Decision for dispute CAC-UDRP-103192

Case number	**CAC-UDRP-103192**
Time of filing	**2020-07-24 09:17:27**
Domain names	**borbank.com**

Case administrator

Name	**Šárka Glasslová (Case admin)**

Complainant

Organization	**BforBank**

Complainant representative

Organization	**Nameshield (Laurent Becker)**

Respondent

Organization	**mlk**

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other proceedings, pending or decided, which relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of the registered trademark 'BFORBANK', such as the European trademark no 8335598 registered since 2009-06-06 in various classes of goods and services.

The Complainant also owns a number of domain names, including the same distinctive wording 'BFORBANK', such as the domain name <bforbank.com>, registered since 2009-01-15.

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:

BforBank is an online bank launched in October 2009 by the Crédit Agricole Regional Banks. BforBank offers daily banking, savings, investment and credit (consumer and real estate) services.

The Complainant's trademark 'BFORBANK' and domain name <bforbank.com> predate the disputed domain name <borbank.com>, which was registered on 2020-06- 08 and redirects to a French website offering competing services to that of the Complainant. The website displays no information about the Respondent or any information about BOR BANK.

The Respondent is referenced in the blacklist of entities alleged to be fraudulently offering credits, passbooks, payment services or insurance contracts. See <https://www.abe-infoservice.fr>.

PARTIES CONTENTIONS

1. Administrative Deficiencies

By notification dated 2020-07-27 and in accordance with Paragraph 4(d) of the Rules, the CAC notified the Complainant that it was administratively deficient in that it had not sufficiently identified the Respondent and the Registrar.

On 2020-07-27, the CAC notified the Complainant of the Registrar's Verification concerning the disputed domain name; and also requested the Complainant correct the administrative deficiency and submit an Amended Complainant.

On 2020-07-27 the Complainant filed an Amended Complaint and 2020-07-27 the CAC determined that the Complaint could proceed by way of Administrative Proceeding.

The Panel considers that the administrative deficiency has now been corrected with the identification of the domain name holder as the proper Respondent.

2. Notification of proceedings to the Respondent and Failure to respond

On 2020-08-30 the Case Administrator of CAC notified the Respondent that as there had been no administratively compliant response submitted that the CAC would proceed to appoint a Panel to decide on the Complaint and to draw such inferences from the Respondent's default as the Panel considered appropriate.

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 and accordingly, this matter can proceed to be considered by the Panel in accordance with the Policy and the Rules.

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

A. Introduction

This is a Mandatory Administrative Proceeding under paragraph 4 of the Uniform Domain Name Dispute Policy (Policy or UDRP) of the Internet Corporation for Assigned Names and Numbers (ICANN), and the Procedural Rules for Uniform Domain Dispute Resolution (Rules) including the Czech Arbitration Centre (CAC) UDRP Supplementary Rules.

B. Substantive Matters

The Complainant has filed a complaint with supporting evidence disputing the registration of the domain name <borbank.com> (disputed domain name) by the Respondent.

The disputed domain name was registered on 2020-06-08.

The Respondent has not filed any administratively compliant response or any materials in response to the Complaint by the deadline set out under the Rules.

Paragraph 15(a) of the Rules provides:

A Panel shall decide a complaint based on the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable.

Accordingly, the Complainant carries the onus to prove its case.

Paragraph 4(a) of the Policy lists three elements that the Complainant must prove to merit a finding that the disputed domain name registered by the Respondent be transferred to the Complainant:

(i) The disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and

(ii) The Respondent has no right or legitimate interests in respect of the disputed domain name; and

(iii) The disputed domain name has been registered and is being used in bad faith.

The Panel is satisfied the Complainant has satisfied all three elements for the principal reasons set out below.

Taking each of these elements in turn:

PARAGRAPH 4(a)(i) - RIGHTS IN AN IDENTICAL OR CONFUSINGLY SIMILAR TRADEMARK

To prove this element, the Complainant must have trademark rights and the disputed domain name must be identical or confusingly similar to the Complainant’s trademark.

The Complainant has adduced evidence that it is the owner of the relevant trademark and domain name set out in the Identification of Rights section above.

The Panel notes that the Complainant’s trademark and domain name predate the registration of the disputed domain name.

The Complainant contends that the disputed domain name is confusingly similar to the Complainant’s trademark ‘BFORBANK’ as follows:

- The omission of the letter “F” in the trademark ‘BFORBANK’ is not sufficient to escape the finding that the domain name is confusingly similar to the trademark and branded goods ‘BFORBANK’.
- The case is one of "typosquatting“, i.e. the disputed domain name contains an obvious misspelling of the Complainant’s trademark ‘BORBANK’ instead of ‘BFORBANK’. The Complainant cites Microsoft Corporation v. X-Obx Designs <xobx.com>

WIPO Case No. D2003-0093 in support of this contention.
- The generic Top-Level Domain suffix ".COM" does not change the overall impression of the designation as being connected to the trademark of the Complainant. It does not prevent the likelihood of confusion between the disputed domain name and the Complainant, its trademark and its domain name associated.

On the evidence adduced by the Complainant as to the extensive use of its trademark 'BFORBANK' in France, the Complainant enjoys a high degree of reputation.

Although no evidence of actual confusion has been provided by the Complainant, the Panel, having reviewed the evidence of reputation in support of the Complainant's case, is satisfied that the disputed domain name is likely to cause confusion amongst Internet users given the nature and wide use of the Complainant's trademark in the classes of goods or services in which they are registered, ie banking services.

This is bolstered by the Complainant's evidence of redirection of internet traffic from the disputed domain name to the French website promoting and offering similar services to that offered by the Complainant.

The Panel therefore considers that the omission of the letter "F" is likely to create the impression to a user of the Complainant's domain name <bforbank.com> that the disputed domain name is associated with or connected to the Complainant. It is therefore confusingly similar to the Complainant's trademark 'BFORBANK' and its domain name <bforbank.com>.

Additionally, the Panel considers the suffix '.COM' to be irrelevant when assessing whether a domain name is identical or confusingly similar to a trademark. This is because gTLDs are only required for the functionality of a website.

Accordingly, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark and that paragraph 4(a)(i) of the Policy is satisfied.

PARAGRAPH 4(a)(ii) - NO RIGHTS OR LEGITIMATE INTERESTS

The burden of proof is on the Complainant to establish that the Respondent lacks rights or legitimate interests in the disputed domain name.

Under the Policy, if a prima facie case is established by the Complainant, then the burden of production of evidence shifts to the Respondent to demonstrate that it has rights or legitimate interests in the disputed domain name. See Document Technologies, Inc. v. International Electronic Communications Inc., WIPO Case No. D2000-0270; Belupo d.d. v. WACHEM d.o.o., WIPO Case No. D2004-0110; Croatia Airlines d. d. v. Modern Empire Internet Ltd, WIPO Case No. D2003-0455; Audi AG v. Dr. Alireza Fahimipour, WIPO Case No. DIR2006-0003.

The Complainant advances several contentions in support of this ground:

(a) The Respondent is not known as the disputed domain name. The WHOIS information is not similar to the disputed domain name.

(b) The Complainant has not granted the Respondent any authorization nor licence to make use of the Complainant's trademark 'BFORBANK' nor to apply for registration of the disputed domain name.

(c) The Respondent is not making a legitimate non-commercial or fair use of the disputed domain name as it is redirected by the Respondent to a French website offering competing services to that of the Complainant.

As the Respondent has failed to submit any administratively compliant response nor attempt to demonstrate any rights or legitimate interests in the disputed domain name, the Panel accepts the Complainant's contentions.

The Panel accepts the uncontroverted evidence that the use of the disputed domain name suggests that the Respondent intended to trade upon the Complainant's trademark by intentionally attempting to mislead Internet users as to the source or affiliation of its website. The subtle omission of the letter "F" is likely to cause a user to mistakenly believe that the disputed domain name and the Complainant's domain name are the same. Any form of typosquatting of a registered trademark ought to be viewed, at first instance, as an unlawful use of the domain name contrary to the rights of a registered trademark owner especially when there is no evidence of legitimate use being adduced by a respondent. The Panel accepts the Complainant's contention that typosquatting can be evidence that a respondent lacks rights and legitimate interest in the domain name. See Microsoft Corp. v. Domain Registration Philippines, FORUM Case No. FA 877979.

The Panel is therefore prepared to draw an adverse inference from the Respondent's failure to respond, in accordance with paragraph 14(b) of the Rules.

The Panel finds that:

- In respect to (a) above, the Panel accepts the Complainant's contention that the Respondent is not commonly known by the disputed domain name. The WHOIS database evidence provided by the Complainant does not identify the Respondent as the disputed domain name.
- In respect to (b) above, the Panel accepts that the Complainant did not grant the Respondent any authorization nor licence to use the Complainant's trademark or to apply for the registration of the disputed domain name.
- In respect to (c) above, the Panel accepts, on its face, the Respondent is not making a legitimate non-commercial or fair use of the disputed domain name.

By the lack of any administratively compliant 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 disputed domain name and that paragraph 4(a)(ii) of the Policy is satisfied.

Accordingly, any use by the Respondent of the disputed domain name is not authorized and therefore likely to be an infringement of the Complainant's legal rights.

PARAGRAPH 4(a)(iii) - BAD FAITH

For the purposes of paragraph 4(a)(iii), paragraph 4(b) of the Policy states that any of the following circumstances shall be considered evidence of the registration and use of a domain name in bad faith:

(i) circumstances indicating that the respondent has registered or has acquired the disputed domain name primarily for the purpose of selling, renting, or otherwise transferring the disputed domain name registration to the complainant who is the owner of the trademark or service mark to a competitor of that 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 owner of the trademark or service mark from reflecting the 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 web site or other on-line location, by creating a likelihood of confusion with the complainant's trademarks as to the source, sponsorship, affiliation, or endorsement of the respondent's web site or location or of a product or service on the respondent's web site or location.

The Complainant advances several contentions in support of this ground:

(a) The disputed domain name is being used in bad faith as it creates confusion with the Complainant's domain name given that the misspelling in the disputed domain name by the omission of the letter "F".
(b) The website linked to the disputed domain name indicates that the Respondent's activity takes place in France; the content of its website is in the French language; the website offers competing services to that offered by the Complainant; and the Respondents is on a blacklist of entities allegedly involved in fraudulently offering credits, passbooks, payment services or insurance contracts.
(c) Given the distinctiveness of the Complainant's trademark and reputation in France, the disputed domain name was registered in bad faith with full knowledge of the Complainant's trademark, and it is inconceivable that the Respondent registered the disputed domain name without actual knowledge of the Complainant's rights in its trademark.

The Panel notes two significant matters raised by the Complainant that it considers highly persuasive and adversely prejudicial to the Respondent:
1. The Respondent is referenced on a blacklist of entities allegedly engaged in fraudulent activities. These are very serious allegations that the Respondent has chosen not to refute by its administrative non-compliance to the Amended Complaint.
2. The Respondent's use of the disputed domain name to offer competing products to that of the Complainant. By the Respondent's failure to refute the very serious allegation of fraudulent activities, the Panel is prepared to draw the inference that the disputed domain name is likely being used for the purposes of implementing the alleged fraudulent activities, and accordingly find that the use of the disputed domain name was in bad faith.

Accordingly and in all the circumstances by reference to the evidence submitted by the Complainant and the inferences to be drawn from the Respondent's failure to submit an administratively compliant response, the Panel considers that the registration and use of the disputed domain name was in bad faith, and paragraph 4(a)(iii) of the Policy is satisfied.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **BORBANK.COM**: Transferred

PANELLISTS

Name	**Adjunct Prof William Lye, OAM QC**

DATE OF PANEL DECISION 2020-08-30

Publish the Decision