

ADMINISTRATIVE PANEL DECISION

Speaky, S.A. v. Domain Admin, Isimtescil.net / Whoisprotection.biz /

Yunus Emre Durak

Case No. D2022-2112

1. The Parties

The Complainant is Speaky, S.A., Belgium, represented by Office Kirkpatrick, SA, Belgium.

The Respondent is Domain Admin, Isimtescil.net / Whoisprotection.biz, Türkiye / Yunus Emre Durak, Türkiye.

2. The Domain Name and Registrar

The disputed domain name <gospeaky.net> is registered with Isimtescil Bilişim A.Ş. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 10, 2022. On June 13, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 14, 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 June 14, 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 June 17, 2022.

On June 14, 2022, the Center sent an email communicating in both English and Turkish regarding the language of the proceeding. The Complainant replied on June 17, 2022, asking English to be the language of the proceeding instead of Turkish. The Respondent sent an email communication in Turkish on the same day, however he 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 in both English and Turkish, and the proceedings commenced on June 21, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 11, 2022. The Respondent submitted an informal email communication on June 22, 2022, however, he did not submit any formal response. Accordingly, the Center notified the commencement of panel appointment process on July 12, 2022.

The Center appointed Kaya Köklü as the sole panelist in this matter on July 18, 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 August 5, 2022, the Panel issued a Panel Order No. 1 by which the Complainant was requested to comment on a Turkish trademark registration of the Respondent filed on September 18, 2014. On August 10, 2022, the Complainant submitted a Supplemental Filing to Panel Order No. 1 together with 12 additional annexes.

On August 10 and 11, 2022, the Respondent sent further email communications to the Center in Turkish and English language.

4. Factual Background

The Complainant is a public limited company with its registered seat in Belgium, formally founded on April 2, 2015. It has developed a software, intended to connect users for the purpose of language learning.

The Complainant is the owner of the SPEAKY trademark. The SPEAKY trademark is registered in various jurisdictions. According to the Complaint, the Complainant is the registered owner of the Benelux Trademark Registration No. 978893 (filed on July 2, 2015, and registered on September 16, 2015), the European Union Trademark Registration No. 15511413 (filed on June 6, 2016, and registered on September 29, 2016) and the United Kingdom Trademark Registration No. 00915511413 (filed on June 6, 2016, and registered on September 29, 2016), all of them covering protection *inter alia* for “education services relating to languages” as protected in class 41 (Annexes 9, 10 and 11 to the Complaint).

The Complainant further holds and operates its official website at “www.speaky.com”. The Complainant argues in its Supplemental Filing the following: “[t]he domain name <gospeaky.com> already advertised its services in 2014 before the filing date mentioned in the Panel’s order” and provides evidence of a screen capture dated September 16, 2014 (Annex 12 to the Complainant’s Supplemental Filing).

The disputed domain name was registered on July 10, 2015, with various changes in the Registrar and IP history since then (Annex 4 to the Complaint).

The Respondent is reportedly an individual from Türkiye. He is the owner of a “Speakychat” trademark registration in Türkiye, filed on September 18, 2014, and registered on July 2, 2015.

The screenshots, as provided by the Complainant, show that the disputed domain name resolves to a website in the English language, which offers to connect users for language learning purposes (Annex 6 to the Complaint). On that website, the SPEAKY trademark of the Complainant as well as its official logo were prominently used until it was changed after June 16, 2022, and thus several days after the Complaint was filed by the Complainant. Additionally, the provided documents by the Complainant show that the general terms and conditions as used by the Respondent on the website associated to the disputed domain name are essentially a copy of the general terms and conditions generated by the Complainant (Annexes 18 and 19 to the Complaint).

The Panel further notes a brief disclaimer within the “contact us” section of the associated website with the following language: “Sorry, we can’t help you with this right now. As the GO SPEAKY team, we do not have any connection with the Speaky.com application. If you want to contact them, reach here [...]@speaky.com” (Annex 16 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 is confusingly similar to its SPEAKY trademark.

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

In addition, the Complainant is convinced that the Respondent has registered and is using the disputed domain name in bad faith by deliberately targeting the Complainant and its services.

B. Respondent

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

However, the Respondent submitted informal email communications in English and Turkish to the Center on June 17 and 22, 2022 and further email communications in English on August 10 and 11, 2022, in response to the Panel Order No. 1 and the Complainant’s Supplemental Filing.

In his email communications, the Respondent mainly refers to its Turkish Trademark Registration for “Speakychat” as filed on September 18, 2014, and further asserts that he owns the disputed domain name for seven years and will appeal any decision in favor of the Complainant. In its email communication to the Center, the Respondent, however, indicated that if the Complainant is willing to pay compensation to him, he “can transfer the domain in an agreement”.

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 the 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 proceeding in Turkish and request a Turkish translation of the Complaint while the Respondent has failed to raise any objection or to respond to the Center’s communication about the language of the proceeding, even though communicated in Turkish and in English. Bearing also in mind that the disputed domain name resolves to a website in English and that the Respondent provided his email submissions to the Center mainly in English, the Panel concludes that the Respondent must be well able to read, write and understand the English language. Also, the Panel notes that the Respondent was given a fair opportunity to respond in Turkish.

In light of the above, the Panel comes to the conclusion that the Respondent will not be prejudiced by a decision being rendered in English. Hence, the Panel determines in accordance with the Complainant's request and the Rules, paragraph 11(a), that the language of these administrative proceedings shall be the English language.

6.2. Substantive Issues

According to paragraphs 14 and 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 and on the basis of the Complaint where no Response has been submitted.

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 the 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.

A complainant bears the burden of proving that all these requirements are fulfilled, even if the respondent has not replied to the complaint. *Stanworth Development Limited v. E Net Marketing Ltd.*, WIPO Case No. [D2007-1228](#).

Concerning the uncontested information provided by the Complainant, the Panel may, where relevant, accept the provided reasonable factual allegations in the Complaint as true.

It is further noted that the Panel has taken note of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") and, where appropriate, will decide consistent with the consensus views captured therein.

Before discussing the three elements under paragraph 4(a) of the Policy, the Panel notes (in light of the Respondent's argumentation in his email communications to the Center) that the Complaint was filed around seven years after the registration of the disputed domain name. However, UDRP panels have widely recognized that mere delay between the registration of a domain name and the filing of a complaint neither bars a complainant from filing such case, nor from potentially prevailing on the merits. See section 4.17 of the [WIPO Overview 3.0](#).

A. Identical or Confusingly Similar

The Panel finds that the Complainant has registered trademark rights in the mark SPEAKY by virtue of various trademark registrations (Annexes 9, 10 and 11 to the Complaint).

The Panel further finds that the disputed domain name is confusingly similar to the Complainant's registered SPEAKY trademark, as it fully incorporates the Complainant's trademark. As stated at section 1.8 of the [WIPO Overview 3.0](#), where the relevant trademark is recognizable within the disputed domain name, the addition of other terms does not prevent a finding of confusing similarity. In the present case, the mere addition of the word "go" does not prevent, in view of the Panel, a finding of confusing similarity between the disputed domain name and the Complainant's SPEAKY trademark.

Accordingly, the Panel finds that the Complainant has satisfied the requirement under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Panel further finds that the Respondent has failed to demonstrate any rights or legitimate interests in the disputed domain name.

While the burden of proof on this element remains with the Complainant, previous UDRP panels have recognized that this would result in the often impossible task of proving a negative, in particular as the evidence in this regard is often 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 in order to meet the requirements of paragraph 4(a)(ii) of the Policy. See, *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#).

The Panel finds that the Complainant has satisfied this requirement, while the Respondent has failed to file any evidence or make any convincing argument to demonstrate rights or legitimate interests in the disputed domain name according to the Policy, paragraphs 4(a)(ii) and 4(c).

In its Complaint and its Supplemental Filing in response to Panel Order No. 1, the Complainant has provided uncontested *prima facie* evidence that the Respondent has no rights or legitimate interests to use the Complainant's trademark SPEAKY in a confusingly similar way within the disputed domain name.

There is also no indication in the current record that the Respondent is commonly known by the disputed domain name. In the absence of a formal response, the Respondent has also failed to demonstrate any of the other non-exclusive circumstances evidencing rights or legitimate interests under the Policy, paragraph 4(c) or other evidence of rights or legitimate interests in the disputed domain name.

As indicated above, the mere fact that the disputed domain name was registered seven years before the filing of the Complaint, does not constitute a right or legitimate interest of the Respondent in the disputed domain name. The Panel particularly sees no indication in the case record for a detrimental reliance of the Respondent on any delay in filing the Complaint. See section 4.17 of the [WIPO Overview 3.0](#).

Also, the Respondent's Turkish Trademark Registration for SPEAKYCHAT does not in view of the Panel qualify as a right or legitimate interest in the disputed domain name. Neither does the disputed domain name comprise the Respondent's SPEAKYCHAT trademark, nor was the SPEAKYCHAT trademark used on the website linked to the disputed domain name (Annex 6 to the Complaint). Quite the opposite, and further discussed under the third element, it was only the Complainant's SPEAKY trademark and official logo (*sic!*), that was prominently used by the Respondent. The fact that the Respondent changed the appearance and content of the website linked to the disputed domain name after the Complainant filed its Complaint does not change the Panel's view for the purpose of the second element.

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

C. Registered and Used in Bad Faith

The circumstances of the case raise the question of whether the disputed domain name was registered in bad faith as it was initially registered shortly before the filing and registration of the Complainant's SPEAKY trademark.

As stated at section 3.8.1 of the [WIPO Overview 3.0](#), where a respondent registers a domain name before the complainant's trademark rights accrue, panels normally do not find bad faith on the part of the respondent. But merely because a domain name is initially created by a registrant before a complainant's trademark rights accrue does not, however, mean that a UDRP respondent cannot be found to have registered the domain name in bad faith. Rather, and as stated in section 3.8.2. of the [WIPO Overview 3.0](#), the individual circumstances of the case may nevertheless justify the assessment of bad faith registration if

the complainant can demonstrate that a respondent's intent in registering the disputed domain name was to unfairly capitalize on the complainant's nascent (typically as yet unregistered) trademark rights.

In the present case, the Complainant contends that the Respondent's registration and use of the disputed domain name is in bad faith, which the Respondent chose not to rebut. In support of the Complainant's contentions, the Panel notes that the disputed domain name was registered three months after the incorporation of the Complainant and at least 10 months after the Complainant started (i) to use its official website at "www.gospeaky.com" and (ii) to offer its language learning application in various App stores (Annex 12 to the Complainant's Supplemental Filing).

Even if the Turkish Trademark Registration of the Respondent for SPEAKYCHAT (filed on September 18, 2014) would be taken into account, the Complainant provided undisputed documents demonstrating that the Complainant started to use its trademark and its official website at "www.gospeaky.com" already before the filing date of the Respondent's Turkish Trademark Registration (Annex 12 to the Complainant's Supplemental Filing).

Taking all this into consideration, the Panel is convinced that the Respondent must have been fully aware of the existence of the Complainant, its company name and its language learning applications when registering the disputed domain name. Hence, the Panel concludes that the Respondent registered the disputed domain name in bad faith.

As to bad faith use, the Panel notes that the Respondent used the Complainant's SPEAKY trademark in combination with its official logo and a copy of its general terms and conditions at the website linked to the disputed domain name until he became aware of the Complaint (Annex 6 to the Complaint and Annexes 6, 7, 8, 9 and 10 to the Complainant's Supplemental Filing). In view of the Panel, this clearly indicates that the Respondent deliberately targets the Complainant and apparently tries to misrepresent itself as the Complainant in order to attract, for illegitimate commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant as to the source, sponsorship, affiliation or endorsement of its website. The fact that the Respondent removed the Complainant's trademark and official logo from its website after being notified of the Complaint (Annex 10 to the Complainant's Supplemental Filing), in view of the Panel, further supports the assessment that the Respondent acts in bad faith.

The mere existence of the Respondent's brief disclaimer in the "contact us" section of the associated website (Annex 16 to the Complaint) is in view of the Panel not used in a clear and sufficiently prominent manner, and hence, cannot cure the Panel's bad faith findings above. In the circumstances of this case, the Panel considers the Respondent's use of the disclaimer as an admission by the Respondent that users may be confused (see section 3.7 of the [WIPO Overview 3.0](#)).

Furthermore, the Panel notes that the Respondent failed to submit a formal response to the Complainant's contentions or to at least rebut any of the Complainant's contentions. The Panel assesses this as an additional indication for bad faith. The Panel is convinced that, if the Respondent had legitimate purposes in registering and using the disputed domain name, it would have substantially responded and substantiated any alleged right.

The Panel finally notes that the Respondent used a privacy service when creating the disputed domain name. Although privacy services are legitimate in many cases, it is for the Panel difficult to see in the present case why the Respondent should need to protect its identity except to make it difficult for the Complainant to protect its trademark rights. The Panel rather believes that the choice of the disputed domain name, which fully incorporates the Complainant's SPEAKY trademark, the content of the associated website as well as the prominent use of the Complainant's SPEAKY trademark in combination with the official company logo rather indicate that the Respondent deliberately opted for a privacy shield in order to prevent an efficient enforcement of legitimate trademark rights by the Complainant.

In view of the Panel, all this strongly indicates the Respondent's bad faith intentions to gain illegitimate benefit by freeriding on the goodwill of the Complainant's SPEAKY trademark.

The Panel concludes that the disputed domain name was registered and is being used in bad faith and that the Complainant has also 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 <gospeaky.net> be transferred to the Complainant.

/Kaya Köklü/

Kaya Köklü

Sole Panelist

Date: August 19, 2022