

ADMINISTRATIVE PANEL DECISION

Nutricia International B.V., N.V. Nutricia v. CONTACT PRIVACY INC.
CUSTOMER 7151571251 / H.Bilgi Gümüş, InternetDomainBorokers.com
Case No. D2022-3188

1. The Parties

The Complainant is Nutricia International B.V., N.V. Nutricia, Netherlands, represented by Eversheds Sutherland (France) LLP, France.

The Respondent is CONTACT PRIVACY INC. CUSTOMER 7151571251 / H.Bilgi Gümüş, InternetDomainBorokers.com, Türkiye¹.

2. The Domain Names and Registrars

The disputed domain names <bebelacmama.net>, <bebelac.net> and <milupamama.com> are all registered with Google LLC (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on August 29, 2022. On August 30, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On the same day, 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 Complainants on August 1 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 in English on September 5, 2022.

On August 31, 2022, the Center sent an email communication in both English and Turkish to the Parties regarding the language of the proceeding. On September 5, 2022, the Complainants confirmed their request that English be the language of the proceeding. The Respondent did not comment on the language of the proceeding.

¹ The original Complaint identified CONTACT PRIVACY INC. CUSTOMER 7151571251 as the Respondent. After the Registrar verified the underlying customer data, the Complaint was amended to list only the name of the underlying registrant (*i.e.*: H.BILGI GÜMÜŞ), whom the Panel understands to be the proper Respondent.

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 in both Turkish and English of the Complaint, and the proceedings commenced on September 7, 2022. In accordance with the Rules, paragraph 5, the due date for Response was September 27, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 28, 2022.

The Center appointed Dilek Ustun Ekdial as the sole panelist in this matter on October 4, 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 Complainants, Nutricia International B. V. and N.V. Nutricia (together also referred to as Nutricia), are Dutch law companies within a global food and beverage group built on three businesses: essential dairy and plant-based products, waters and specialised nutrition. The Complainants are active in the specialised nutrition business, and more specifically in products related to early life nutrition and medical nutrition.

The Complainants distribute infant milks under the trademarks BEBELAC and MILUPA aiming to support a healthy child growth. The BEBELAC and MILUPA trademarks thus are extensively used throughout the world for infant foods, and have acquired considerable renown, consumer recognition and goodwill at an international level.

The Complainants annually invest very substantial resources on the advertising and promotion of their BEBELAC and MILUPA trademarks and products.

Reflecting their global reach, the Complainants (along with other group subsidiaries) own numerous domain names consisting of the term “bebelac” or “milupa”, including the domain names <bebelac.com> and <milupa.com> which were registered in 1999 and 2000 respectively.

The Complainants have registered numerous trademarks consisting of, or containing the terms “bebelac” in most jurisdictions throughout the world, including but not limited to the following:

- International trademark BEBELAC No. 156405, protected in, *inter alia*, Egypt, France, Italy and Portugal, registered on September 24, 1951, duly renewed and covering goods in classes 5 and 29;
- International trademark BEBELAC No. 766285, protected in, *inter alia*, Bulgaria, China, Cuba, Hungary, Greece, Morocco, Poland, Romania, the Russian Federation and Türkiye, registered on July 9, 2001, duly renewed and covering goods in classes 5, 29, 30 and 32;
- International trademark  No. 927273, protected in, *inter alia*, Albania, Montenegro and Serbia, registered on May 18, 2007, duly renewed and covering goods in classes 5, 29 and 30;

The Complainants have also registered numerous trademarks consisting of, or containing the terms “milupa” in most jurisdictions throughout the world, including but not limited to the following:

International trademark MILUPA No. 467879, protected in, *inter alia*, Belarus, Egypt, Croatia, Iceland, Korea, Monaco, Morocco and the Russian Federation, registered on September August 17, 1981, duly renewed and covering goods in classes 5 and 29;

European Union Trade Mark MILUPA No. 007198773, registered on August 22, 2009, duly renewed and covering goods in classes 5, 29, 30 and 32;

International trademark  No. 396445, protected in, *inter alia*, Austria, Croatia, France, Germany, Hungary, Italy, Monaco, Montenegro, Morocco, Poland, Portugal, Romania, Serbia, Switzerland and Türkiye, registered on January 18, 1973, duly renewed and covering goods in classes 5, 29, 30 and 31;

European Union Trade Mark  No. 006651939, registered on April 17, 2009, duly renewed and covering goods in classes 5, 29 and 30;

French trademark  No. 3434995, registered on June 15, 2006, duly renewed and covering goods in classes 5, 29 and 30.

The disputed domain names were registered on January 22, 2017 <milupamama.com>, on May 10, 2017 <bebelacmama.net>, on February 14, 2018 <bebelac.net>.

The Complainant's trademark registrations significantly predate the registration of the disputed domain names.

The screenshots, as provided by the Complainants, show that the disputed domain names resolve to some websites in the Turkish language, which are used for offering various kinds of products of the Complainants. On these websites, the MILUPA and BEBELAC trademarks of the Complainants and some of their official product images are used without any visible disclaimer describing the (lack of) relationship between the Parties.

5. Parties' Contentions

A. Complainants

The Complainants' arguments are as follows:

The Complainants are the registered owner of the MILUPA and BEBELAC trademarks in numerous jurisdictions, including, but not limited to Türkiye.

The Complainants referred to prior UDRP cases which panels have held that "when a domain name wholly incorporates a complainant's registered mark that is sufficient to establish identity or confusing similarity for purposes of the Policy". See *Magnum Piering, Inc. v. The Mudjackers and Garwood S. Wilson, Sr*, WIPO Case No. [D2000-1525](#).

The disputed domain name <bebelac.net> is identical to the Complainants' trademark BEBELAC and the disputed domain names <bebelacmama.net> and <milupamama.com> are confusingly similar to the MILUPA and BEBELAC trademark registrations of the Complainants.

It is well established that the applicable Top Level Domain ("TLD") in a domain name is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.11 and the cases referenced therein). The mere addition of the descriptive term "mama" is insufficient to distinguish the disputed domain names <bebelacmama.net> and <milupamama.com> from the Complainants' trademarks given that the dominant element is the Complainants trademarks. The term

“mama” reinforces the association with the Complainants, the Complainants’ business and its trade marks as, in English, it means mother, and in Turkish, it means “baby food”.

The Complainants contend that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

The Complainants have not licensed or otherwise permitted the Respondent to use any of their trademarks or to register the disputed domain names incorporating their trademarks.

- The Respondent is not making a legitimate noncommercial or fair use of the disputed domain names, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademarks of the Complainant.

- The Respondent is not an authorized reseller of the Complainants products.

- The offering on the online shop at the websites resolving from the disputed domain names are further misleading, in that it suggests to consumers that they can legitimately purchase this product in Türkiye.

- The Respondent’s use of the disputed domain names show that the Respondent knew of the Complainants’ trademarks when registering the disputed domain names.

- The Respondent’s use of the disputed domain names show that the Respondent registered and used the disputed domain names with the intention to attract, for commercial gain, Internet users to the websites, by creating a likelihood of confusion with the Complainant’s MILUPA and BEBELAC trademarks as to the source, sponsorship, affiliation, or endorsement of its websites or location or of a product or service on its websites or location, which constitutes registration and use in bad faith pursuant to paragraph 4(b)(iv) of the Policy.

Lastly, the Complainants argue that the Respondent indicated in the Whois Information, is the same person, who was the respondent to a previous UDRP complaint filed by the Complainant, under *Nutricia International B.V. and N.V. Nutricia v. Hasan Bilgi Gumus*, WIPO Case No. [D2018-0253](#), in relation to the bad faith registration and use of other domain names.

B. Respondent

The Respondent did not reply to the Complainants’ contentions.

6. Discussion and Findings

Procedural Issues:

6.1. Language of the Proceeding

Paragraph 11(a) of the Rules provides that: “Unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding.”

The Complainants have requested English to be the language of the proceeding. The Panel determines in accordance with the Rules, paragraph 11(a), that the language of this proceeding shall be English for the following reasons:

- The disputed domain names contain the Complainants' trademarks MILUPA and BEBELAC;
- The Respondent did not reply to the Center communications in both English and Turkish about the language of the proceeding;
- The Respondent did not reply to the Complainants' contentions after being notified of the Complaint in both English and Turkish;
- The Complainant is unable to communicate in Turkish. Requiring the Complainants to submit documents in Turkish would lead to delay of the proceeding and cause the Complainants to incur additional translation expenses. Under these circumstances, the Panel determines English to be the language of this proceeding.

6.2. Consolidation

This Complaint has been filed against two Respondents (one being a privacy service), and concerns three disputed domain names. Paragraph 10(e) of the Rules gives the Panel discretion to decide a request by a Party to consolidate multiple domain name disputes in accordance with the Policy and the Rules.

In considering whether to consolidate a complaint, panels look at whether:

- the domain names or corresponding websites are subject to common control; and
- the consolidation would be fair and equitable to all parties.

Procedural efficiency would also underpin panel consideration of such a consolidation (see [WIPO Overview 3.0](#), section 4.11.2).

- The Complainants in the present administrative proceeding are members of the same group of companies.
- Their Complaint is based on the same set of facts against the same Respondent (as demonstrated below).
- The disclosed underlying registrant for all the disputed domain names is H.Bilgi Gümüő, InternetDomainBorokers.com. All the disputed domain names are hence in common control.

As such, the Panel accepts the Complainants' request for consolidation.

6.3. Substantive Issues

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

Under paragraph 4(a) of the Policy, the Complainants bear the burden of showing:

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

A. Identical or Confusingly Similar

The Panel finds that the Complainants own trademark rights for the MILUPA and the BEBELAC marks.

The disputed domain name contains the Complainants' trademarks MILUPA and BEBELAC with the word "mama". The addition of this word does not avoid a finding of confusing similarity between the disputed domain name and the Complainants' marks. The generic Top Level Domains ".com" or ".net" may be

disregarded when examining the identity or confusing similarity between the Complainants' MILUPA and BEBELAC trademarks and the disputed domain names.

Therefore, the Panel finds that the disputed domain names are confusingly similar to the trademarks in which the Complainants have rights, satisfying the condition of the Policy paragraph 4(a)(i).

B. Rights or Legitimate Interests

The Respondent has not provided any evidence of the conditions specified in paragraph 4(c) of the Policy, or any other circumstances giving rise to rights or legitimate interests in the disputed domain names.

It is clear that the Respondent has not demonstrated any *bona fide* offering of goods and services by its use of the disputed domain names. Nor has the Respondent shown that it has been commonly known by the disputed domain names. Rather, the evidence of the Complainants suggests that the Respondent has used the disputed domain names in an attempt to trade off the goodwill associated with the Complainants' trademark.

The Complainant also showed, *inter alia*, that the Respondent has neither a license nor any other permission to use the Complainants' trademark in the disputed domain names or otherwise.

The Panel finds that the Complainants have made a *prima facie* case that the Respondent lacks rights or legitimate interests, and the Respondent has failed to demonstrate such rights or legitimate interests or otherwise rebut the Complainants' arguments.

The Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain names.

C. Registered and Used in Bad Faith

The Panel is of the opinion that when the Respondent registered the disputed domain names it knew that MILUPA and BEBELAC were the trademarks of the Complainants, and that the Respondent registered the disputed domain names in bad faith.

In view of the Panel, the Respondent has registered the disputed domain names solely for the purpose of creating an association with the Complainants and their special products.

After having reviewed the Complainants' screenshots of the websites linked to the disputed domain names, the Panel is convinced that the Respondent has intentionally registered the disputed domain names in order to generate traffic to its own websites.

Furthermore, the evidence on the record provided by the Complainants with respect to the Respondent's use of the disputed domain names indicates that the Respondent has used the disputed domain names to attract, for commercial gain, Internet users to websites by creating confusion in the minds of the public as to an association between its websites and the Complainant.

Accordingly, the Panel finds that the disputed domain names have been registered and are being used in bad faith.

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, <bebelacmama.net>, <bebelac.net> and <milupamama.com> be transferred to the Complainants.

/Dilek Ustun Ekdial/

Dilek Ustun Ekdial

Sole Panelist

Date: October 25, 2022