

ADMINISTRATIVE PANEL DECISION

FB SOLUTION v. Nurcan Öztürk

Case No. D2023-1110

1. The Parties

The Complainant is FB SOLUTION, France, represented by Scan Avocats AARPI, France.

The Respondent is Nurcan Öztürk, Türkiye.

2. The Domain Name and Registrar

The disputed domain name <fbsolution.info> is registered with Google LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 13, 2023. On March 14, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 14, 2023, 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, Contact Privacy Inc. Customer 7151571251) and contact information in the Complaint. The Center sent an email communication to the Complainant on March 16, 2023, 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 March 16, 2023.

The Center sent an email communication in English and Turkish to the parties on March 16, 2023, regarding the language of the proceeding, as the Complaint has been submitted in English and the language of the registration agreement for the disputed domain name is Turkish. The Complainant sent an email to the Center requesting English to be the language of the proceeding on March 16, 2023. The Respondent did not comment on the language of the proceeding.

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 March 23, 2023. In accordance with the Rules, paragraph

5, the due date for Response was April 12, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on April 13, 2023.

The Center appointed Kaya Köklü as the sole panelist in this matter on April 24, 2023. 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 has its registered seat in France and was founded in 2004. It is active in baking and delivery of breads, pastries and cakes to professional customers such as airline and railway catering companies and to hotels and restaurants. It provides its products and services not only in France but also in other markets (Annexes D1 and D3 to the Complaint).

The Complainant owns various word and figurative trademark registrations for FB SOLUTION (Annexes E1 to E8 to the Complaint). According to the Complaint, the Complainant is, among others, the registered owner of the European Union Trademark Registration No. 004310678 (registered on February 21, 2006) for the word mark FB SOLUTION, covering protection for various goods and services as protected in classes 29, 30, 39 and 43 (Annex E1 to the Complaint).

Since 2010, the Complainant further owns and operates various domain names incorporating its FB SOLUTION trademark, such as <fbsolution.fr> and <fbsolution.com> (Annexes F1 and F2 to the Complaint).

The Respondent is reportedly from Türkiye.

The disputed domain name was registered on September 12, 2022.

Apparently, the disputed domain name has yet not been associated to an active website (Annex G to the Complaint).

5. Parties' Contentions

A. Complainant

The Complainant requests the transfer of the disputed domain name.

The Complainant is of the opinion that the disputed domain name confusingly similar to its FB SOLUTION trademark.

It further argues that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

Finally, the Complainant is convinced that the Respondent has registered and is using the disputed domain name in bad faith.

B. Respondent

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

6. Discussion and Findings

6.1. Language of the Proceeding

The Panel determines in accordance with the Complainant's request and the Rules, paragraph 11(a), that the language of this administrative proceeding shall be English.

Although the language of the registration agreement is Turkish, the Panel finds that it would be inappropriate, given the circumstances of this case, to conduct the proceedings in Turkish and request a Turkish translation of the Complaint while the Respondent has failed to raise any objection or even to respond to the Center's communication about the language of the proceedings, even though communicated in Turkish and in English. The Panel particularly notes that the Respondent was given the opportunity to respond in Turkish and that also this opportunity remained unused by the Respondent.

Consequently, the Panel is convinced that the Respondent will not be prejudiced by a decision being rendered in English.

6.2. Substantive Issues

According to paragraph 15(a) of the Rules, the Panel shall decide the Complaint in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

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

- (i) the disputed domain name is identical or confusingly similar to a trademark 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.

Paragraph 4(a) of the Policy states that the Complainant bears the burden of proving that all these requirements are fulfilled, even if the Respondent has not replied to the Complainant's contentions. *Stanworth Development Limited v. E Net Marketing Ltd.*, WIPO Case No. [D2007-1228](#).

However, concerning the uncontested information provided by the Complainant, the Panel may, where relevant, accept the provided reasonable factual allegations in the Complaint as true. See section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

For the evaluation of this case, the Panel has taken note of the [WIPO Overview 3.0](#) and, where appropriate, will decide consistent with the consensus views stated therein.

A. Identical or Confusingly Similar

To begin with, the Panel confirms that the Complainant has satisfied the threshold requirement of having relevant trademark rights. As evidenced in the Complaint, the Complainant is the registered owner of the FB SOLUTION trademark (Annexes E1 to E8 to the Complaint).

The Panel further finds that the disputed domain name is identical to the Complainant's FB SOLUTION trademark. As stated at section 1.8 of the [WIPO Overview 3.0](#), where a trademark is recognizable within the disputed domain name, the omission or addition of other terms or characters would not prevent a finding of confusing similarity. In the present case, the disputed domain name fully comprises the FB SOLUTION trademark with no additions. The (technically required) omission of the blank space between "fb" and "solution", does, in view of the Panel, not prevent a finding of confusing similarity between the disputed

domain name and the Complainant's FB SOLUTION trademark, as the Complainant's trademark remains well recognizable within the disputed domain name.

The Panel also notes that the applicable generic Top-Level Domain ("gTLD") (".info" in this case) is viewed as a standard registration requirement, and may as such be disregarded by the Panel, see in this regard the [WIPO Overview 3.0](#), section 1.11.1.

In view of the above, the Panel is satisfied that the Complainant has met the requirements under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

While the burden of proof remains with the Complainant, the Panel recognizes that this would often result in the impossible task of proving a negative, in particular as the evidence needed to show the Respondent's rights or legitimate interests is primarily within the knowledge of the Respondent. Therefore, the Panel agrees with prior UDRP panels that the Complainant is required to make out a *prima facie* case before the burden of production shifts to the Respondent to show that it has rights or legitimate interests in the disputed domain name to meet the requirements of paragraph 4(a)(ii) of the Policy. *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#).

With its Complaint, the Complainant has provided *prima facie* evidence that the Respondent has no rights or legitimate interests, particularly no license or alike to use the Complainant's FB SOLUTION trademark in a confusingly similar way within the disputed domain name.

The Respondent has not rebutted any of the Complainant's contentions. In the absence of a response, the Respondent particularly has failed to demonstrate any of the nonexclusive circumstances evidencing rights or legitimate interests under the Policy, paragraph 4(c) or provide any other evidence of a right or legitimate interest in the disputed domain name.

Also, the Panel notes that the nature of the disputed domain name carries a high risk of implied affiliation or association, as stated in section 2.5.1 of the [WIPO Overview 3.0](#), considering that the disputed domain name is identical to the Complainant's trademark.

Consequently, the Panel finds that the Complainant has satisfied the requirements of paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

In the Panel's view, the Respondent has registered and is using the disputed domain name in bad faith.

The Panel is convinced that the Respondent was aware of the Complainant's FB SOLUTION trademark when registering the disputed domain name in September 2022. At the date of registration, the Complainant's FB SOLUTION trademark was already registered and used for many years. Bearing in mind the inherently misleading nature of the disputed domain name, it is obvious to the Panel, that the Respondent has deliberately chosen the disputed domain name to target the Complainant and mislead Internet users who particularly are searching for information on the Complainant and its provided goods and services. Consequently, the Panel has no doubt that the Respondent has registered the disputed domain name in bad faith.

With respect to the use of the disputed domain name in bad faith, as already indicated before, the disputed domain name has apparently yet not been linked to an active website. Nonetheless, and in line with the previous UDRP decisions (*Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#)) and section 3.3 of the [WIPO Overview 3.0](#), the Panel believes that the non-use of a domain name does not prevent a finding of bad faith use.

Applying the passive holding doctrine as summarized in section 3.3 of the [WIPO Overview 3.0](#), the Panel believes that the Complainant's FB SOLUTION trademark is sufficiently distinctive and assesses that the composition of the disputed domain name, which fully incorporates the Complainant's FB SOLUTION trademark, is inherently misleading. In view of the Panel, this makes any good faith use of the Complainant's FB SOLUTION trademark within the disputed domain name unlikely and implausible.

Also, the Panel accepts the failure of the Respondent to submit a response to the Complainant's contentions as an additional affirmation of the Panel's finding of bad faith.

Taking the facts of the case into consideration, the Panel concludes that the disputed domain name was registered and is being used in bad faith and that the Complainant consequently has satisfied the third element of the Policy, namely, paragraph 4(a)(iii) of the Policy.

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 name <fbsolution.info> be transferred to the Complainant.

/Kaya Köklü/

Kaya Köklü

Sole Panelist

Date: May 8, 2023