

ADMINISTRATIVE PANEL DECISION

The Toronto-Dominion Bank v. Super Privacy Service LTD c/o Dynadot /
Almila Yagmur
Case No. D2022-2849

1. The Parties

The Complainant is The Toronto-Dominion Bank, Canada, represented by CSC Digital Brand Services Group AB, Sweden.

The Respondent is Super Privacy Service LTD c/o Dynadot, United States of America ("US") / Almila Yagmur, Türkiye.

2. The Domain Names and Registrar

The disputed domain names <tdbusinesscentral.com>, <tdeasytrade.com>, and <tdpowerbroker.com> are registered with Dynadot, LLC (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on August 2, 2022. On August 3, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On August 4, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondent and contact information in the Complaint.

The Center sent an email communication to the Complainant on August 5, 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 August 9, 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 August 12, 2022. In accordance with the Rules, paragraph 5, the due date for Response was September 1, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on September 2, 2022.

The Center appointed Clive Duncan Thorne as the sole panelist in this matter on September 6, 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 which is publicly listed on the New York Stock Exchange is the second largest bank in Canada and sixth largest in North America by market capitalization and deposits. It is commonly known as TD and operates as TD Bank Group.

It was created in 1955 through the merger of the Bank of Toronto and The Dominion Bank which were founded in 1855 and 1869 respectively. It has over 86,000 employees and over 25 million clients worldwide. In Canada the retail bank operates as TD Canada Trust. In the US it operates as TD Bank (the initials being used officially for all US operations). The US subsidiary was created through its acquisition of Banknorth and Commerce Bank and for many years known as TD Banknorth.

TD Bank now serves more than 9 million customers with a network of more than 1,300 branches primarily located in the eastern US. TD also ranks among the world's leading online financial services firms.

The Complainant is the owner of hundreds of trade mark registrations consisting of or including the elements "TD" and "TD Bank" as well as the trading names and unregistered trade marks TD and TD BANK in connection with financial, banking and related businesses, goods and services.

Set out in Annex 1 to the Complaint is documentary evidence from the Canadian Intellectual Property Office and US Patent and Trademark Office of marks relied upon by the Complainant as relevant to the Complaint. These are:

- TD US registration 1649009 in class 36 registered June 25, 1991.
- TD US registration 3041792 in class 36 registered January 10, 2006.
- TD Canada registration TMA396087 in classes 9, 16, 35, and 36 registered March 20, 1992.
- TD Canada registration TMA644911 in classes 35, 36, 37, and 39 registered July 26, 2005.
- TD BANK US registration 3788055 in class 36 registered May 11, 2010.
- TD BANK Canada registration TMA549396 in classes 35, 36, and 37 registered July 8, 2001.

The Complainant owns numerous websites including "http://www.td.com/" and "http://www.tdbank.com/". SimilarWeb ranks "www.td.com" as the 26th most popular website in Canada and 737th globally and "www.tdbank.com" as the 694th most popular in the US.

Evidence is given by the Complainant in Annexes 2, 3, and 4 to the Complaint which rank the TD brand as one of the world's most valuable. For example, Interbrand's Best Canadian Brands exhibited at Annex 2 ranks TD as the "number 1" overall Canadian brand in the 2012 and 2014 editions.

In summary, the Complainant's evidence shows that its TD brand is well recognized by consumers, industry peers and the broader global community.

The three disputed domain names were registered between October 18, 2019 and October 27, 2021, which is after the dates of registration of the Complainant's trade marks set out above.

According to the evidence submitted with the Complaint, the three disputed domain names redirected to “www.sedo.com”, where each disputed domain name were offered for sale at USD 999. Currently, the disputed domain names redirect to “www.godaddy.com”.

In the absence of a Response there is no evidence adduced by the Respondent.

Having considered the above evidence adduced by the Complainant, and given the circumstances on this case, the Panel finds it to be true.

5. Parties' Contentions

A. Complainant

The Complainant submits:

- i. The three disputed domain names are confusingly similar to the Complainant's registered trade marks TD and TD BANK.
- ii. There is no evidence that the Respondent has rights or legitimate interests in the three disputed domain names;
- iii. The Respondent, at the date of registration of the disputed domain names would have been aware of the Complainant's rights in the mark TD and business trading as TD so as to constitute registration and use in bad faith. In addition the fact that the Respondent was offering to sell the disputed domain names for profit constitutes bad faith use.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

Each of the three disputed domain names consists of the letters “td” followed by additional terms: “easytrade”, “powerbroker”, and “businesscentral” respectively. As set out in section 4 above, the Panel has found that the Complainant owns trade mark rights in the mark TD. The mark TD is recognizable in the disputed domain names. In the Panel's view, the addition of the additional terms to the mark TD, means that the three disputed domain names are all confusingly similar to the Complainant's trade mark TD.

The Complainant rightly points out that the Top Level Domain “TLD”, in this case “.com” should be disregarded in considering confusing similarity. It relies upon [WIPO Overview 3.0](#) at section 1.11.

The Panel therefore finds that the three disputed domain names are confusingly similar to the trade mark TD in which the Complainant has rights within Paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

In the absence of a Response and evidence from the Respondent, the Panel finds the following. The Respondent is not sponsored by or affiliated with the Complainant in any way. The Complainant has not given the Respondent permission to use the Complainant's trade marks in any manner including in domain

names. The Complainant has not licensed, authorized, or permitted the Respondent to register domain names incorporating the Complainant's trade marks.

The evidence supports a finding that the Respondent is not commonly known by the disputed domain names which is evidence of a lack of rights or legitimate interests. The Whois data exhibited at Annex 5 to the Complaint identifies the Registrant as "Almila Yagmur" which does not resemble the disputed domain names in any manner. It is well established that where no evidence suggests that the Respondent is commonly known by the disputed domain names then the Respondent cannot be regarded as having acquired rights or legitimate interests.

The Complainant also relies upon the fact that at the date of filing the Complaint the Respondent was using a privacy Whois service. It is established authority that such use can, under certain circumstances, equate to a lack of legitimate interest.

The evidence adduced by the Complainant at Annexes 6 and 7 to the Complaint shows that the Respondent was using the disputed domain names to redirect internet users to "for sale" pages at www.sedo.com where the Respondent listed the domain names for sale. The disputed domain names were being offered for sale for an amount that presumably exceed the Respondent's out of pocket expenses. It has been held by previous Panels that such conduct can evidence the Respondent's lack of rights and legitimate interests. For example, as cited by the Complainant, in *Spirig Pharma AG v Whois privacy services, provided by Domain/Protect / Alexander Zinovjev*, WIPO Case No. [D2014-1612](#), the only use of the disputed domain name was as an offer to sell. That panel held that such use could not constitute legitimate interest.

Having considered the evidence of use adduced by the Complainant, and taking into account that the disputed domain names were registered well after that dates of registration of the Complainant's trade marks relied upon, the Panel is satisfied that the Respondent has no rights or legitimate interests in the disputed domain names within Paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

In support of its submission the Complainant relies upon its evidence that the trade marks TD and TD BANK are known internationally. The Complainant states that it has marketed and sold its goods and services using its trade mark TD since 1969 though the earliest trade mark expressly referred to in the Complaint was registered in 2005. In any event this was well before the dates of registration of the disputed domain names in 2019 and 2021, respectively.

The Complainant specifically relies on the evidence that it is the second largest bank in Canada and sixth largest in North America. It points out that the fame of its trade marks TD and TD BANK has been confirmed by numerous previous panel decisions in which it was successful. These are listed in Annex 9 to the Complaint.

The Complainant submits that the composition of the disputed domain names consisting of "td" plus a descriptive term makes it illogical to believe that the Respondent registered the disputed domain names without specifically targeting the Complainant. Following *Telstra Corp Ltd v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#) it is not possible to conceive of a plausible situation in which the Respondent would have been unaware of the Complainant's marks at the date of registration.

In addition it submits that TD is so closely linked and associated with the Complainant that the Respondent's use must imply bad faith registration.

The Complainant rightly submits that the descriptive terms all refer to activities in which the Complainant as a bank or financial institution trades or has interests.

In the case of “easytrade” the Complainant offers numerous financial services including the buying and selling of financial assets, commonly referred to as a trade or trading. It’s services make the trading process easy.

In the case of “powerbroker” the Complainant is a large financial institution and provides its customers with a range of financial products and services including investment and brokerage services via its own primary domain <td.com>.

In the case of “businesscentral” the Complainant through its primary domain names and websites <td.com> and <tdbank.com> offers commercial business banking services.

The Panel accepts these submissions and finds on the evidence that the disputed domain names were registered in bad faith.

The only evidence of the Respondent’s use of the disputed domain names is that they redirected to “For Sale” pages on “www.sedo.com” where the Respondent is offering them for sale for amounts presumably exceeding out of pocket registration expenses. This is evidenced in Annexes 6 and 7 to the Complaint where screenshots of the disputed domain names websites are exhibited. The Complainant submits that this use constitutes bad faith use under Paragraph 4(b)(i) of the Policy because the Respondent has demonstrated an intention to sell for valuable consideration, presumably in excess of its out of pocket expenses. The Panel agrees with this submission.

Moreover, the Panel finds that the current use of the disputed domain names, namely to redirect users to “www.godaddy.com”, given the circumstances surrounding this case, cannot constitute good faith use.

Moreover the registration and use of the confusingly similar disputed domain names with knowledge of the Complainant’s rights and incorporating the mark TD can only be intended to attract internet users as to the source of the disputed domain names by creating a likelihood of confusion with the Complainant’s mark within Paragraph 4(b)(iv) of the Policy.

The Panel also takes into account that the Respondent had employed a privacy service to hide its identity. It is established that Panels have viewed a respondent’s use of a privacy or proxy service which is know to block or intentionally delay disclosure of the identity of the actual underlying registrant as an indication of bad faith. (see [WIPO Overview 3.0](#) at section 3.6).

The Panel is therefore satisfied on the evidence that the Respondent registered and is using the disputed domain names in bad faith within 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 names, <tdbusinesscentral.com>, <tdeasytrade.com>, and <tdpowerbroker.com> be transferred to the Complainant.

/Clive Duncan Thorne/

Clive Duncan Thorne

Sole Panelist

Date: September 20, 2022