Decision for dispute CAC-UDRP-102451

Case number	CAC-UDRP-102451
Time of filing	2019-04-17 09:05:54
Domain names	financo-bk.com

Case administrator

Organization	Iveta Špiclová (Czech Arbitration Court) (Case admin)

Complainant

Organization	FINANCO

Complainant representative

Organization	Nameshield (Enora Millocheau)

Respondent

Organization	ADOC CONPANY

OTHER LEGAL PROCEEDINGS

There are no other legal proceedings related to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant asserts rights in the FINANCO trademark based on its ownership of the following French Registered Trademarks:

PREFERENCE FINANCO registration 3385073 registered on 11 October 11 2005 in class 36 for financial-related services;

FINANCO registration number 3747380 registered on 18 June 2010 in class 36 for financial-related services;

E-COFFRE FINANCO® n°3752546 registered since 9 July 2010, notably in class 36 for financial-related services.

FACTUAL BACKGROUND

In the absence of a Response or other communication from the Respondent, the factual background is that provided by the uncontested information provided in by the Complainant.

The Complainant was founded in 1986, FINANCO is a financial company that manufactures and distributes financial solutions.

The Complainant is the owner of the following French registered trademarks:

PREFERENCE FINANCO registration 3385073 registered on 11 October 11 2005 in class 36 for financial-related services;

FINANCO registration number 3747380 registered on 18 June 2010 in class 36 for financial-related services;

E-COFFRE FINANCO® n°3752546 registered since 9 July 2010, notably in class 36 for financial-related services.

The Complainant is also the owner of the Internet domain names <financo.fr> which it registered and has used since 18 March 1998 and <financo.eu> which it registered and has used since 20 March 2006.

The disputed domain name <financo-bk.com> was registered on 7 March 2019 and resolves to a website offering financial services such as online banking and professional loan.

PARTIES CONTENTIONS

No administratively compliant Response has been filed. The Complainant argues that the Respondent does not have any rights or legitimate interest in the disputed domain name and argues that according to Croatia Airlines d.d. v. Modern Empire Internet Ltd. WIPO Case No. D2003-0455, a complainant is required to make out a prima facie case that the respondent lacks rights or legitimate interests in the disputed domain name and once such prima facie case is made, respondent carries the burden of demonstrating such rights or legitimate interests.

The Complainant submits that the Respondent is not commonly known by the disputed domain name and cites decisions of previous panels that have made this finding where the WHOIS information was not similar to the disputed domain name viz. Broadcom Corp. v. Intellifone Corp. FORUM Case No. FA 96356 where the panel stated that the Respondent has “no rights or legitimate interests because the respondent is not commonly known by the disputed domain name or using the domain name in connection with a legitimate or fair use”.

The Complainant asserts that the Respondent is not affiliated with the Complainant in any way; does not carry out any activity for or have any business with the Respondent; has not been licensed or authorized to make any use of the FINANCO trade mark or to apply for registration of the disputed domain name by the Complainant.

Moreover, the website in relation with the disputed domain name <financo-bk.com> offers financial services, particularly online banking services and professional loans which are highly similar to the services provided by the Complainant. Past panels have held that using a domain name to offer related services to that of a complainant is not a use indicative of rights or legitimate interests. Citing General Motors LLC v. MIKE LEE NAF Case No. FA 1659965, (“Past panels have decided that a respondent’s use of a domain to sell products and/or services that compete directly with a complainant’s business does not constitute a bona fide offering of goods or services pursuant to Policy paragraph 4(c) (i) or a legitimate noncommercial or fair use pursuant to Policy paragraph 4(c)(iii).”).

The Respondent identifies itself as a bank registered in Malta”. The Complainant submits that an Internet search for this address leads to another financial website, operated by the company registered under the same number and at the same address which is registered in the Malta Bankers’ Association.

The Complainant submits that the disputed domain name has been registered and is being used in bad faith arguing that the registrant had constructive knowledge/prior knowledge of the potential rights of the Complainant and is being used to attract Internet users for commercial gain by creating a likelihood of confusion with the Complainant.

The Complainant argues that the disputed domain name was registered many years after Complainant had registered it. Moreover, the word "financo" has no meaning in any language. Finally, the Respondent choose to associate the term “financo” with the abbreviation “bk”, for “bank”.

Besides, the disputed domain name redirects to a website providing financial services such as professional loans, which are highly similar to the services offered by the Complainant and the services covered by its trademarks, registered in class 36 for financial related services. Thus, the Respondent could not have ignored the Complainant's trademark FINANCO at the moment of registration of the disputed domain name <financo-bk.com>, which cannot be a coincidence.

The Complainant submits that by using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its 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 the Respondent's website or location or of a product or service on the respondent's website or location, as mentioned by Policy paragraph 4(b) (iv).

The Complainant further submits that the disputed domain name was registered and is being used to profit from the Complainant's mark by attracting Internet users to its competing website which is evidence of bad faith.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed 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 the Respondent to have no rights or legitimate interests in respect of the disputed 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 the disputed 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

The Complainant has provided evidence of its ownership of the name and mark FINANCO through its ownership of the above-referenced French trademarks, the use of its corporate name in in the financial services industry inter alia though its established web presence using the domain names <financo.fr> and <financo.eu> since 1998 and 2006 respectively.

This Panel accepts the Complainant's submissions that the disputed domain name is confusingly similar to the Complainant's FINANCO trademark as it contains the Complainant's trademark in its entirety; neither the addition of the letters "bk" which is likely in the context to be taken as an abbreviation for the word "bank" nor the hyphen serve to distinguish the disputed domain name from the FINANCO mark; and in the context of the present Complaint, the gTLD ".com" extension may be disregarded for the purpose of the similarity test under the Policy.

The Complainant has therefore satisfied the first element of the test in paragraph 4(a)(i) of the Policy.

This Panel also accepts the Complainant's submission that once it has made out a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name the burden of demonstrating such rights or legitimate interests shifts to the Respondent.

The Complainant has made out such a prima facie case arguing that the Respondent is not commonly known by the disputed domain name; the Respondent is not in any way affiliated with the Complainant which is the owner of the FINANCO trademark; the Respondent does not carry out any activity for or have any business with the Respondent; the Respondent has not been licensed or authorized to make any use of the FINANCO trademark or to apply for registration of the disputed domain name by the Complainant; and the website to which the disputed domain name resolves purports to offer financial

services, specifically online banking services and professional loans which are highly similar to the services provided by the Complainant.

In the circumstances the burden of production shifts to the Respondent and since the Respondent has failed to file any response it has failed to discharge the burden. In the circumstances the Complainant is entitled to succeed in the second element of the test in paragraph 4(a)(ii) of the Policy.

This Panel furthermore finds that on the balance of probabilities the disputed domain name was registered and is being used in bad faith. Even if the registrant of the disputed domain name was not actually aware of the Complainant's French registered trademarks, it is highly improbable that when disputed domain name was registered on 7 March 2019, the registrant was unaware of the Complainant which has carried on business with an Internet presence using the Internet domain names <financo.fr> since 18 March 1998 and <financo.eu> since 20 March 2006.

Furthermore the disputed domain name redirects to a website providing financial services such as professional loans, which are highly similar to the services offered by the Complainant and the services covered by the its trademarks, registered in class 36 for financial related services.

In the absence of any response or other explanation, and in the circumstances set out in the Complaint, this Panel finds that on the balance of probabilities the Respondent is intentionally attempting to attract, for commercial gain, Internet users to its 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 the Respondent's website or location or of a product or service on the Respondent's website or location, as mentioned by Policy paragraph 4(b) (iv).

This Panel finds therefore on the balance of probabilities that the disputed domain name has been registered and is being used in bad faith.

The Complainant has therefore succeeded in the third and final element of the test in paragraph 4(a)(iii) of the Policy and is entitled to reliefs sought in the Complaint.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **FINANCO-BK.COM**: Transferred

PANELLISTS

Name	**James Bridgeman**

DATE OF PANEL DECISION 2019-05-22

Publish the Decision