

ADMINISTRATIVE PANEL DECISION

Calik Enerji Sanayi Ve Ticaret Anonim Sirketi and Çalik Holding Anonim Şirketi v. Privacy service provided by Withheld for Privacy ehf / roberts samson

Case No. D2022-1670

1. The Parties

Complainants are Calik Enerji Sanayi Ve Ticaret Anonim Sirketi and Çalik Holding Anonim Şirketi, Türkiye, represented by EFOR Patent Limited Sirketi, Türkiye.

Respondent is Privacy service provided by Withheld for Privacy ehf, Iceland / roberts samson, Austria.

2. The Domain Name and Registrar

The disputed domain name <calikernerji.com> (the “Domain Name”) is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 9, 2022. On May 9, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On May 9, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name, which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainants on May 10, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainants to submit an amendment to the Complaint. The Complainants filed an amended Complaint on June 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 Respondent of the Complaint, and the proceedings commenced on June 2, 2022. In accordance with the Rules, paragraph 5, the due date for Response was June 22, 2022. Respondent did not submit any response. Accordingly, the Center

notified Respondent's default on June 23, 2022.

On June 29, 2022, Complainants submitted two further amended Complaints.

The Center appointed Kimberley Chen Nobles as the sole panelist in this matter on June 28, 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

Complainant Calik Enerji Sanayi Ve Ticaret Anonim Sirketi, established in 1998, is a Turkish energy company and a subsidiary of Complainant Çalik Holding Anonim Şirketi. Complainants operate mainly in the areas of oil and gas production, transportation, and distribution, power generation and distribution. Complainant Çalik Holding Anonim Şirketi owns numerous registered national and international trademarks with the ÇALIK mark, across several countries, such as:

- Turkish registered trademark for ÇALIK, under registration number 2000 16787, registered on September 9, 2002;
- International registered trademark for ÇALIK, under registration number 1030693 registered on January 25, 2010.

Complainants also own and operate domain names including <calikenerji.com> and <calikenerji.com.tr>.

The Domain Name was registered on March 31, 2022. The Domain Name previously resolved to Complainants' website, but at the time of this Decision, it directs to an error page.

5. Parties' Contentions

A. Complainants

Complainants contend that (i) the Domain Name is identical and confusingly similar to Complainants' trademarks; (ii) Respondent has no rights or legitimate interests in the Domain Name; and (iii) Respondent registered and is using the Domain Name in bad faith.

In particular, Complainants contend that they have trademark registrations for ÇALIK and own domain names incorporating the ÇALIK trademarks. Complainants contend that Respondent registered and is using the Domain Name to confuse Internet users looking for *bona fide* and well-known ÇALIK products and services.

Complainants note that it has no affiliation with Respondent, nor authorized Respondent to register or use a domain name, which includes Complainants' trademarks, and that Respondent has no rights or legitimate interests in the registration and use of the Domain Name. Rather, Complainant contend that Respondent has acted in bad faith in acquiring and setting up the Domain Name for redirecting the Domain Name to Complainants' website, when Respondent clearly knew of Complainants' rights. The Domain Name is also very similar to one of Complainants' trade name, and there is a risk for possible illegal phishing attempts.

B. Respondent

Respondent did not reply to Complainants' contentions.

6. Discussion and Findings

Under paragraph 4(a) of the Policy, to succeed Complainants must satisfy to the Panel that:

- (i) the Domain Name is identical or confusingly similar to a trademark or service mark in which Complainants have rights; and
- (ii) Respondent has no rights or legitimate interests in respect of the Domain Name; and
- (iii) the Domain Name was registered and is being used in bad faith.

Section 4.3 of the [WIPO Overview 3.0](#) states that failure to respond to the complainant's contentions would not by itself mean that the complainant is deemed to have prevailed; a respondent's default is not necessarily an admission that the complainant's claims are true.

Thus, although in this case Respondent has failed to formally respond to the Complaint, the burden remains with Complainants to establish the three elements of paragraph 4(a) of the Policy by a preponderance of the evidence. See, e.g., *The Knot, Inc. v. In Knot We Trust LTD*, WIPO Case No. [D2006-0340](#).

A. Identical or Confusingly Similar

Ownership of a trademark registration is generally sufficient evidence that a complainant has the requisite rights in a mark for purposes of paragraph 4(a)(i) of the Policy. See [WIPO Overview 3.0](#), section 1.2.1. Complainants provided evidence of their rights in the ÇALIK trademarks, as noted above. In particular, Complainants' use and registration of the ÇALIK trademarks long predate the registration of the Domain Name. Complainants have also submitted evidence which supports that the ÇALIK trademarks are widely known and a distinctive identifier of Complainants' products and services. Complainants have therefore proven that they have the requisite rights in the ÇALIK trademarks.

With Complainants' rights in the ÇALIK trademarks established, the remaining question under the first element of the Policy is whether the Domain Name, typically disregarding the Top-Level Domain ("TLD") in which it is registered (in this case, ".com"), is identical or confusingly similar to Complainants' trademark. See, e.g., *B & H Foto & Electronics Corp. v. Domains by Proxy, Inc. / Joseph Gross*, WIPO Case No. [D2010-0842](#).

Here, the Domain Name is confusingly similar to Complainants' ÇALIK trademarks. These trademarks, which are fanciful and inherently distinctive, are recognizable in the Domain Name. The addition of the term "ernerji" does not prevent a finding of confusing similarity between Complainants' trademarks and the Domain Name.

Thus, the Panel finds that Complainants have satisfied the first element of the Policy.

B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, a complainant must make at least a *prima facie* showing that a respondent possesses no rights or legitimate interests in a disputed domain name. See, e.g., *Malayan Banking Berhad v. Beauty, Success & Truth International*, WIPO Case No. [D2008-1393](#). Once a complainant makes such a *prima facie* showing, the burden of production shifts to the respondent, though the burden of proof always remains on the complainant. If the respondent fails to come forward with evidence showing rights or legitimate interests, the complainant will have sustained its burden under the second element of the UDRP.

From the record in this case, it is evident that Respondent was, and is, aware of Complainants and the ÇALIK trademarks, and does not have any rights or legitimate interests in the Domain Name.

Complainants have confirmed that Respondent is not affiliated with Complainants, or otherwise authorized or licensed to use the ÇALIK trademarks or to seek registration of any domain name incorporating the trademarks. Respondent is also not known to be associated with the ÇALIK trademarks. Moreover, there is no evidence showing that Respondent has been commonly known by the Domain Name.

In addition, Respondent has not used the Domain Name in connection with a *bona fide* offering of goods or services or a legitimate noncommercial or fair use. Rather, Complainants assert that the Domain Name previously redirect to Complainants' website which has not been rebutted by Respondent, and at the time of this Decision, it resolves to an error page. Such use does not constitute a *bona fide* offering of goods or services or a legitimate noncommercial or fair use and cannot under the circumstances confer on Respondent any rights or legitimate interests in the Domain Name. See, e.g., *Intesa Sanpaolo S.p.A. v. Charles Duke / Oneandone Private Registration*, WIPO Case No. [D2013-0875](#).

Accordingly, Complainants have provided evidence supporting its *prima facie* claim that Respondent lacks any rights or legitimate interests in the Domain Name. Respondent has failed to produce countervailing evidence of any rights or legitimate interests in the Domain Name. Thus, the Panel concludes that Respondent does not have any rights or legitimate interests in the Domain Name and Complainants have met their burden under paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Panel finds that Respondent's actions indicate that Respondent registered and is using the Domain Name in bad faith.

Paragraph 4(b) of the Policy provides a non-exhaustive list of circumstances indicating bad faith registration and use on the part of a domain name registrant, namely:

“(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or

(ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your website or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location.”

The Panel finds that Complainants provided ample evidence to show that registration and use of the ÇALIK trademarks long predate the registration of the Domain Name. Complainants are also well established and known. Indeed, the record shows that Complainants' ÇALIK trademarks and related services are widely known and recognized. Therefore, and also noting the composition of the Domain Name itself, Respondent was likely aware of the ÇALIK trademarks when he registered the Domain Name, or knew or should have known that the Domain Name was confusingly similar to Complainants' trademarks. See [WIPO Overview 3.0](#), section 3.2.2; see also *TTT Moneycorp Limited v. Privacy Gods / Privacy Gods Limited*, WIPO Case No. [D2016-1973](#).

The Panel therefore finds that Respondent's awareness of Complainants' trademark rights at the time of registration suggests bad faith. See *Red Bull GmbH v. Credit du Léman SA, Jean-Denis Deletraz*, WIPO

Case No. [D2011-2209](#); *Nintendo of America Inc v. Marco Beijen, Beijen Consulting, Pokemon Fan Clubs Org., and Pokemon Fans Unite*, WIPO Case No. [D2001-1070](#); *BellSouth Intellectual Property Corporation v. Serena, Axel*, WIPO Case No. [D2006-0007](#).

Further, the registration of the Domain Name incorporating Complainants' ÇALIK trademark with the addition of the term "ernerji" which is a misspelling of "enerji" - "energy" in English and part of the trade name of Complainant, Calik Enerji Sanayi Ve Ticaret Anonim Sirketi, by the addition of the letter "r" between the letters "e" and "n" suggests Respondent's actual knowledge of Complainants' rights in the ÇALIK trademark at the time of registration of the Domain Name and its effort to opportunistically capitalize on the registration and use of the Domain Name considering that Complainants are in the business of power and energy production and distribution.

In addition, Respondent has not used the Domain Name in connection with a *bona fide* offering of goods or services or a legitimate noncommercial or fair use. Rather, Complainants assert that the Domain Name previously redirected to Complainants' website at the domain name <calikenerji.com> (which is almost identical to the Domain Name), which has not been rebutted by Respondent. It is more likely than not that Respondent seeks to create likelihood of confusion with Complainants and/or their trademarks. Although the Domain Name currently resolves to an error page, from the inception of the UDRP, panels have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding. See section 3.3 of the [WIPO Overview 3.0](#). In the present circumstances, including the distinctiveness and reputation of the ÇALIK trademarks, the failure of Respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, the use of a privacy service, and the implausibility of any good faith use to which the Domain Name may be put, the Panel finds that the non-use of the Domain Name also constitutes bad faith.

Accordingly, the Panel finds that Respondent has registered and is using the Domain Name in bad faith and Complainants succeed under the third element of paragraph 4(a) 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 Domain Name <calikernerji.com> be transferred to Complainants.

/Kimberley Chen Nobles/

Kimberley Chen Nobles

Sole Panelist

Date: July 12, 2022