Decision for dispute CAC-UDRP-105198

Case number	CAC-UDRP-105198
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Domain names	bf-bank.com

Case administrator

Name	Olga Slanařová (Case admin)

Complainant

Organization	BFORBANK

Complainant representative

Organization	NAMESHIELD S.A.S.

Respondent

Name	Obada Alzatari

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 name.

IDENTIFICATION OF RIGHTS

The Complainant, BFORBANK, is the owner of several trademarks BFORBANK, such as the European trademark n° 8335598 registered since June 2, 2009. The Complainant also owns a number of domain names, including the same distinctive wording BFORBANK, such as the domain name <bforbank.com>, registered since January 16, 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 name <bf-bank.com> was registered on December 23, 2022, and redirects to a parking page with commercial links related to the Complainant's activities and offering the domain name for sale for 9888 USD.

PARTIES CONTENTIONS

ARGUMENTS OF THE COMPLAINANT:

The Complainant submits that the disputed domain name <bf-bank.com> is confusingly similar to its trademark BFORBANK. It argues that the substitution of the letters “OR” by the hyphen 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.

It further contends that this is a clear case of "typosquatting“, i.e. that the disputed domain name contains an obvious misspelling of the Complainant’s trademark: BF-BANK instead of BFORBANK. The Complainant further goes on to state that the disputed domain name incorporates six letters of the Complainant's trademark and contains sufficiently recognisable aspects of the Complainant’s trademark to give rise to confusing similarity. The Complainant asserts that the pronunciation of the disputed domain and the Complainant’s trademark is the almost the same as the absence of the letters “O” and “R” does not alter the pronunciation of the trademark BFORBANK.

The Complainant cites previous panel decision which state that “The use of an abbreviation of the trade mark does not in the circumstances of this case sufficiently distinguish the resulting domain name from the Complainant’s trade mark and does not avoid confusing similarity between the Complainant’s trade mark and the disputed domain name” quoting CAC Case No. 104430, BOURSORAMA SA v. Jean Valjean.

Moreover, it puts forward that previous panels have found that the slight spelling variations does not prevent a disputed domain name from being confusing similar to the Complainant’s trademark and refers to WIPO Case No. D2003-0093, Microsoft Corporation v. X-Obx Designs <xobx.com> (“Typographical error variations and misspellings of trademarked terms have long been found to be confusingly similar.”).

Besides, the Complainant contends that the addition of the generic Top-Level Domain suffix “.COM” does not change the overall impression of the designation as being connected to the trademark BFORBANK of the Complainant. This is argued not to prevent the likelihood of confusion between the disputed domain name and the Complainant, its trademark and its domain names associated.

Finally, the Complainant points out that its rights in the name “BFORBANK’ have been confirmed by previous Panels and cites CAC Case No. 103192, BforBank v. mlk <borbank.com> and WIPO Case No. D2010-1300, Bforbank S.A. v. Transure Enterprise Ltd/Above.com Domain Privacy <bfobank.com>.

The Complainant argues that the additional requirements of the Policy have been met and that the disputed domain name should be transferred to it. The Complainant makes a number of legal arguments and also supplies a set of annexes providing evidence of its activities and of the Respondent's use of the disputed domain name.

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has not shown, to the satisfaction of the Panel, that 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

Since the Complainant has not established that the case meets the requirements of the first element of paragraph 4(a)(i) of the Policy, there is no need to examine whether 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

Since the Complainant has not established that the case meets the requirements of the first element of paragraph 4(a)(i) of the Policy, there is no need to examine whether 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

According to Paragraph 4(a) of the Policy, the Complainant is required to prove each of the following three elements to obtain an order that the disputed domain name should be transferred or cancelled:

(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 rights 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 has examined the evidence available to it and has come to the following conclusion concerning the satisfaction of the first element of paragraph 4(a) of the Policy in these proceedings:

RIGHTS

The Complaint has established rights in the name BFORBANK. The disputed domain name <BF-BANK.COM > contains six of the eight letters of the earlier right and a hyphen in addition to the generic top-level suffix ".COM".

The disputed domain name and the earlier right are not identical.

They would however be required to be at least similar in order to satisfy the first element. In establishing confusing similarity, it is established practice to disregard the top-level suffix in the domain name (i.e. ".com") of a disputed domain name. It is also customary to hold that the mere addition of elements such as underscores or hyphens do not normally add sufficient distance to avoid a finding of confusing similarity.

It follows that the name BFORBANK and the name BF-BANK need to be compared in order to determine the existence of confusing similarity.

In fact, in the sector concerned and described by the Complainant, the element "BANK" is highly descriptive for the services provided and therefore of little distinctiveness. The elements "BFOR" and "BF" and even the hyphen therefore gain a greater relevance in the comparison as distinctive and to some degree distinguishable elements within the signs.

The Complainant has stated that the names BFORBANK and BF-BANK are similar. However, this is not the case. The names are neither visually nor phonetically similar, nor are they conceptually so close that they cannot be distinguished. The concept conveyed by the "BF-BANK" is different to that of the BFORBANK.

When two of four letters of a distinctive element of a name or even two of a total of eight letters are missing, it is not possible to simply speak of a clear case of "typosquatting". The hyphen is nowhere near the letters "O" or "R" on a keyboard and even less so on the keys of a mobile device. However, these two letters are missing and there is a hyphen in their place. Neither is this an obvious misspelling of a name. It is considered unlikely that "BFOR" will be misspelled "BF-".

In this case, the addition of a hyphen creates an additional difference between the earlier right and the disputed domain name as it does not create the impression of a mere typographical error or an obvious misspelling of the name.

Contrary to the contention of the Complainant, the lack of the letters "O" and "R" certainly alter the pronunciation of the name which as a result are phonetically easy to distinguish.

The disputed domain name is not simply a "slight spelling variation" or an "abbreviation of a trademark" and the Complainant has offered no evidence establishing that this could be the case or that this version could be a known or customary abbreviation of the earlier right or a variation of its spelling.

The Complainant has not argued that BFOR has any specific meaning that it is an acronym of any sort that could also be relayed in the letter combination "BF".

The cases cited by the Complainant as being decided in its favor are unlike the case under examination: Both "BORBANK" and "BFOBANK" are indeed typos and slight variations of the earlier right but the names are unlike the name "BF-BANK" They share seven of eight letters in identical order and there is no break between the first part of the name and the word "bank" using a hyphen. The argument in these cases cannot be applied to the dispute being examined by the Panel. (See: CAC Case No. 103192, BforBank v. mlk <borbank.com>; WIPO Case No. D2010-1300, Bforbank S.A. v. Transure Enterprise Ltd/Above.com Domain Privacy <bfobank.com>).

It is therefore held that the disputed domain name <BF-BANK.COM> is not confusingly similar to the earlier rights in the name "BFORBANK" and the Panel concludes that the Complainant has not satisfied the requirement under paragraph 4(a)(i) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Rejected

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

1. **bf-bank.com**: Remaining with the Respondent

PANELLISTS

Name	**Udo Pfleghar B.A. (Melb.)**

DATE OF PANEL DECISION 2023-03-27

Publish the Decision