

Decision for dispute CAC-UDRP-105546

Case number CAC-UDRP-105546

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Domain names web-beforbank-fr.site

Case administrator

Name Olga Dvořáková (Case admin)

Complainant

Organization BFORBANK

Complainant representative

Organization NAMESHIELD S.A.S.

Respondent

Name enders Proton

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 is the owner of the European trademark "BFORBANK n° 8335598 filed on June 2nd, 2009 and registered on December 12th, 2009.

The Complainant also owns the domain name <bforbank.com> registered since January 16th, 2009.

FACTUAL BACKGROUND

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

The Complainant is an online bank launched in October 2009 by the Crédit Agricole Regional Banks. The Complainant offers daily banking, savings, investment and credit (consumer and real estate) services for 240 000 customers.

The Complainant is the owner of the European trademark "BFORBANK® n°8335598 registered since June 2nd, 2009 and the Complainant owns the domain name <bforbank.com> registered since January 16th, 2009.

The disputed domain name <web-beforbank-fr.site> was registered on June 2nd, 2023 (hereinafter, the "Disputed Domain Name").

The Complainant argues that the Disputed Domain Name resolves to an inactive website.

According to Complainant's non-contested allegations, the Respondent has no rights or legitimate interest in respect of the Disputed Domain Name and the Complainant is not related in any way to the Complainant's business.

For the purpose of this case, the Registrar confirmed that the Respondent is the current registrant of the Disputed Domain Name and that the language of the registration agreement is English.

The facts asserted by the Complainant are not contested by the Respondent.

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

PARTIES CONTENTIONS

COMPLAINANT:

First element: Similarity

The Complainant states that the Disputed Domain Name is confusingly similar to its trademark "BFORBANK®".

The Complainant asserts that the addition of the terms "WEB" and "FR", is not sufficient to escape the finding that the Disputed Domain Name is confusingly similar to the trademark BFORBANK®. On the contrary, the association of the terms "WEB" and "FR" (meaning "FRANCE") with the trademark worsens the likelihood of confusion between the Disputed Domain Name and the Complainant's trademarks.

The Complainant indicates that the additions are coupled with a clear case of "typosquatting"; in particular taking into consideration that the Disputed Domain Name contains obvious misspellings of the Complainant's trademark (i.e. the addition of an "E").

Furthermore, the Complainant contends that the addition of the gTLD ".SITE" does not change the overall impression of the designation as being connected to the Complainant's trademark. It does not prevent the likelihood of confusion between the Disputed Domain Name and the Complainant, its trademark and its domain names associated.

Second element: Rights or legitimate interest

The Complainant contends that the Respondent is not known as the Disputed Domain Name at the Whois database.

Additionally, the Complainant contends that the Respondent is not affiliated with nor authorized by the Complainant in any way. The Complainant contends that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name. The Complainant does not carry out any activity for, nor has any business with the Respondent.

Neither license nor authorization has been granted to the Respondent to make any use of the Complainant's trademark BFORBANK® or apply for registration of the Disputed Domain Name by the Complainant.

The Complainant also claims that the Disputed Domain Name is a typosquatted version of the trademark BFORBANK® and the Disputed Domain Name resolves to an inactive website. The Complainant contends that Respondent did not make any use of Disputed Domain Name since its registration, and it confirms that Respondent has no demonstrable plan to use the Disputed Domain Name. It demonstrates a lack of legitimate interests in respect of the Disputed Domain Name.

Third element: Bad faith

The Complainant states that the Disputed Domain Name is confusingly similar to its trademark BFORBANK®.

The Respondent has registered the Disputed Domain Name several years after the registration of the trademark BFORBANK® by the Complainant, which it has established a strong reputation while using this trademark for online banking, savings, investment and credit (consumer and real estate) services for 240 000 customers and all the results of a search for the terms "WEB-BEFORBANK-FR" refers to the Complainant.

The Complainant states that the misspelling and the addition of the terms "WEB" and "FR" were intentionally designed to be confusingly similar with the Complainant's trademark. Thus, given the distinctiveness of the Complainant's trademark and its reputation, the Complainant contends that it is inconceivable that the Respondent could have registered the Disputed Domain Name without actual knowledge of Complainant's rights in the trademark.

Furthermore, the Disputed Domain Name is inactive. 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 of the Disputed Domain Name by the Respondent that would not be illegitimate, such as by being a passing off, an infringement of consumer protection legislation, or an infringement of the Complainant's rights under trademark law.

RESPONDENT

Respondent did not reply to the Complaint.

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

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 a 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 are being used in bad faith.

The Panel has reviewed in detail the evidence available to it and has come to the following conclusions concerning the satisfaction of the three elements of paragraph 4(a) of the Policy in the proceeding:

1. THE COMPLAINANT'S RIGHTS AND CONFUSING SIMILARITY OF THE DISPUTED DOMAIN NAME TO THE COMPLAINANT'S RIGHTS.

Paragraph 4(a)(i) of the Policy establishes the obligation of the Complainant to demonstrate that the Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

The Complainant submitted copy of the European trademark "BFORBANK®" n°008335598 filed on June 2nd, 2009 and registered on December 12th, 2009 prior to 2023, the creation's year of the Disputed Domain Name.

From the Panel's perspective, the Disputed Domain Name <web-beforbank-fr.site> is composed of almost all letters of the trademark "BFORBANK" with the only addition of the letter "E"; i.e. BEFORBANK instead of BFORBANK. From the Panel's perspective, this an intentional misspelling of Complainant's trademark and a clear typosquatting case where internet users searching for "BFORBANK" might wrongly type the letter E in the keyboard and by doing so, they would end up at Respondent's website "web-beforbank-fr.site".

Furthermore, previous Panels have found that special attention should be taken with domain names where the difference in spelling is so insignificant that it is hardly noticeable and does not change the distinctive character of the mark in question. See, e.g., BOURSORAMA SA v. francois goubert, CAC Case No. 104595: " This also applies to domain names where the difference in spelling is so insignificant that it is hardly noticeable and does not change the distinctive character of the mark in question. Most readers would be hard put to quickly spot the difference between "BOURSORAMA" and "BOUSORAMA". This takes some analysis, especially

at the mind reads what it expects to see from previous experience. In this case, that expectation would be to read the well-known word "BOURSORAMA").

The addition of the terms „WEB“ and „FR“ to the Disputed Domain Name does not prevent a finding of confusing similarity under the first element either; in particular since the Respondent includes the term FR which is a common abbreviation used for France where Complainant's banking business is located.

Lastly, the addition of the Top-Level Domain Name “.SITE” in a domain is considered as a standard registration requirement and, therefore, it should be disregarded under the first element confusing similarity test. See paragraph 1.11 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition Jurisprudential (hereinafter the „WIPO Jurisprudential Overview 3.0“).

Therefore, the Panel concludes that the Complainant has satisfied the requirement under paragraph 4(a)(i) of the Policy and the Disputed Domain Name is confusingly similar to Complainant's mark.

2. RESPONDENT'S LACK OF RIGHTS OR LEGITIMATE INTERESTS IN THE DISPUTED DOMAIN NAME.

The second element of the Policy requires that the Complainant establishes that the Respondent has no rights or legitimate interests in the Disputed Domain Name. The generally adopted approach, when considering the second element, is that if a complainant makes out a prima facie case, the burden of proof shifts to the respondent to rebut it with relevant evidence demonstrating rights or legitimate interests in the Disputed Domain Name; see, for example, CAC Case No. 102333, Amedei S.r.l. v sun xin. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy (see e.g. WIPO case no. D2003-0455, Croatia Airlines d.d. v. Modern Empire Internet Ltd.).

In this regard, Paragraph 4 (c) provides with circumstances which could prove rights or legitimate interest in the Disputed Domain Name on behalf of the Respondent such as:

(i) before any notice to Respondent of the dispute, Respondent is using or provides with demonstrable preparations to use, the domain name or a name corresponding to the Disputed Domain Name in connection with a bona fide offering of goods or services; or

(ii) The Respondent (as an individual, business, or other organization) has been commonly known by the Disputed Domain Name, even if the Respondent has acquired no trademark or service mark rights; or

(iii) The Respondent is making a legitimate noncommercial or fair use of the Disputed Domain Name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Complainant has confirmed in the Complaint that the Disputed Domain Name is not connected with or authorized by the Complainant in any way.

From the information provided by the Complainant, there is no evidence or reason to believe that the Respondent (as individual, business or other organization) has been commonly known by the Disputed Domain Name.

The Respondent's name "Enders Proton" is all what it links the Disputed Domain Name with the Respondent. Absent of any other evidence such as a personal name, nickname or corporate identifier, the Panel is of the opinion that the Respondent is not commonly known by the Disputed Domain Name.

The Complainant indicates that they have not granted authorization to the Respondent to use their "BFORBANK®" trademark. Furthermore, the Complainant asserts that the Respondent is not affiliated with him nor authorized in any way to use the trademark "BFORBANK®".

The website associated with the Disputed Domain Name resolves to an inactive website. Different Panels have confirmed that the lack of content at the Disputed Domain Name can be considered as a finding that Respondent does not have bona fide offering of goods and services (see, for example, Forum Case No. FA 1773444, Ashley Furniture Industries, Inc v. Joannet Macket/JM Consultants).

The fact that Respondent did not reply to the Complaint gives an additional indication that the Respondent lacks rights or legitimate interest since the Respondent did not provide with evidence of the types specified in paragraph 4 (c) of the Policy, or of any circumstances, giving rise to rights or legitimate interests in the Disputed Domain Name.

Therefore, the Panel concludes that neither the Respondent nor the evidence establishes that the Respondent has any right or legitimate interest to the Disputed Domain Name. The Complainant has therefore also satisfied the requirement under paragraph 4(a)(ii) of the Policy.

3. BAD FAITH REGISTRATION AND USE OF THE DISPUTED DOMAIN NAME.

Paragraph 4(a)(iii) of the Policy indicates that the Complainant must assert that the Respondent registered and is using the Disputed Domain Name in bad faith. In this sense, Paragraph 4(b) of the Policy sets out four circumstances which if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

- circumstances indicating that the Respondent has registered or acquired the domain name primarily for the purpose of selling,

renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or 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

- 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 Disputed Domain Name, provided that Respondent has engaged in a pattern of such conduct; or
- The Respondent has registered the Disputed Domain Name primarily for the purpose of disrupting the business of a competitor; or
- by using the Disputed Domain Name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to the Respondent's 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.

In accordance with the evidence, the Disputed Domain Name is currently not in use. It is well established at different UDRP panel resolutions that the lack of use of a domain name does not prevent from finding bad faith (e.g. Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. 2000-0003).

In light of the above, the WIPO Jurisprudential Overview 3.0. at paragraph 3.3. provides some factors that have been considered relevant in applying the passive holding doctrine such as: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put.

For the current case, the evidence at hand confirms that Complainant's "BFORBANK®" trademark is distinctive and the Complainant has a strong reputation in the online banking industry, at least in Europe. Furthermore, the Complainant has provided evidence that the Respondent should have found information over the internet about Complainant's trademarks rights over "BFORBANK®" before registering the Disputed Domain Name.

In addition to the above described and from the Panel perspective, the following circumstances also confirm Respondent's bad faith in the registration of the Disputed Domain Name:

(a) By conducting a search over the Internet, the Respondent should have been made aware of Complainant's "BFORBANK®" trademark as well as their reputation in the online banking in Europe;

(b) The Disputed Domain Name is composed with the terms WEB" and „FR", the latest being a common abbreviation for the country France where the Complainant established its business. Absent of Respondent's reply, this combination is only a confirmation of Respondent's knowledge of Complainant's trademark "BFORBANK®" prior to the registration of the Disputed Domain Name;

(c) Complainant's trademark rights over "BFORBANK®" predate the date of registration of the Disputed Domain Name.

(d) The website associated with the Disputed Domain Name is inactive.

These factors make the Panel believe that the Disputed Domain Name was registered with the intention to attract, for commercial gain, Internet users to the Respondent's 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.

The Complainant has also indicated that the misspelling and the addition of the terms „WEB" and „FR" were intentionally designed to be confusingly similar with the Complainant's trademark. In this vein, Past Panels have confirmed that typosquatting may be an indication of bad faith (e.g. ESPN, Inc v. XC2, WIPO Case Nr. D2005-0444). In addition, Past Panels have also indicated that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith. See paragraph 3.1.4 of the WIPO Jurisprudential Overview 3.0.

From the Panel's perspective, the fact that the Disputed Domain Name is composed of the term BFORBANK instead of BFORBANK, it is an intentional misspelling of Complainant's trademark and, therefore, it is a confirmation of bad faith on Respondent's side. Furthermore, the addition of the the terms „WEB" and „FR" to the Disputed Domain Name seem intentional with the purpose of confusing internet users.

In light of the evidence presented to the Panel, including: a) the likelihood of confusion between the Disputed Domain Name and the Complainant's "BFORBANK®" trademark, b) the lack of reply to this Complaint by Respondent, c) the fact that the Disputed Domain Name is being passively held and iv) the fact that the Disputed Domain Name is a typosquatted version of the Complainant's trademark, the Panel draws the inference that the Disputed Domain Name was registered is being used in bad faith.

Therefore, the Panel concludes that Respondent registered and is using the Disputed Domain Name in bad faith and thus has satisfied the requirement under paragraph 4(a)(iii) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **web-beforbank-fr.site**: Transferred
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PANELLISTS

Name	Victor Garcia Padilla
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DATE OF PANEL DECISION **2023-07-18**

Publish the Decision
