Decision for dispute CAC-UDRP-100711

Case number	CAC-UDRP-100711
Time of filing	2014-06-02 12:28:42
Domain names	firotur.com, firotur.net, firotur.org, firotur.biz, firotur.info

Case administrator

Name	Lada Válková (Case admin)

Complainant

Organization	FIRO-tour a.s.

Complainant representative

Organization	HaveHolásek & Partners s.r.o., advokátní kancelář

Respondent

Organization	NAYMANLI TURIZM SAN. TIC. LTD. STI.

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings which are pending or decided and which relate to the Domain Names.

IDENTIFICATION OF RIGHTS

Complainant states and provides evidence in support thereof, that it is the owner of several trademark registrations that contain the word FIRO. The Complainant is also the owner of national registrations for the trademark FIRO-TOUR.
The Complainant is also the holder of the following domain names: “firotour.com”, “firo-tour.com”, “firo-tour.biz”, “firo.info”, “firo-tour.info”, “firo-tour.org”, “firotour.eu”, “firo-tour.eu” and “firotour.cz”

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT ARE HERE REPORTED AS IS:

1. The Complainant asserts that it is a Czech company whose business is mainly the operation of a travel agency; the Complainant is a tour operator operating mainly in the European market, organizing hotel-based, exotic, skiing, last minute and excursion tours, both by air plane and bus. The Complainant also arranges sales of plane tickets, cruise tickets and tickets for cultural events. The Complainant operates on the Czech market of tour operators since 1990 and is currently one of the leading tour operators. A significant portion of the Complainant’s revenues comes from tours to Turkey.

2. The Complainant is the owner of the word mark “firo”, file No. 4650891, which is registered as a Community trademark in

the database of the Office for Harmonisation in the Internal Market ("OHIM") from 25 November 2010 and concerns goods and services of the following classes: 16, 35, 36, 39 (e.g. tour operator services), 41, 43.

3. The Complainant is also the owner of the word mark "firo", file No. 358823, No. of entry 273838, which is registered as a national trademark in the database of the Industrial Property Office of the Czech Republic ("IPO") from 25 July 2005 and concerns goods and services of the following classes: 16, 35, 36, 39 (e.g. tour operator services), 41 and 43, the word mark "firotours", file No. 459867, No. of entry 301570, which is registered as a national trademark in the database of the IPO from 5 November 2008 and concerns the goods and services of the following classes: 35, 39 (e.g. tour operator services) and 41, and the word mark "firotour", file No. 459868, No. of entry 301571, which is registered as a national trademark in the database of the IPO from 5 November 2008 and concerns goods and services of the following classes: 35, 39 (e.g. tour operator services) and 41.

4. The Complainant is also the owner of the combined mark "FIRO-TOUR", File No. 115229, No. of entry 206482, which is registered as a national trademark in the database of the IPO from 30 December 1997 and concerns goods and services of the following classes: 16, 35, 36, 39 (e.g. tour operator services), 41 and 42, a combined mark "FIRO TOUR", File No. 158844, No. entry 251226, which is registered as a national trademark in the database of the IPO from 24 February 2003 and concerns goods and services of the following classes 16, 35, 36, 39 (e.g. tour operator services), 41 and 42.

5. Mr Roman Fisek, the Chairman of the Complainant's board of directors, is the owner of the word mark "firo tour", file No. 6975114, which is registered as a Community trade mark in the database of the OHIM from 10 June 2009 and concerns goods and services of the following classes: 16, 35, 36, 39 (e.g. tour operator services), 41 and 43, and of the international trade mark "firo tour", file No. 800185, which is registered as an international trademark in the database of the World Intellectual Property Organization ("WIPO") from 24 February 2003 for the goods and services of the following classes 16, 39 (e.g. tour operator services) and 43. These trademarks are used by the Complainant in its business as agreed between the Complainant and Mr Roman Fisek in agreement on use of trademarks. (Trademarks under sections 3, 4 and 5 hereinafter "Trademarks")

6. In the Czech Republic and other above mentioned destinations, the Complainant uses the Trademarks for its business in the field of tour operator services and sale for more than ten years, both in written and graphic form.

7. The Complainant states that it is also the holder of the following domain names: "firotour.com", "firo-tour.com", "firo-tour.biz", "firo.info", "firo-tour.info", "firo-tour.org", "firotour.eu", "firo-tour.eu" and "firotour.cz" ("Complainant's domains"), which are used for the presentation of the services provided by the Complainant. All Complainant's domains are redirected to the Complainant's domain "firotour.cz". The number of unique visitors of Complainant's domains from 1 June 2010 to 1 September 2013 reached over 3,658,000 and the number of visits from all around the world was over 8,729,000.

8. The Respondent is a Turkish company and according to the who.is information database, the company holds the following domain names: "firotur.com", "firotur.org", "firotur.net", "firotur.info" and "firotur.biz" ("Domains"). The Domains were registered during the years 2012 and 2013 and transferred to the Respondent on 31 October 2013.

9. Domains are automatically redirected to the domain "tatilinfo.com", where is a business presentation and offer of services provided by the Respondent, which is the Complainant's competitor. Before the automatic redirection to the domain "tatilinfo.com" there is the following text in Turkish:

"The web page you are trying to access will be redirected to www.tatilinfo.com within one minute. "Firo Turizm Tasimacilik Ltd. Sti." and the web page to which you will be redirected are absolutely unrelated. The following web domains were purchased under a contract on Thursday, 31 October 2013, and were paid for by the authorized representatives of Tatil Info.com. These domains are owned by our company and there is no relation between our company and the relevant trade name or trademark holder. We emphasize that we are absolutely unrelated to the holders of the "Firo Tur" and "Firo Tour" trademarks. We strongly urge you to avoid confusing these trademarks with our company's trademark. Attention!...
Respectfully,
Tatil Info.com Management

www.firotur.com www.firotur.net www.firotur.org www.firotur.biz www.firotur.info”

10. Before business presentation and offer of services provided by the Respondent on the Domains was a business presentation and offer of services provided by another Complainant’s competitor, FIRO TURIZM TASIMACILIK LIMITED SIRKETI (hereinafter “FIRO TUR”), which was established in 2012.

11. The Complainant contends that the purpose of the Respondent’s Domains is marketing promotion of the Respondent as the Complainant’s competitor on the market of tour operators. The Complainant believes that the Respondent is guilty of encroachment upon the Complainant’s Trademarks, interference with the Complainant’s corporate name and of unfair competition while benefiting from the reputation of the Complainant’s business in Europe including Turkey.

12. The Complainant believes that all those aftermentioned facts entitle the Complainant to request transfer of the Domains pursuant to the Policy.

13. According to the Complainant tt is evident that the Domain names “firotur” are almost identical or very similar to the Trademarks of the Complainant, in particular to the “firotour” trademarks, and this similitude is seen by the Complainant especially in the following facts:

- The Complainant’s domains are phonetically identical to the Domains, as all these domains are read as [firo tu:r] both in English and Czech;

- The Complainant’s domains are visually identical to the Domains;

- The Complainant’s domains are almost identical to the Domains, the only difference being the omission of letter “o” in the word “tour”. According to the Complainant’s information, the words “FIRO” and “TUR” do not have any meaning in Turkish, which supports the Complainant’s belief that the only reason for choosing these words is taking advantage of the Complainant’s reputation, which is a case of unfair competition;

- The probability of confusion of the Complainant’s domains and the Domains is further increased by the fact that identical services are being offered on the Complainant’s domains and the Domains (tour operator services, sales of package tours and accommodation services), while these services were until recently offered by the company FIRO TUR under a logo which was almost identical to the Complainant’s logo registered as one of the Trademarks.

14. The Complainant asserts that the Respondent has neither any industrial property rights to the Domains (e.g. rights connected to trademark) nor any other rights (e.g. rights to corporate name) which would justify the Respondent’s title to the Domains (within the meaning of paragraph 4 (a) (ii) of the Policy). The Turkish company FIRO TUR, which presented its services on the Domains, does not have such industrial property rights neither.

15. The Respondent uses the Domains for diverting the Complainant’s customers from the Complainant’s domains by the so called URL hijacking and for promotion of the Respondent (previously for promotion of another Complainant’s competitor, the Turkish company FIRO TUR.

16. The Complainant asserts that the Domains were registered / bought by the Respondent in bad faith, as is evident from the following:

- By registering / holding the Domains, the Respondent made it impossible for the Complainant to make use of them as the holder of the Trademarks;

- The Respondent registered / bought the Domains with the aim to complicate business activities of the Complainant as the holder of the Trademarks;

- The Respondent registered / bought the Domains taking into account the probability of confusion of the Complainant’s

domains and the Domains, which is further increased by the fact that identical services are being offered on the Complainant's domains and the Domains (tour operator services, sales of package tours and accommodation services), while these services were until recently offered under a logo which was almost identical to the Complainant's logo registered as one of the Trademarks. This fact then might have induced the confusion of the Complainant's domains and the Domains or make the customers believe that the Complainant operates, offers, approves of or sponsors the Domains and the services presented on them;

- By using the Domains, the Respondent is guilty of unauthorized usage of Complainant's corporate name (see below);

- By using the Domains, the Respondent is guilty of unfair competition against the Complainant (see below).

17. The Complainant also believes that the true previous owner of the Domains was the Turkish company FIRO TUR, which offered its services on the Domains. The previous owner of the Domains (Chinese company Domain ID Shield Service CO., Limited) might possibly only function as the so called ID SHIELD to FIRO TUR, which should make it impossible for persons with right to the Domains to find the true owner of the Domains and exercise their rights against him. Thus the Respondent registered / bought the Domains in bad faith (within the meaning of paragraph 4 (a) (iii) of the Policy).

18. By using the Domains, the Respondent is guilty of unauthorized usage of Complainant's corporate name.

19. The Complainant asserts that the Complainant's corporate name is protected pursuant to Article 8 of the Paris Convention for the Protection of Industrial Property, which provides that the corporate name is protected in all member countries without the need of its actual registration.

20. In the Domains the Respondent makes unauthorized use of the words "firo tur" which, the only difference being the omission of the letter "o" in the word "tour", represents the Complainant's corporate name, which has a clearly distinctive function. By his conduct, the Respondent makes unauthorized use of the Complainant's corporate name and there is no legal reason for the Respondent to claim and register the Complainant's corporate name for himself or a third party as his domain name. The reason for which the Respondent abuses the Complainant's corporate name is clearly and solely the economic benefiting from the Complainant's reputation in all Europe, including Turkey. Such practices cannot be tolerated and they moreover confirm the Respondent's bad faith in registering the Domains.

21. The Complainant contends that by using the Domains, or, in particular, by previous renting or providing them to the Turkish company FIRO TUR, the Respondent commits unfair competition practices against the Complainant.

22. The Complainant states that between the Complainant and the Respondent there is clearly a competitive relationship within economic competition. The competitive relationship in general does not refer only to relationship between entities which compete in a direct and permanent way, but also to ad hoc competition based on a certain act motivated by a competitive aim of the agent (the Respondent) to gain benefit or competitive advantage in its economic position at the expense of competitive position held by other entities. Thus at the moment of registering the Domains, the Respondent entered into a competitive relationship with the Complainant. Beyond doubt, between the Respondent and the Complainant, there is a competitive relationship on the market of tour operator services, sales of package tours and accommodation services.

23. The conduct of the Respondent is, beyond doubt, contrary to good morals in competition since the Respondent uses in his Domains the Complainant's Trademark and corporate name without any legal ground, the motive of which is, among other motives, increasing the number of visitors of the Respondent's website and thereby obtaining material benefits (for the Respondent himself or previously for the Turkish company FIRO TUR). While the customers expect to find goods and services offered by the Complainant on the Domains, they are redirected to the website of the Respondent "tatilinfo.com" (previously to the website of another Turkish competitor, the FIRO TUR company). Without any authorisation the Respondent prevents the Complainant from offering his services under the Domains on which the customers reasonably expect to find such services offered.

24. The conduct of the Respondent may also cause harm to other competitors, consumers or other customer. Harm is, beyond doubt, caused to the Complainant, who can be wrongfully associated with the websites under the Domains due to the fact that the Complainant's corporate name and Trademarks is being used in the Domains. "Redirecting" of the potential customers of the Complainant to the competitor's offer can therefore induce harm which consists in the fact that if the Domains did not exist, the customers would not be misled when searching the Complainant's website and the risk of their entering the website of the competitor would be eliminated.

25. Harm may also be caused to consumers and other customers who, given the misleading name of the Domains, can mistakenly suppose that the website operated under the Domains is operated or supported by the Complainant or that the Complainant and the Turkish company FIRO TUR are connected or cooperating entities.

26. Previous "warning" of the potential customers before redirecting them from the Domains to the website of the Respondent "tatilinfo.com" is not sufficient to prevent the potential harm caused to Complainant, other competitors, consumers or other customer.

27. The probability of confusion of the Complainant and the Respondent (previously the Turkish company FIRO TUR) is further increased by the fact that identical services are being offered on the Complainant's domains and the Domains (tour operator services, sales of package tours and accommodation services), and these services were until recently offered by the Turkish company FIRO TUR under a logo which was almost identical to the Complainant's logo registered as one of the Trademarks. The website under the Domains then openly imitated the design of the website operated under the Complainant's domains.

28. By using the Domains, the Respondent (or previously the Turkish company FIRO TUR) makes the impression that the Complainant operates, supports or approves of the website under the Domains.

29. By using the Domains, the Respondent (or previously the Turkish company FIRO TUR) is trying to gain benefit which it otherwise might not be able to objectively obtain. Those who are interested in finding the Complainant's website by typing the Complainant's name in the Internet search engine might enter the Domains, by which the Respondent and previously the Turkish company FIRO TUR gains higher traffic on the website. By so doing, the Respondent may, as has been stated above, decrease the traffic of the Complainant's official website located under the Complainant's domains, which may cause damage to the Complainant as the Complainant may have fewer customers. Such unfair competition practices cannot be tolerated and they again confirm the Respondent's bad faith in registering the Domains.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the Domain Names are identical or confusingly similar to a trademark or service mark in which the complainant has rights (within the meaning of paragraph 4(a)(i)of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant has, to the satisfaction of the Panel, shown the Respondent to have no rights or legitimate interests in respect of the Domain Names (within the meaning of paragraph 4(a)(ii)of the Policy).

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown the Domain Names have been registered and are being used in bad faith (within the meaning of paragraph 4(a)(iii)of the Policy).

PROCEDURAL FACTORS

The Panel is satisfied that all procedural requirements under UDRP were met and there is no other reason why it would be

inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

This Panel agrees with the Complainant's contentions that the Domain names "firotur" are almost identical to the FIRO TOUR trademarks of the Complainant and that the domains of the Complainant are phonetically identical to the Domain Names, as all these domains are read as [firo tu:r] both in English and Czech.

Therefore, the Complainant has, to the satisfaction of the Panel, shown that the Domain Names are identical or confusingly similar to a trademark or service mark in which the complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy).

This Panel finds that the Complainant has made out a prima facie case. The Respondent has no connection or affiliation with the Complainant that has not licensed or otherwise authorized the Respondent to use or register any domain name incorporating the Complainant's trademark. The Respondent does not appear to make any legitimate non-commercial or fair use of the Domain Names, nor any use in connection with a bona fide offering of goods or services. In addition, the Respondent does not appear to be commonly known by the name "Firo Tur" or by a similar name. Finally, in the absence of any Response from the Respondent, or any other information indicating the contrary, the Panel concludes that the Respondent has no rights or legitimate interests in respect of the Domain Names.

Accordingly, the Panel finds that the Complainant has shown that the Respondent has no rights or legitimate interests in respect of the Domain Names (within the meaning of paragraph 4(a)(ii)of the Policy).

In the absence of contrary evidence, the Panel finds that:

the use of the Domain Names described above constitutes bad faith use. Besides, the Panel notes that the above-described use of the Domain Names confirms that the Respondent knew of the Complainant's trademark, products and services when registering the Domain Names and intentionally intended to create an association with the Complainant and its business;

the definitive proof that Respondent was fully aware of the Complainant's trademark and websites is given by the fact that on the Respondent's website there was a disclaimer affirming that: "omissis.. We emphasize that we are absolutely unrelated to the holders of the "Firo Tur" and "Firo Tour" trademarks. We strongly urge you to avoid confusing these trademarks with our company's trademark". The Panel finds the use of such disclaimer does not absolve the Respondent from a finding of bad faith registration and use and as such does not provide any basis for a finding of the Respondent's rights or legitimate interests in the Domain Names;

the Respondent, as shown by the contents displayed on its website, must have had actual knowledge of the Complainant's trademark at the time of the registration of the disputed domain name;

the above described use of the disputed domain name, i.e., to divert Internet traffic to the Respondent's website supports an inference of bad faith registration and use of the disputed domain name.

Therefore, the Panel finds on the basis of the evidence presented, that the Complainant has, to the satisfaction of the Panel, shown that the Domain Names have been registered and are being used in bad faith (within the meaning of paragraph 4(a)(iii)of the Policy).

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

AND THE DISPUTED DOMAIN NAME(S) IS (ARE) TO BE

1. **FIROTUR.COM**: Transferred

2. **FIROTUR.NET**: Transferred
3. **FIROTUR.ORG**: Transferred
4. **FIROTUR.BIZ**: Transferred
5. **FIROTUR.INFO**: Transferred

PANELLISTS

Name	**Dr. Fabrizio Bedarida**

DATE OF PANEL DECISION 2014-07-18

Publish the Decision