

ADMINISTRATIVE PANEL DECISION

Calik Holding Anonim Sirketi v. Murat Terzioglu, ZEHIR
Case No. D2023-2704

1. The Parties

The Complainant is Calik Holding Anonim Sirketi, Türkiye, represented by EFOR Patent Limited Sirketi, Türkiye.

The Respondent is Murat Terzioglu, ZEHIR, Germany.

2. The Domain Name and Registrar

The disputed domain name <calik.net> is registered with OnlineNic, Inc. d/b/a China-Channel.com (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 23, 2023. The Complaint was originally filed in respect of three disputed domain names, identifying the respective registrars as the Respondents as the details of at least two of the registrants were not publicly available from the Whois. On June 23, 2023, the Center transmitted by email to the Registrars requests for registrar verification in connection with the disputed domain name. On June 25, 2023, the Registrars transmitted by email to the Center their verification responses disclosing registrant and contact information for the disputed domain names which differed from the named Respondents and contact information in the Complaint. The Center sent an email communication to the Complainant on June 26, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. On July 24, 2023, the Complainant notified the Center that it intended to withdraw the Complaint against two of the disputed domain names and proceed only against the currently named Respondent. The Complainant filed an amended Complaint on July 26, 2023.

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 July 27, 2023. In accordance with the Rules, paragraph 5, the due date for Response was August 16, 2023. The Complainant filed a supplemental filing after the Notification of Complaint on July 28, 2023. The Response was filed with the Center on August 14, 2023.

The Center appointed Warwick A. Rothnie as the sole panelist in this matter on August 23, 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 is headquartered in Türkiye but, according to the Complaint, provides goods and services in the energy, construction, textiles, mining, finance, and digital sectors across 37 countries spanning Central Asia, the Balkans, Middle East, and North Africa. The corporate group employs some 16,000 people.

According to the Complaint, the Complainant was established in 1981. According to the Response (including an attached a Wikipedia article), however, the Complainant itself was formed under its current name in 1997 as an umbrella company over the operations of several companies including Orta Dogu Tekstil (formed in 1981) and Çalik Denim (formed in 1987) although another section of the Wikipedia article identifies the denim manufacturing entity as being founded in 1987 under the name Gap Güneydogu Tekstil. In any event, it is clear that the Complainant adopted its name by 1997.

The Complainant promotes the goods and services of the corporate group from at least a website to which the domain name <calik.com> resolves.

The Complaint includes evidence that the Complainant owns 33 registered trademarks in Türkiye based on ÇALIK. The three earliest registrations are:

- (a) Registered Trademark No. 171077, which was filed and registered from May 17, 1996, in respect of goods in International Classes 9, 23, 24, and 25 for the sign:



- (b) Registered Trademark No. 2000/16787, which was filed and registered from August 11, 2000, in respect of a wide range of goods and services across every International Class for the sign:



- (c) Registered Trademark No. 2002 15700, which was filed and registered from June 25, 2002, in respect of a range of goods across International Classes 23, 24, and 25 for the sign ÇALIK DENIM and the floral device shown in the above trademarks.



The Complainant's other trademarks are registered in 2009 or later. In some cases, they are for words in plain type. In others they feature the floral device. However, none are for the word ÇALIK alone.

The Complainant also holds three International Registrations for ÇALIK and device: International Registration Nos. 1030693, 1030693A and 1030693B. The International Registrations were registered on January 25, 2010. The International Registrations designate a number of countries (Albania, Egypt, European Union, Iran, Japan, North Macedonia, Russian Federation, South Korea, Syrian Arab Republic, Ukraine, and Uzbekistan), are in colour and consist of the device element shown in the above signs and the word ÇALIK.

The disputed domain name was registered on January 4, 2008.

It has not resolved to an active website. According to the Response, the disputed domain name has not at any time resolved to a parking page with pay-per-click ("PPC") advertising links. The Respondent has included the disputed domain name, however, on his own personal page where it is listed as being for sale as well as listing numerous other domain names for sale. In addition, an MX record has been activated using the disputed domain name.

The Response includes evidence that the Respondent is an engineer with an MBA. He was originally from Türkiye but undertook some education in Germany. He then returned to Türkiye to work initially in family businesses and has since started his own IT consulting businesses and moved back to Germany.

While a student, and continuing since then, the Respondent has operated businesses relating to website creation and IT matters. The Respondent has also operated a business of acquiring domain names, sometimes for his own use but more generally for resale.

5. Discussion and Findings

5.1 Procedural issues – Supplemental filing from the Complainant and Language of Proceeding

The Complaint in the form of the Complainant's supplemental filing has not been marked up. So, it is not clear what changes have been made to the Complaint in the form of the supplemental filing (which have been described by the Complainant's representative as "some minor changes [...] as per the requests of our client").

In any event, the Response has been submitted after the Complainant's supplemental filing and appears to address it. With some reservations, therefore, the Panel will accept the supplemental filing.

Before submitting the Response, the Respondent did request that the proceeding be conducted in German in case he needed to consult with a lawyer in Germany.

Under the Rules, paragraph 11, the language of the proceeding is the language of the registration agreement for the disputed domain name unless the parties agree otherwise or the Panel determines otherwise.

In the present case, the language of the registration agreement is English. Consistently with the Rules, the Complaint has been submitted in English. In addition, the Response has been submitted in English. Accordingly, the Panel finds that there is no reason to depart from the Rules.

5.2 Substantive issues

Paragraph 4(a) of the Policy provides that in order to divest the Respondent of the disputed domain name, the Complainant must demonstrate each of the following:

- (i) the disputed domain name 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.

Paragraph 15(a) of the Rules directs the Panel to decide the Complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable.

A. Identical or Confusingly Similar

The first element that the Complainant must establish is that the disputed domain name is identical with, or confusingly similar to, the Complainant's trademark rights.

The Complainant has proven ownership of numerous registered trademarks which include the word "Çalik". For present purposes it is sufficient to note that the Complainant's registered trademarks include Turkish Registered Trademark No. 2000/16787 and also the three International Registrations, all for ÇALIK and device.

It is usual to disregard the design elements of a trademark under the first element, as such elements are generally incapable of representation in a domain name. Where the textual elements have been disclaimed in the registration or cannot fairly be described as an essential or important element of the trademark, however, different considerations may arise. See for example, WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.10.

While the device element is a significant part of the Complainant's trademarks, the word "Çalik" is an equally prominent component of the four registrations just referred to. The word is not so insubstantial or overborne by the device elements as to justify a depart from the usual rule at this stage of the inquiry which is essentially a standing requirement.

In undertaking that comparison, it is also permissible in the present circumstances to disregard the generic Top-Level Domain ("gTLD") component as a functional aspect of the domain name system. [WIPO Overview 3.0](#), section 1.11. On that basis, the Panel finds that the disputed domain name is identical to those four registered trademarks.

The Respondent disputes this finding on the basis that "Çalik" is a common surname and the name of at least two places in Türkiye. In addition, the Respondent points out that most of the Complainant's trademarks were registered after the Respondent registered the disputed domain name.

These arguments misunderstand the nature of the test that has developed under the Policy.

As already noted, this requirement under the Policy is essentially a standing requirement. The comparison between the proven trademark and the disputed domain name simply requires a visual and aural comparison of the disputed domain name to the proven trademark. This test is narrower than and thus different to the

question of “likelihood of confusion” under trademark law. Therefore, questions such as the scope of the trademark rights, the date they were acquired, the geographical location of the respective parties and other considerations that may be relevant to an assessment of infringement under trademark law are not relevant at this stage. Such matters, if relevant, are better taken into account under the other elements of the Policy. See e.g., [WIPO Overview 3.0](#), section 1.7.

Accordingly, the Panel finds that the Complainant has established that the disputed domain name is identical with the Complainant’s trademark and the requirement under the first limb of the Policy is satisfied.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of “proving a negative”, requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

It is not in dispute between the parties that the Respondent is not associated with the Complainant or otherwise authorized to use the Complainant’s trademarks. Nor is the disputed domain name derived from the Respondent’s name or any name by which he or his businesses is commonly known. The Respondent does not hold any trademarks for the name.

The Complainant also points to the activation of a MXrecord related to the disputed domain name and alleges that the Respondent is, or may be, using the disputed domain name to engage in phishing or similar activities to mislead the Complainant’s customers. The Respondent denies this allegation categorically and claims, however, that more than 90 per cent of domain name hosts activate the MXrecord to allow communications involving the domain name.

Bearing in mind that the Respondent has held the disputed domain name since 2008 and no evidence of phishing or other false or misleading use of the disputed domain name in emails has been submitted, the Panel is not prepared to accept the Complainant’s allegation in this case.

Nonetheless, the other matters referred to are usually sufficient to establish the required *prima facie* case.

According to the Response, the Respondent has been conducting a business as a domainer since the early 2000s. This was initially as a sideline but at least since his move to Germany in 2017 has become part of his main IT business.

The Respondent says he is careful in this business not to buy any trademark but only generic or “keywords”. He also does not redirect the names to parking services and does not place advertisements on the pages.

In that connection, the Respondent points out that “Çalik” is a very common surname amongst people of Turkish heritage. There are more than 4,000 people in Türkiye registered with this name on LinkedIn alone. There are at least three prominent professional football players in Türkiye and Sadi Çalik is a well-known abstract sculptor. Further, an <Ancestry.com> search returns 250,000 entries worldwide. It is also the name of two places in Türkiye.

According to the Respondent, there are also 10 listings for “çalik” in the TDK (Turkish Language Association) Dictionary, with three being nouns and seven being adjectives.

The Respondent further notes that his business practice was exonerated in a previous domain name dispute: *Türkiye Cumhuriyeti Ziraat Bankası Anonim Şirketi v Murat Terzioğlu, Zehir*, WIPO Case No. [D2017-2111](#) (the Ziraat Bankası case). In that decision, the panelist found that the Respondent had rights or legitimate interests in the domain name <ziraat.net> in the face of the complainant's very well-known "Ziraat Bankası" trademark.

It is not clear from the Response what steps the Respondent took, or takes, to confirm whether a domain name he is seeking to acquire is the subject of a trademark. Some of the submissions in the Response contest how extensively, if at all, the Complainant had registered and used its trademark before the Respondent registered the disputed domain name. The fact remains that, regardless of the position with its subsidiaries, the Complainant itself had adopted as its corporate name the "Çalık" name and the Complainant did have three registered trademarks in Türkiye before the Respondent registered the disputed domain name.

Further, while the Response is a little confusing on this point, it does appear that the Response admits the Respondent knew of the Complainant and its use of "Çalık" and, the Panel infers, had that knowledge when the Respondent registered the disputed domain name.

It may also be that the Respondent was proceeding on a narrow view of the scope of the Complainant's trademark as, in some parts of the Response, the Respondent emphasizes that the Complainant does not have a registration for "Çalık" alone. For example, the three registrations that predate the Respondent registering the disputed domain name all feature the prominent floral device.

As discussed in section 5A above, the inclusion in the trademarks of that floral device is not presently relevant under the Policy at least in terms of satisfying the standing requirement. The Panel does accept, however, that the apparent commonality of the term "Çalık" as a surname and dictionary term could affect what constitutes an infringement of the registered trademark in at least some circumstances.

It is clear from the record in this case that the Complainant has very extensive trademark protection in Türkiye in particular. The Complainant's protection has extended outside Türkiye to a number of Balkan, Middle Eastern, North African and Central Asian countries in particular – but, on the record in this case, after the Respondent registered the disputed domain name.

That protection, at least through registrations, does not extend to Germany or other parts of the world where the evidence suggests there is a significant Turkish presence.

Those facts are not conclusive in themselves given the global nature of the Internet and the increasing presence of commerce on the Internet.

In the present case, however, the disputed domain name has been registered by the Respondent since 2008 – that is, around 15 years. Throughout all that time, there is no evidence that the Respondent has used, or attempted to use, the disputed domain name to target the Complainant or its trademark. The content of the disputed domain name also has connotations other than indicating the Complainant or its trademark.

The Panel is conscious that paragraph 2.10.1 of the [WIPO Overview 3.0](#) does summarise the general position under the Policy:

"2.10.1 Panels have recognized that merely registering a domain name comprised of a dictionary word or phrase does not by itself automatically confer rights or legitimate interests on the respondent; panels have held that mere arguments that a domain name corresponds to a dictionary term/phrase will not necessarily suffice. In order to find rights or legitimate interests in a domain name based on its dictionary meaning, the domain name should be genuinely used, or at least demonstrably intended for such use, in connection with the relied-upon dictionary meaning and not to trade off third-party trademark rights."

In this proceeding, there has been no use nor demonstrable preparations to use the disputed domain name in connection with something related to its ordinary meaning. So, the first element referred to in the final sentence is not present. On the other hand, there has been no obvious attempt to trade off the Complainant's or any third party's rights over a very extended period.

In that context, there have been a number of decisions under the Policy which have held that "domaining" is not *per se* illegitimate under the Policy. The *Ziraat Bankasi* case, *supra*, is one such case. Moreover, it involved the Respondent as the respondent and the panel decided the Respondent had rights or legitimate interests in circumstances which appear to be very similar to the present circumstances.

The Panel is not bound by prior decisions. See e.g., [WIPO Overview 3.0](#), section 4.1. However, consistency of outcomes is highly desirable.

In the present case, having regard to the very long period in which the disputed domain name has been registered but not used to target the Complainant or its trademark and the potential for its use in relation to its descriptive or surnominal significance outside the sphere of the Complainant's operations, the Panel finds that the Complainant has not established in all the circumstances that the Respondent does not have rights or legitimate interests in the disputed domain name.

Based on the available record, therefore, the Panel finds the second element of the Policy has not been established.

Accordingly, the Complaint must fail.

C. Registered and Used in Bad Faith

In the circumstances, there is no value in considering whether the disputed domain name has been registered and used in bad faith under the Policy as the Complaint must fail in any event.

7. Decision

For the foregoing reasons, the Complaint is denied.

However, the Panel considers it appropriate to record that the denial is without prejudice to the Complainant's right to refile in the event that evidence emerges that the disputed domain name is subsequently being used to target the Complainant or otherwise take advantage of the resemblance of the disputed domain name to the Complainant's trademark.

/Warwick A. Rothnie/

Warwick A. Rothnie

Sole Panelist

Date: September 6, 2023