

Decision for dispute CAC-UDRP-105516

Case number **CAC-UDRP-105516**

Time of filing **2023-06-09 10:08:00**

Domain names **bbforbank.com, bforbank-fr.com, bforebank.com, bfrbank-fr.com**

Case administrator

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

Complainant

Organization **BFORBANK**

Complainant representative

Organization **NAMESHIELD S.A.S.**

Respondent

Name **M Verschoor**

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 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.

The disputed domain names were registered on May 26, 27 and 29, 2023 and are inactive.

FACTUAL BACKGROUND

BFORBANK is an 100% 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 for 240 000 customers.

PARTIES CONTENTIONS

COMPLAINANT:

A. The disputed domain names are confusingly similar to a trademark or service mark in which the Complainant has rights

The Complainant states that the disputed domain names <bbforbank.com>, <bforbank-fr.com>, <bforebank.com>, <bfrbank-fr.com> are confusingly similar to its trademark BFORBANK.

The addition of the letter “B” in the domain name <bbforbank.com>, the addition of the term “FR” in the domain name <bforbank-fr.com>, the addition of the letter “E” in the domain name <bforebank.com>, the deletion of the letter “O” and the addition of the term “FR” in the domain name <bfrbank-fr.com> are not sufficient to escape the finding that the domain names are confusingly similar to the trademark and branded goods BFORBANK®.

This is a clear case of “typosquatting”, i.e. the disputed domain names contain obvious misspellings of the Complainant’s trademark. Previous panels have found that the slight spelling variations does not prevent a disputed domain name from being confusingly similar to the complainant’s trademark. Please see for instance CAC Case No. 103070, BOLLORE v. Ryan Stewart (“The disputed domain name is confusingly similar to the Complainant’s Trademark. As the Complainant correctly pointed out, substitution of the letter “o” by the letter “c” in the disputed domain name is not sufficient to exclude the likelihood of confusion with Complainant’s Trademark, as they look highly similar from visual perspective. It is an obvious, and in the opinion of the Panel also deliberate misspelling of Complainant’s Trademark and thus a clear case of typosquatting.”).

Furthermore, the Complainant contends that the addition of the gTLD “.COM” 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 names and the Complainant, its trademark and its domain names associated.

Finally, the Complainant’s rights over the term “BFORBANK” have been confirmed by previous panels, for instance: WIPO Case No. D2022-1972, BFORBANK v. alexandre monserrat <bforbankfrance.net>; CAC Case No. 103192, BforBank v. mlk <borbank.com>.

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

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.

The Respondent is not identified in the Whois data of the disputed domain names. Past panels have held that a Respondent was not commonly known by a disputed domain name if the Whois information was not similar to the disputed domain name. Thus, the Respondent is not known as the disputed domain name. Please see for instance Forum Case No. FA 1781783, Skechers U.S.A., Inc. and Skechers U.S.A., Inc. II v. Chad Moston / Elite Media Group <bobsfromsketchers.com> (“Here, the WHOIS information of record identifies Respondent as “Chad Moston / Elite Media Group.” The Panel therefore finds under Policy 4(c)(ii) that Respondent is not commonly known by the disputed domain name under Policy 4(c)(ii).”).

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 names.

The Complainant also claims that the disputed domain names are a typosquatted version of the trademark BFORBANK. Typosquatting is the practice of registering a domain name in an attempt to take advantage of Internet users’ typographical errors and can be evidence that a respondent lacks rights and legitimate interests in the domain name. Please see for instance Forum Case No. FA 877979, Microsoft Corp. v. Domain Registration Philippines (“In addition, Respondent has engaged in typosquatting, which provides additional evidence that Respondent lacks rights and legitimate interests in the disputed domain name under Policy 4(a)(ii).”).

Besides, the disputed domain names are inactive. The Complainant contends that Respondent did not make any use of disputed domain names since its registration, and it confirms that Respondent has no demonstrable plan to use the disputed domain names. It demonstrates a lack of legitimate interests in respect of the disputed domain names. Please see for instance Forum Case No. FA 1773444, Ashley Furniture Industries, Inc. v. Joannet Macket / JM Consultants (“The Panel finds that Respondent’s lack of content at the disputed domain shows the lack of a bona fide offering of goods or services or a legitimate noncommercial or fair use per Policy 4(c) (i) and (iii).”).

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

The disputed domain names are confusingly similar to the Complainant’s trademark BFORBANK.

The Respondent has registered the disputed domain names several years after the registration of the trademark BFORBANK by the Complainant, which has established a strong reputation while using this trademark. Besides, the Complainant contends that the terms “BBFORBANK”, “BFORBANK-FR”, “BFOREBANK” and “BFRBANK-FR” do not have any signification, except in relation with the Complainant.

The Complainant states that misspellings were intentionally designed to be confusingly similar with the Complainant’s trademark.

Previous UDRP panels have seen such actions as evidence of bad faith. See for instance Forum Case No. 157321, Computerized Sec. Sys., Inc. v. Bennie Hu ("The Panel finds that Respondent's registration and use of a domain name that differs from Complainant's mark by only one letter indicates "typosquatting", which is evidence of bad faith registration and use.").

Thus, given the distinctiveness of the Complainant's trademarks and reputation, the Complainant contends that it is inconceivable that the Respondent could have registered the disputed domain names without actual knowledge of Complainant's rights in the trademark.

Furthermore, the disputed domain names are inactive. The Complainant contends that the Respondent has not demonstrated any activity in respect of the disputed domain names, and it is not possible to conceive of any plausible actual or contemplated active use of the domain names 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.

As prior WIPO UDRP panels have held, the incorporation of a famous mark into a domain name, coupled with an inactive website, may be evidence of bad faith registration and use.

RIGHTS

Paragraph 4(a)(i) of the Policy requires the Complainant to show that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

The disputed domain name <bbforbank.com> holly incorporates the BFORBANK trademark, with the addition of the letter "B", what does not change the pronunciation.

The disputed domain name <bforbank-fr.com> differs only by the addition of "-FR" to refer to France.

The disputed domain name <bfrbank-fr.com> differs only by:

- the deletion of the vowel "O", what does not change the pronunciation;
- the addition of "-FR" to refer to France.

The disputed domain name <bforebank.com> differs only by the addition of the vowel "E", what does not change the pronunciation.

The disputed domain name <bfrbank-fr.com> differs by:

- the deletion of the letter "O", what does not change the pronunciation;
- the addition of "-FR" to refer to France.

These additions and deletions do not avoid the confusing similarity.

Thus, the disputed domain names are confusingly similar to the BFORBANK trademark.

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

Pursuant to paragraph 4(c) of the Policy, the Respondent may establish rights or legitimate interests in the disputed domain name by demonstrating any of the following:

- (i) before any notice to it of the dispute, the Respondent's use of, or demonstrable preparations to use, the disputed 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 has been commonly known by the disputed domain name, even if it has acquired no trademark or service mark rights; or
- (iii) the Respondent is making a legitimate non-commercial 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 Respondent is not commonly known under the disputed domain names.

The Complainant asserts that the Respondent is not related in any way with the Complainant and that it did not grant any authorization

to use the BFORBANK trademark or to register the disputed domain names. This allegation was not contested by the Respondent.

There is no indication that the Respondent is commonly known by the BFORBANK trademark.

There is no evidence of any bona fide use of the disputed domain names.

The typosquatting practice used by the Respondent is indeed an attempt to take advantage of Internet users' typographical errors when searching the official website www.bforbank.com.

The Respondent did not respond to the Complainant to rebut its *prima facie* case. It did not provide any evidence or allege any circumstance to establish that it has rights or legitimate interests in the disputed domain names.

Therefore, the Complainant has established a *prima facie* case that the Respondent has no rights or legitimate interests in respect to the disputed domain names.

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

Paragraph 4(b) of the Policy sets out examples of circumstances that will be considered by a Panel to be evidence of bad faith registration and use of the disputed domain names.

It provides that:

"For the purposes of paragraph 4(a)(iii), the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a Domain Name in bad faith:

(i) circumstances indicating that the Respondent has registered or the respondent has 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 Domain Name; or

(ii) the Respondent has registered the 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 Domain Name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the Domain Name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to your 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 or service on the respondent's website or location."

The simultaneous registration of combinations of the BFORBANK trademark demonstrates that this trademark was deliberately targeted.

It is therefore reasonable to assume that the Respondent, who, at the same time, targeted France, where the Complainant is domiciled, was well aware of the BFORBANK trademark when it registered the disputed domain names.

Typosquatting is clearly a bad faith practice.

The Panel takes into consideration the fact that, as a banking group, the Complainant must protect its clients against these attacks on the Internet.

The Panel also takes into consideration, as above explained, that banking services are strictly regulated, to protect professionals as well as their customers.

Therefore, it cannot be tolerated that an individual registers without any authorization, and uses, or even not uses, domain names incorporating or typosquatting a trademark protected for banking services.

Given the circumstances of the case, the Panel finds that the main criteria set out in the Telstra decision on passive holding are met in view of the following and current circumstances:

- the Respondent has provided no evidence whatsoever of any actual or contemplated good faith use by it of the domain name;
- there is no evidence that the contact details of the registrant are correct; and
- taking into account all of the above, it is not possible to conceive of any plausible actual or contemplated active use of the 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.

For all the above reasons, the Panel is of the opinion that the disputed domain names satisfy the requirement of paragraph 4(a)(iii) that the disputed domain names were registered and are being used in bad faith by the Respondent.

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 identified that the address of the Complainant's domicile was different from the address mentioned on the BFORBANK trademark, which seemed to be the current address.

It sent a Nonstandard Communication on July 20, 2023, asking to explain what is the current official address, in order to be sure that the Complainant is the BFORBANK trademark's owner.

The answer was sent on July 21, 2023, explaining the legal seat had indeed changed and it produced an official updated incorporation certificate on July 26, 2023.

This issue has been solved.

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

Confusing similarity of the disputed domain names with the BFORBANK trademark

Typosquatting of a famous trademark in connection with passive holding of disputed domain names is a proof of absence of any legitimate right or interest and of bad faith.

The Complainant made a prima facie case of the of absence of any legitimate right or interest and of bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **bbforbank.com**: Transferred
2. **bforbank-fr.com**: Transferred
3. **bforebank.com**: Transferred
4. **bfrbank-fr.com**: Transferred

PANELLISTS

Name	Marie-Emmanuelle Haas Avocat
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DATE OF PANEL DECISION	2023-07-27
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Publish the Decision
