

Decision for dispute CAC-UDRP-105264

Case number	CAC-UDRP-105264
Time of filing	2023-03-07 11:16:33
Domain names	bforbank.click, bforbank.fun

Case administrator

Name	Olga Dvořáková (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	I PANAGIOTOPOULOS
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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 the following registered trademark:

European Union Registered Trademark No. 8335598 for the word mark BFORBANK, registered on December 8, 2009, for goods and services in Nice Classes 9, 35, 36 and 38.

FACTUAL BACKGROUND

The Complainant is an online bank launched in October 2009 by the Crédit Agricole Regional Banks, which offers daily banking, savings, investment and credit (consumer and real estate) services. It is the owner of several BFORBANK registered trademarks including European Union Registered Trademark No. 8335598 for the word mark BFORBANK, registered on December 8, 2009, for goods and services in Nice Classes 9, 35, 36 and 38. It also owns a number of domain names including the same "bforbank" distinctive wording, such as the domain name <bforbank.com>, registered since January 16, 2009.

The disputed domain names <bforbank.click> and <bforbank.fun> were registered on February 20, 2023. <bforbank.click> resolves to a login page copying the Complainant's official customer access page. <bforbank.fun> resolves to an inactive page.

PARTIES CONTENTIONS

Complainant:

The disputed domain names are identical to the Complainant's BFORBANK trademark and its associated domain names, each including the mark in its entirety. The addition of the new generic Top-Level Domain suffix ".click" or ".fun" does not change the overall impression of the designations as being connected to the trademark or prevent the likelihood of confusion arising. Past panels have confirmed the Complainant's rights over the BFORBANK mark.

The Respondent has no rights or legitimate interests in the disputed domain names.

The Respondent is not identified in the Whois database as the disputed domain names. Past panels have held that a respondent is not commonly known by a disputed domain name if the Whois information is not similar to the domain name concerned. Neither license nor authorization has been granted to the Respondent to make any use of the Complainant's trademark or to apply for registration of the disputed domain names.

The disputed domain name <bforbank.click> resolves to a login page copying the Complainant's official customer access and could be used in order to collect personal information of the Complainant's clients. The Respondent's website cannot be considered as a bona fide offering of services or fair use, since the website can mislead consumers into believing that they are accessing the Complainant's website.

The disputed domain name <bforbank.fun> resolves to an inactive page. The Respondent did not make any correct use of the disputed domain name since its registration, affirming that it has no demonstrable plan to use the disputed domain name. This demonstrates a lack of legitimate interests in respect of the disputed domain name except in order to create a likelihood of confusion with the Complainant and its trademark.

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

The disputed domain names are identical to the Complainant's trademark and were registered several years after the registration of such mark, in which the Complainant has since established a strong reputation. The term "bforbank" has no significance other than in relation to the Complainant. Given the distinctiveness of the Complainant's trademarks and reputation, it is inconceivable that the Respondent could have registered the disputed domain names without actual knowledge of the Complainant's rights in the trademark.

The disputed domain name <bforbank.click> resolves to a login page copying the Complainant's official customer access and containing no information about the Respondent. Therefore, by using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of its website. Besides, the Respondent can collect personal information through this website, namely passwords. Past panels have stated that a respondent is acting in bad faith by using a domain name in such a way.

The disputed domain name <bforbank.fun> resolves to an inactive page. The Complainant contends that the Respondent has not demonstrated any activity in respect of the disputed domain name, and it is not possible to conceive of any plausible actual or contemplated active use thereof by the Respondent that would not be illegitimate, such as by constituting passing off, an infringement of consumer protection legislation, or an infringement of the Complainant's rights under trademark law. Prior panels have held that the incorporation of a famous mark into a domain name, coupled with an inactive website, may be evidence of bad faith registration and use.

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 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

The Complainant has demonstrated that it has UDRP-relevant rights in its BFORBANK registered trademark by virtue of European Union Registered Trademark No. 8335598.

The Second-Level Domain of each of the disputed domain names contains the Complainant's BFORBANK trademark in its entirety, and it is thus fully recognizable in each of said domain names on a straightforward side-by-side comparison. The generic Top-Level Domain in respect of each of the disputed domain names, namely ".click" and ".fun" respectively, is typically disregarded for the purposes of the comparison under the first element analysis of the Policy. Accordingly, the Panel finds that the disputed domain names are identical to the Complainant's BFORBANK trademark.

With regard to the second element of the Policy, the Complainant submits that the Respondent does not have any rights or legitimate interests in either of the disputed domain names, asserting that the Respondent is not commonly known by either, and is not making a *bona fide* offering of goods and services or any fair use thereby, adding that neither license nor authorization has been granted to the Respondent to make any use of the Complainant's trademark or to apply for registration of the disputed domain names. The Complainant asserts that the disputed domain name <bforbank.fun> resolves to an inactive page, that the Respondent has never used said domain name since registration, and that it has no demonstrable plan to use it. The Complainant notes that the disputed domain name <bforbank.click> resolves to a login page copying the Complainant's official customer access page, which could be used to collect personal information of the Complainant's clients.

The Panel finds that these submissions, taken together, are sufficient to constitute the requisite *prima facie* case that the Respondent has no rights and legitimate interests in the disputed domain names (see, for example, section 2.1 of the WIPO Overview 3.0). The non-use of the disputed domain name <bforbank.fun> would not give rise to any such rights and legitimate interests in and of itself. Furthermore, the Respondent's use of the disputed domain name <bforbank.click> to clone the Complainant's official customer access page could in no way confer any such rights and legitimate interests upon it.

The Respondent has failed to rebut the Complainant's said *prima facie* case in that it has not filed a Response in the administrative proceeding. The Panel considers that it is reasonable in all of the above the circumstances to make a finding that the Respondent has no rights or legitimate interests in either of the disputed domain names.

The Panel turns to the third element assessment, namely the question of registration and use in bad faith in respect of the disputed domain names. Each of the disputed domain names is identical to the Complainant's distinctive trademark, and the Panel considers that such mark's inclusion in each could in no way be considered mere coincidence. The Panel notes the Complainant's uncontradicted assertion that the website associated with the disputed domain name <bforbank.click> emulates a user panel login page of the Complainant, so that an Internet user could insert their credentials believing that this website is a genuine website of the Complainant, potentially putting their information at risk. The disputed domain name <bforbank.fun>, although currently pointing to an inactive website, was registered on the same day as the disputed domain name <bforbank.click>. For these reasons, the Panel considers that the Respondent more likely than not had actual knowledge of Complainant's rights in its BFORBANK trademark at the point when each of the disputed domain names were registered.

In all of these circumstances, and in the absence of any rebuttal from the Respondent, the Panel finds on the balance of probabilities that the Respondent is using the Complainant's trademark in the disputed domain name <bforbank.click> in order to create the false impression of an affiliation with the Complainant, its trademarks, and/or its products and services, and is using this disputed domain name to intentionally attract, for commercial gain, Internet users to its website, by creating a likelihood of confusion with the Complainant's trademark, products and services. Accordingly, the Panel finds that the Respondent has registered and is using the disputed domain name <bforbank.click> in bad faith.

With regard to the disputed domain name <bforbank.fun>, the Panel notes that there is no associated website and accordingly it is being "passively held". Such passive holding does not allow the Respondent to escape a finding of registration and use in bad faith in circumstances where, as here, the disputed domain name is identical to the Complainant's distinctive mark, the Respondent has failed to submit a Response or otherwise to provide any evidence of actual or contemplated good faith use, and it is implausible that the disputed domain name could be put to any such good faith use if its website were to become active (see, on this topic, Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003). In all of these circumstances, and in the absence of any rebuttal from the Respondent, the Panel finds on the balance of probabilities that the Respondent has registered and is using the disputed domain name <bforbank.fun> in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

- 1. **bforbank.click**: Transferred
- 2. **bforbank.fun**: Transferred

PANELLISTS

Name	Andrew Lothian
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DATE OF PANEL DECISION 2023-03-31

Publish the Decision