or not the Respondent's holding of the disputed domain name could be regarded as passive, the Panel does not find any such circumstances to be present in this case.

D. Reverse Domain Name Hijacking

Under paragraph 15(e) of the Rules: “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.”

In the view of the Panel, the Complainant knew or ought to have known that it could not establish any arguable case that the Respondent had registered the disputed domain name in bad faith, *i.e.*, in the knowledge of the Complainant’s use of the mark EXXE and with the intention of taking unfair advantage of any rights that the Complainant may have obtained in that mark. Moreover, the exchange of emails exhibited by the Complainant indicates that the Complainant made a commercial approach to the Respondent to buy the disputed domain name without any suggestion that the disputed domain name had been registered or used in bad faith. The Complainant volunteers that it has made numerous unsuccessful approaches to the Respondent and then launched the present proceeding, having failed in its legitimate efforts to purchase the disputed domain name from the Respondent.

The Panel also notes that the Complainant in this proceeding is legally represented, which carries a greater obligation to ensure that any proceedings under the UDRP are properly brought.

The Panel finds therefore 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. The Panel finds that the Complaint was brought in bad faith and constitutes an abuse of the administrative proceeding.

/Steven A. Maier/

Steven A. Maier

Sole Panelist

Date: December 19, 2022