

Decision for dispute CAC-UDRP-105171

Case number	CAC-UDRP-105171
Time of filing	2023-02-02 08:36:50
Domain names	bforbank.live, bforbank.site

Case administrator

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

Organization	BFORBANK
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Complainant representative

Organization	NAMESHIELD S.A.S.
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Respondent

Name	Andre Spence
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OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

The Complainant is the owner of European trademark BFORBANK, n° 8335598 registered since June 2, 2009.

FACTUAL BACKGROUND

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 disputed domain names <bforbank.live> and <bforbank.site> were registered on January 26, 2023.

PARTIES CONTENTIONS

COMPLAINANT:

The Complainant contends that the requirements of the Policy have been met and that the disputed domain name should be

transferred to it.

RESPONDENT:

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed 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 disputed 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 disputed 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

1. The disputed domain names are confusingly similar to Complainant's trade mark. The disputed domain names are identical to Complainant's trade mark BFORBANK and its domain names associated. The disputed domain names include the trade mark in its entirety.

The addition of the New generic Top-Level Domain suffix ".LIVE" or ".SITE" does not change the overall impression of the designations as being connected to the trademark BFORBANK. It does not prevent the likelihood of confusion between the disputed domain names and the Complainant, its trademark and its domain names associated. (see WIPO Case No. D2006-0451, F. Hoffmann-La Roche AG v. Macalve e-dominios S.A. ("It is also well established that the specific top level of a domain name such as ".com", ".org" or ".net" does not affect the domain name for the purpose of determining whether it is identical or confusingly similar.")).

2. No rights or legitimate interests of the Respondent

The onus to make out a prima facie case that the Respondent lacks rights or legitimate interests is placed on the Complainant.

According to the WIPO Case No. D2003-0455, Croatia Airlines d.d. v. Modern Empire Internet Ltd., the 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 Respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(a) (ii) of the Policy.

However, once prima facie case is made, the Respondent carries the burden of demonstrating rights or legitimate interests in the disputed domain name. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(a) (ii) of the Policy. The Respondent did not file any response in this administrative proceedings.

Complainant has put forward that the Respondent is not affiliated with nor authorized by SA BFORBANK in any way. The Complainant has put forward that the Respondent has no rights or legitimate interests in respect of the disputed domain names.

Complainant has put forward that the Respondent does not carry out any activity for, nor has any business with the Respondent.

Complainant has put forward that no authorization has been granted to the Respondent to make any use of the Complainant's trademarks, or apply for registration of the disputed domain names.

Complainant and the Respondent have never had any previous relationships, nor has the Complainant ever granted the Respondent with any rights to use the BFORBANK trade mark in any forms, including the disputed domain names.

Complainant has put forward that the disputed domain name <bforbank.live> points to a parking page with commercial links related to the Complainant's activities.

Complainant has put forward that the disputed domain name <bforbank.site> resolves to a website written in French providing information regarding financial analysis, which is closely related to the financial services provided by the Complainant. This contributes to the likelihood of confusion since Complainant's business is also providing financial services.

The Panel holds that the use of the disputed domain names and the use of the website is infringing the Complainant's trade mark rights and could potentially phish for users' data and lead to trademark tarnishment.

3. The disputed domain names were registered and are being used in bad faith

i. The disputed domain names were registered in bad faith

It should be highlighted that Complainant's trade mark registration predates the registration of the disputed domain names and the Respondent have never been authorized by the Complainant to register the disputed domain names. Although Complainant has put forward that its trade mark BFORBANK has established distinctiveness and a strong reputation, this argument is rejected by the Panel, because it is not substantiated with underlying evidence. In view of the overall composition of the disputed domain names, and with regards to the disputed domain name <bforbank.site> using the term "BFORBANK" in connection with financial services which is closely related to the Complainant and its business activities, it follows that the combination of the trade mark BFORBANK in the disputed domain name <bforbank.site> and its correlated domain name <bforbank.live> is also owned by Respondent is a deliberate and calculated attempt to improperly benefit from the Complainant's rights and reputation and therefore:

Considering the fact that:

- The Respondent very likely knew about the Complainant and its trade mark;
- The Complainant's trademark is a registered EU trade mark;
- The Respondent has failed in presenting a credible evidence-backed rationale for registering the disputed domain names.

The disputed domain names shall be deemed as registered in bad faith.

ii. The disputed domain names are being used in bad faith

By using the disputed domain names, the Complainant contends that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its 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, as mentioned by Policy, paragraph 4(b) (iv).

UDRP panels have categorically held that registration and use of a domain name for illegal activity – including impersonation, passing off, and other types of fraud – is manifestly considered evidence of bad faith within paragraph 4(b)(iv) of the Policy.

See in Forum Case No. 94864, Southern Exposure v. Southern Exposure, Inc. where the Panel held that the Respondent is using the domain name to attract Internet users to its website by creating confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Complainant's website. The Respondent registered and used the domain name in question to profit from the Complainant's mark by attracting Internet users to its competing website. This is evidence of bad faith.

In terms of paragraph 4(b)(iv) of the Policy, the above facts demonstrate the Respondent's use of the disputed domain names in bad faith, despite the fact that the Complainant has not given proof of distinctiveness nor a strong reputation. The disputed domain names are clearly registered and used for commercial gain, thus in bad faith. The website on disputed domain name <bforbank.site> shows in French that they explain basics of financial analysis (l'analyse financière) followed by a clickable link to their terms & conditions. The use of terms & conditions is an indicator for entrepreneurship. This misleadingly raises confusion since BFORBANK is active as financial service provider. The Respondent has no legitimate interest in using the identical name as the trade mark in its domain name other than creating confusion.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **bforbank.live**: Transferred
 2. **bforbank.site**: Transferred
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PANELLISTS

Name **Gie Van den Broek**

DATE OF PANEL DECISION **2023-03-03**

Publish the Decision
