# Decision for dispute CAC-UDRP-101182

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| Case number | CAC-UDRP-101182 |
| Time of filing | 2016-02-23 11:34:04 |
| Domain names | takasbank.com |

## Case administrator

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| Name | Lada Válková (Case admin) |

## Complainant

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| Organization | İSTANBUL TAKAS VE SAKLAMA BANKASI ANONİM ŞİRKETİ |

## Complainant representative

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| Organization | Net Koruma Consultancy Services |

## Respondent

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| Name | sukru haluk argun |

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

The Complainant is the owner of the following trade mark registrations in connection with financial and banking services, registered with the Turkish Patent Institute:

- Turkish Trade mark No. 2003 18086, in TAKASBANK, applied for on 11 July 2003 and registered on 17 November 2004 (covering class 36); and

- Turkish Trade mark No. 2012 97928, in TAKASBANK, applied for 23 November 2012 and registered on 17 January 2014 (covering classes 36, 38 and 42).

The Complainant also relies on its business name as well as the domain name <takasbank.com.tr>, which it registered on 24 July 1998 and resolves to its main website available at www.takasbank.com.tr.

FACTUAL BACKGROUND

The Complainant is a banking institution located in Turkey. The Complainant has been providing services since 1991,

although using the name "Takasbank" since 1996. The Complainant is the owner of several trade mark registrations in Turkey in the term "TAKASBANK" since 2004 (as listed above). The Complainant's main website is available at www.takasbank.com.tr.

The Respondent is an individual based in Turkey that appears to be in the business of acquiring and selling domain names.

The disputed domain name is <takasbank.com> (the Domain Name). It was acquired by the Respondent on 28 April 1999 and is resolving to a website where the Domain Name is being offered for sale by a company called Investi Grup Ltd.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT'S COMPLAINT

The Complainant asserts that "Takasbank" is one of the biggest and most valued banks of Turkey and has been providing its services since 1992. The Complainant further submits that "settlement transactions (the actions to be taken regarding payments to be made related with the commitments and delivery of securities regarding the transactions realized in capital markets) were being realized between transaction parties without intermediation between the years 1986 and 1988. Between the years 1988 and 1992, the settlement and custody transactions were performed by a department within the Stock Exchange and were transferred and entrusted in 1992 to ISE Settlement and Custody Inc., a company founded as a partnership between the ISE and its members. Increasing both the diversity and the range of its services by taking investment banking license on 1996, ISE Settlement and Custody Bank, Inc. founded Central Registry Agency (CRA) in 2005 together with the ISE for the dematerialization and custody transactions of securities traded at the ISE markets".

The Complainant further submits that "due to the name change of the bank’s biggest shareholder "Istanbul Stock Exchange (ISE)" to "Borsa İstanbul Inc.(BİAŞ)”, the name of Takasbank “ISE Settlement and Custody Bank Inc." was changed to "Istanbul Clearing, Settlement and Custody Bank Inc.-Takasbank" as of 11 April 2013".

The Complainant further asserts that "according to the Articles of Incorporation of "Istanbul Clearing, Settlement and Custody Bank Bank Inc.-Takasbank", the major purpose and activity of the bank is to provide clearing, settlement and custody services within the framework of capital market and related exchange regulations as well as rendering investment banking services within the scope of the Banking Law and other banking regulations".

The Complainant referred to its website available at www.takasbank.com.tr for more information about the Complainant and its activity. The Complainant also provided a history line since 1992.

Identity or confusing similarity

The Complainant submits that the Domain Name is identical to its "Takasbank" business name, trade mark and domain name and that "Takasbank" is a very well-known bank in Turkey that has built up considerable renown since 1992. In this regard, the Complainant asserts that it registered “Takasbank” on 8 August 1995 as a business name, but that it started its business on 9 July 1991. The Complainant states that its “Operating Certificate” is provided as Annex to the Complaint (although this annex was not attached to the Complaint but was produced further to the Panel's Administrative Procedural Order).

The Complainant further asserts that it is the registered owner of "Takasbank" trade mark registration, namely Turkish Trade mark No. 2003 18086 and 2012 97928 (as listed above). In addition, the Complainant asserts that it registered the domain name <takasbank.com.tr> on 24 July 1998 and that it has been actively using it since that date. The Complainant has provided evidence of its trade mark and domain name registrations.

The Complainant also states that its "Takasbank" trade marks and domain name have been used for years and have reached a high level of consumer recognition. Therefore, the Complainant argues that it has "a priority right on the term “Takasbank”

based on the registration of its business name, trade marks and domain name dating back to 1991. The Complainant further asserts that the likelihood of confusion between the Domain Name and the Complainant's trade marks is high.

The Complainant therefore asserts that the Domain Name is identical to the Complainant's trade marks and domain name.

No rights or legitimate interests

The Complainant asserts that the Respondent does not have rights or legitimate interests in the Domain Name. The Complainant asserts that the Respondent does not own a trade mark registration or application nor has any personal rights in the term "Takasbank". The Complainant further asserts that the Respondent does not have any permission or license to use its TAKASBANK trade mark.

The Complainant further submits that there is no evidence that the Respondent has used the Domain Name in connection with a bona fide offering of goods or services, and that the Respondent is not commonly known by the Domain Name. The Complainant also asserts that the Respondent is not making a legitimate non-commercial or fair use of the Domain Name. The Complainant further asserts that the Respondent's motive for registering the Domain Name is to take unfair advantage of the Complainant's rights.

Bad faith registration and use

The Complainant asserts that over the past years it has become a symbol of quality in banking, insurance and retirement sector and that it has become well known and recognized in the sector throughout Turkey and the world. It thus submits that the Domain Name was registered with the aim of gaining unduly benefit from the reputation acquired by the Complainant over the years.

The Complainant submits that "Takasbank" is a term that was created by the Complainant in 1991 and does not have a meaning for banking services. Accordingly, the Complainant argues that the term "Takasbank" is not a necessary term in the relevant sector and that the Respondent does not have a right to use it without the Complainant's consent.

The Complainant further submits that the Respondent undoubtedly had knowledge of the Complainant's trade mark at the time of registration of the Domain Name and that as such the Domain Name was registered by the Respondent in bad faith. The Complainant relies on the decision Builder's Best, Inc. v. Yoshiki Okad, WIPO Case No. D2004-0748 (which states that "in order to find bad faith, there must be some evidence of knowledge that the Respondent knew the domain name was identical or similar to the Complainant's mark.").

The Complainant further asserts that the Respondent's offer to sell the Domain Name on the associated website clearly proves the Respondent's bad faith. A screen shot of the website associated with the Domain Name is provided as an annex to the Complaint.

The Complainant further submits that the Respondent is using the Domain Name to intentionally attempt to attract, for commercial gain, Internet users to his website, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website, in accordance with paragraph 4(b)(iv) of the Policy.

The Complainant further asserts that the Internet Archive records available at www.archive.org for the Domain Name also prove the Respondent's bad faith. The Complainant underlines that the Internet Archive show that on 7 February 2003 the Respondent was using the Domain Name to resolve to a website offering several domain names for sale, including the Domain Name as well as <microsoftco.com>, <microsoftca.com> and <yapikredibank.com>, amongst others. The Complainant asserts that "Yapı Kredi" is also one of the most important banks of Turkey and that this proves that the Respondent is registering domain names to sell them for profit. The Complainant also refers to a second record from the Internet Archive dated 29 January 2011 showing that the Respondent was selling approximately 100 domain names. The Complainant asserts that this also proves the Respondent's bad faith. The Complainant therefore submits that by selling

domain names through the website www.takasbank.com, the Complainant's reputation is being severely harmed and may cause the bank to lose its customers, as it gives the impression to customers that the Complainant is selling domain names

RESPONDENT'S RESPONSE

The Respondent submits that the history of the Complainant is not only irrelevant but also contradictory in terms of its content and may even be considered as evidence of the Respondent's rights in the Domain Name.

The Respondent asserts that he is the manager of Invest Grup Co.Ltd, a company in the business of information technology, website design, hosting, software applications together with web portal development and sales, and Internet advertising since the year 1999. The Respondent asserts that as of the late 1990's he has registered many domain names with the intention to build web operations at the respective domain names. The Respondent asserts that his company has developed and operated one of Turkey's first classified ad websites in the early 2000, followed by firsatyagmuru.com (covering public/private company campaign dates, entry specifications, lottery announcements and results), firsatabak.com (special priced single spot item sales), kentport.com (travel, dining, entertainment sharing), filmkolik.com (movies and theatres, films) towards the mid years of 2000. The Respondent further asserts that this fact may be checked by a background check of these domain names.

The Respondent further asserts that the Domain Name was purchased in the year 1999 with the intention to build one of Turkeys first and foremost "barter" website operations for the public. The Respondent further asserts as follows:

"However, as has been our start up policy on all portal operation projects, while preparing the background details and software for this project, we have also examined 'similar' websites that have acted earlier than us on this particular (sic) subject. Having noticed by the mid 2000's that web based barter operations in Turkey are not receiving the attention, nor providing the turnover expected, we have halted our project preparations but have kept the domain and put it up for sale along with some of our domain investments. [The Domain Name] has thus been put up for sale from time to time since we have made a considerable investment in terms of man hours (let alone the annual renewal fees paid since 1999) and with the possibility of making use of the domain at a later date.

As the economy has become shaky in many parts of the world in the recent years, Turkey has had its fair share of this turmoil, and thus, our board of directors decided in 2015 to suspend quite a number of our web operations mentioned above, keeping a few local oriented operations such as Bodrumdoktor.com, Bodrumilanlar.com, Veterinerbodrum.com, and have put up some of our previously used and non operative domains for sale from time to time in the previous years. This we have done, as it is not forbidden in the domain market to sell any domains by investors/operators/ I.T. companies".

The Respondent further asserts that "We have been approached by many investors regarding all of our domains for sale, including Takasbank, however, our basic business ethic and policy is to sell a previously operated and/or null domain based on the man hour/ financial/ projectual investment made on them. So far, Takasbank has not received any mutually agreeable figure between demanding parties and us. If we cannot sell any one of our domains based on the above policy, we intend to keep them for a possible future use as a 'Business' operation".

The Respondent further asserts that the Complainant's local trade marks were registered on 11 July 2003, whilst the Domain Name was registered on 28 April 1999, by the Respondent, acting as shareholder and manager of Invest Grup Co. Ltd.

The Respondent further states that the name "Takasbank" was and is only known to a small circle of Turkish stock market investors and is not a well-known, famous mark in general. The Respondent also asserts that "Takasbank" is not necessarily a trade name and/or business identifier, as the Complainant deals mainly in stock protection services on behalf of stock market investors. The Respondent further submits that the Complainant's company name has no relevance to the name "Takas" in Turkish, and has been changed twice, once in 2005 and another in 2013 by the Complainant. Finally, the Respondent also asserts that the name "takas" means "barter" in Turkish, and has no relation whatsoever to the Complainant's trade marks.

COMPLAINANT'S UNSOLICITED ADDITIONAL SUBMISSION

In response to the Respondent's assertion that the name "takas" means "barter" in English and has no clear relation to the Complainant, the Complainant underlines that it has several trade mark registrations in class 36 which cover "financial and monetary services". The Complainant also asserts that it has a registered business name for "takasbank" since 1992 for the banking services.

The Complainant further asserts that the Respondent's reasons for registering the Domain Name are further evidence of the Respondent's bad faith. The Complainant asserts that the Respondent is a Turkish citizen and that is active in investment, operating and IT sectors. For these reasons, the Complainant submits that "there is no chance that the Respondent did not hear about the Complainant while having an active business in investment sector". The Complainant also asserts that the Respondent's main business is to register third party domain names and that this is also evidence of the Respondent's bad faith.

RESPONDENT'S REPLY TO COMPLAINANT'S UNSOLICITED ADDITIONAL SUBMISSION

The Respondent asserts the term "barter" indeed has no relevance to banking and or financing in general and is most publicly used for the barter of "goods".

The Respondent further asserts that the Complainant does not have trade mark rights since the early 1990s and that "local" trade mark registrations are insufficient to claim rights on a ".com", ".net", ".org" or any international domain name, registered by its initial owner/registrant.

The Respondent further states the fact that it has other domain names up for sale is irrelevant to the present case. Furthermore, the Respondent underlined that the reason why the domain names have been put up for sale have already been provided in the Respondent's Response.

The Respondent thus asserts that the Complainant's unsolicited additional submission consists of a misleading rewording of the Complainant's original Complaint.

The Respondent also states that he never had the intention to keep the Domain Name but that he decided to put it up for sale to cover the initial man hours plus renewal costs incurred for the project that his company was intending to launch (but that ultimately was not launched given the unprofitable marked conditions for the project).

The Respondent further asserts that the Complainant contacted the Respondent to obtain the transfer of the Domain Name prior to the filing of the Complaint and that the Respondent never said he would not do so as long as he was able to recover the approximate costs involved for the registration of the Domain Name.

Finally, the Respondent asserts that the flexibility shown towards the Complainant regarding the payment of fees after the deadline may be considered as favouritism.

The Panel has accepted the Complainant's and the Respondent's unsolicited submissions in the interest of fairness.

ADDITIONAL SUBMISSION REQUESTED BY THE PANEL

Paragraph 12 of the Rules provides that "in addition to the complaint and the response, the Panel may request, in its sole discretion, further statements or documents from either of the Parties".

On 8 April 2016, the Panel issued a procedural order requesting the Complainant to produce an annex that was meant to be attached to the Complaint but did not appear on the record, namely Annex 2 to the Complaint, which contained the "operation certificate" of the Complainant. The Panel gave the Complainant 7 working days to produce such evidence and gave the Respondent an opportunity to comment specifically in relation to the evidence submitted by the Complainant.

On 11 April 2016, the Respondent supplied an unsolicited submission reproduced as follows:

"We ask that the appointed panelist take note of this important fact in his requirement from complainant. His requirement is as such; To provide "The 'Operation Certificate' of the Complainant is provided as Annex 2".

In our country there is no such document as "an operation certificate", this would only be something the complainant may prepare on their own with any date and with no factual basis, as we may do so also.

What the requirement should be (even though it also does not constitute a basis for the final decision) is the actual "Trademark Certificate" to be provided by the Trademark Institute of the Republic of Turkey before 1999".

On 18 April 2016, the Complainant produced the requested evidence.

On 19 April 2016, the Respondent responded as follows:

"The 'operation documents' provided by the complainant on 18.04.2016 is NOT a trademark certificate (even though even a valid certificate is no longer considered a right to a domain registered by another party..).

What they provided in place of a real Trademark Certificate, is a document provided to any company simply based on their declaration of services, and the complainant allegedly tries to use this in place of an official trademark certificate to divert the opinion of the Arbitrator".

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown that the Domain Name is 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 that the Respondent does not have rights or legitimate interests in respect of the Domain Name (within the meaning of paragraph 4(a)(ii)of the Policy).

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown that the Domain Name has been registered and is 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

Paragraph 4(a) of the Policy provides that to obtain the transfer of the Domain Name, the Complainant must prove the following three elements:

(i) the Domain Name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights;

(ii) the Respondent has no rights or legitimate interests in respect of the Domain Name; and

(iii) the Domain Name has been registered and is being used in bad faith.

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

Furthermore, paragraphs 10(b) and 10(d) of the Rules provide that the Panel shall ensure that the parties are treated with equality and shall determine the admissibility, relevance, materiality, and weight of the evidence.

Paragraphs 10(a) and 10(c) of the Rules also provide that the Panel shall conduct the administrative proceeding in such manner as it considers appropriate in accordance with the Policy and these Rules and shall ensure that the administrative proceeding takes place with due expedition.

Taking the aforementioned provisions into consideration, the Panel finds as follows:

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires the Panel to consider first whether the Complainant has established relevant trade mark rights. The Complainant is the registered owner of several trade mark registrations in the term TAKASBANK. The Panel is therefore satisfied that the Complainant has established trade mark rights in the term TAKASBANK.

For the sake of completeness, it should be noted that the fact that the Complainant's trade marks post-date the registration date of the Domain Name and are from Turkey is irrelevant, as paragraph 4(a)(i) of the Policy does not require a complainant to demonstrate prior rights in a particular jurisdiction, only that it has trade mark rights in a name that is identical or confusingly similar to the disputed domain name. See paragraph 1.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Second Edition ("WIPO Overview 2.0"), available at http://www.wipo.int/amc/en/domains/search/overview2.0 ("If the complainant owns a trademark, then it generally satisfies the threshold requirement of having trademark rights. The location of the trademark, its date of registration (or first use) [see also paragraph 1.4 below], and the goods and/or services for which it is registered, are all irrelevant for the purpose of finding rights in a trademark under the first element of the UDRP. However, such factors may bear on a panel's determination whether the respondent has registered and used the domain name in bad faith under the third element of the UDRP."). Furthermore, the first requirement under the Policy is a low-threshold requirement that serves essentially to determine whether a complainant has a bona fide basis to bring a case and so, given the Complainant's trade mark registrations, there is no doubt in the Panel's mind that the Complainant meets this threshold.

The Panel is also required under paragraph 4(a)(i) of the Policy to examine whether the Domain Name is identical or confusingly similar to the Complainant's trade mark. The Domain Name incorporates the Complainant's TAKASBANK trade mark in its entirety. Prior panels deciding under the Policy 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.

It is well established that the top-level suffix ".com" is generally disregarded under the identity or confusing similarity test as it is a functional element.

The Panel therefore finds that the Domain Name is identical to the Complainant's TAKASBANK trade mark.

The Complainant has therefore satisfied paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Paragraph 4(a)(ii) of the Policy requires the Complainant to demonstrate that the Respondent has no rights or legitimate interests in the Domain Name. Paragraph 4(c) of the Policy sets out a list of non-exhaustive circumstances that may suggest that a respondent has rights or legitimate interests in a domain name, including but not limited to:

"(i) before any notice to you of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or

(ii) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have

acquired no trademark or service mark rights; or

(iii) you are making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue."

Paragraph 2.1 of the WIPO Overview 2.0, supra, provides that "While the overall burden of proof rests with the complainant, panels have recognized that this could result in the often impossible task of proving a negative, requiring information that is often primarily within the knowledge of the respondent. Therefore a complainant is required to make out a 'prima facie' case that the respondent lacks rights or legitimate interests. Once such 'prima facie' case is made, the burden of production shifts to the respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the domain name. ... If the respondent does come forward with some allegations or evidence of relevant rights or legitimate interest, the panel then weighs all the evidence, with the burden of proof always remaining on the complainant".

Based on the arguments and evidence put forward by the Parties, the Panel finds that the Complainant has made a prima facie showing that the Respondent lacks rights or legitimate interests in the Domain Name and that the Respondent has failed to rebut such a showing.

The Respondent's use of the Domain Name to offer it for sale on the associated website cannot constitute a bona fide offering of goods or services. As discussed in more detail below, the Panel is persuaded that, on balance, the Respondent registered the Domain Name while being aware of the Complainant's rights in the term TAKASBANK, which is a term that, although consists of two common terms, "takas" ("barter" in English) and "bank", does not seem to have any other meaning except in relation to the Complainant. However, even if the Domain Name could be said to be comprised of common or dictionary terms, which may be generic with respect to certain goods or services, prior panels deciding under the Policy have held that the mere registration of a domain name consisting of common or dictionary terms does not automatically confer rights or legitimate interests in the domain name in question: "Normally, in order to find rights or legitimate interests in a domain name based on the generic or dictionary meaning of a word or phrase contained therein, the domain name would need to be genuinely used or at least demonstrably intended for such use in connection with the relied-upon meaning (and not, for example, to trade off third-party rights in such word or phrase)". See paragraph 2.2 of the WIPO Overview 2.0, supra.

Taking the above into account, there is no evidence on record to support the Respondent's claim that he acquired the Domain Name with the intention of using it in connection with its "generic" meaning (i.e. to building a "barter" website). The only evidence on record consists of the Respondent's offer to sell the Domain Name on the associated website and such use of the Domain Name by itself is insufficient to give rise to rights or legitimate interests. See Educational Testing Service v. TOEFL, WIPO Case No. D2000-0044 (<toefl.com>) ("the Respondent’s offering of 'toefl.com' for sale at 'tourdomain.com' does not, standing alone, establish a right or legitimate interest in that domain name") and Dollar Bank, Federal Savings Bank v. Paul Stapleton, The New Media Factory, WIPO Case No. D2016-0518 (<dollarbankers.com>).

There is no evidence that the Respondent is commonly known by the Domain Name. Neither can the Respondent's use of the Domain Name to resolve to a website offering the Domain Name for sale be considered a legitimate non-commercial or fair use of the Domain Name.

The Complainant has therefore satisfied paragraph 4(a)(ii) of the Policy.

C. Registration and Use in Bad Faith

Paragraph 4(b) of the Policy sets out a non-exhaustive list of circumstances that may indicate that the Domain Name was registered and used in bad faith, including but not limited to:

"(i) circumstances indicating that [the respondent has] registered or acquired a disputed domain name primarily for the purpose of selling, renting, or otherwise transferring the disputed domain name to the complainant or to a competitor of the complainant, for valuable consideration in excess of [the respondent's] documented out-of-pocket costs directly related to the disputed domain name; or

(ii) [the respondent has] registered the disputed domain name in order to prevent the complainant from reflecting the complainant's trade mark or service mark in a corresponding domain name, provided that [the respondent has] engaged in a pattern of such conduct; or

(iii) [the respondent has] registered the disputed domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the disputed domain name, [the respondent has] intentionally attempted to attract, for commercial gain, Internet users to [the respondent's] website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of [the respondent's] website or location or of a product or service on [the respondent's] website or location".

The Respondent's main defence is that the Complainant's trade marks were registered after the Domain Name was registered. As a general rule, a domain name registered before the relied-upon trade mark would not have been acquired in bad faith because the registrant could not have contemplated the existence of the complainant's rights. However, there are exceptions to the rule and bad faith can be found in such cases where the respondent is clearly aware of the complainant's rights (or potential rights). See paragraph 3.1 of the WIPO Overview, supra.

In this case, the Panel is of the view that, on balance, the Respondent was likely aware of the Complainant's rights at the time of registration of the Domain Name. First of all, it should be noted that the Complainant's rights in the term TAKASBANK did not arise as of the date of registration of the Complainant's trade marks with the Turkish Patent Institute in 2004 but rather significantly prior to that date as a result of the Complainant's use of the term in connection with its finance-related activities. Indeed, there is evidence on record that the Complainant began its business activities in 1991 (albeit using a different name) and began trading under the name "Takasbank" prior to the registration date of the Domain Name in 1999 (despite the fact that the Complainant has been inconsistent as to the exact date). This is strongly suggested by the fact that the Complainant registered the domain name <takasbank.com.tr> under the .TR extension for Turkey in mid-1998, and that it was immediately used (as shown by the record on the Internet Archive) to promote the Complainant's finance-related services. The information appearing on the Complainant's official website at 'www.takasbank.com.tr', including its Annual Report for 1999 (where it is stated that the Complainant began using the name "Takasbank" in 1996) also confirms this.

The Respondent has not denied knowledge of the Complainant's existence at the time of registration of the Domain Name but has rather argued that the Complainant is only known to a small circle of Turkish stock market investors and is not well-known in general. However, for the purposes of the Policy, it is not necessary for a complainant to demonstrate that it was well-known at the time of registration of the Domain Name but rather that it was likely known by the Respondent at this time. Given that the Respondent is based in Turkey, where the Complainant operates its business, together with the fact that the Respondent appears to be in the business of acquiring and selling domain names (having also registered a number of banking and finance-related domain names, as shown by the screen captures of the Domain Name in the Internet Archive), the Panel is convinced, on balance, that the Respondent was aware of Complainant's existence at the time of registration and acquired the Domain Name to take advantage of the Complainant's rights. The Panel therefore finds that the Respondent registered the Domain Name in bad faith.

Given the Respondent's awareness of the Complainant's rights at the time of registration of the Domain Name, the Respondent's use of the Domain Name to resolve to a website offering the Domain Name for sale constitutes, in the particular circumstances of this case, evidence that the Respondent registered the Domain Name primarily for the purpose of selling it to the Complainant or one of its competitors for valuable consideration in excess of the Respondent's documented out-of-pocket costs directly related to the Domain Name, in accordance with paragraph 4(b)(i) of the Policy. Whilst the practice of acquiring and selling domain names for profit is not in itself illegitimate, it is so when the domain name in question is identical or confusingly similar to a trade mark and there is evidence that, as in the present case, it was acquired to take advantage of its trade mark value.

The Panel is also of the view that paragraph 4(b)(ii) of the Policy is satisfied, namely that the Respondent registered the

Domain Name in order to prevent the Complainant from reflecting its trade mark in the corresponding domain name and that the Respondent has engaged in a pattern of such conduct. As shown by the evidence on the Internet Archive, the Respondent was previously using the Domain Name to resolve to a website offering domain names for sale, including the Domain Name as well as a number of other domain names infringing well-known third party trade marks, such as <microsoftco.com> (offered for $ 50.000), <microsoftca.com> (offered for $ 50.000) and <microsoftee.com> (offered for $ 40.000) as well as a number of domain names reproducing the names of well-known banks in Turkey and in other countries, such as <yapikredibank.com> and <bankmilennium.com>. The Respondent's pattern of abusive domain name registrations is therefore, contrary to the Respondent's contention, relevant to this case, as it serves as a strong indication of the Respondent's bad faith in the present case. See WGZ-Bank Westdeutsche Genossenschafts-Zentralbank eG. v. Xuhui, Dai-Wn-Bgag, WIPO Case No. D2001-0925 (<wgz-bank.com>)(finding that "the registration by the Respondent of other well-known trademarks of banks demonstrates a pattern of such conduct. These circumstances are evidence of both bad faith registration and bad faith use under paragraph 4(b)(ii) of the Policy").

The Panel therefore finds that the Respondent has registered and is using the Domain Name in bad faith.

The Complainant has therefore satisfied 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. **TAKASBANK.COM**: Transferred

## PANELLISTS

| Name | **David Taylor** |
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DATE OF PANEL DECISION 2016-05-07

Publish the Decision