

## Decision for dispute CAC-UDRP-105519

Case number	CAC-UDRP-105519
Time of filing	2023-06-09 09:54:34
Domain names	beforbankepargne.com

### 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	Lagarrigue arnaud
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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 name.

#### IDENTIFICATION OF RIGHTS

The Complainant is the registered owner of European trademark registration no. 008335598 "BforBank", registered on December 8, 2009, in classes 9, 35, 36, and 38 (hereinafter referred to as the "Trademark").

#### FACTUAL BACKGROUND

The Complainant is an online bank launched in October 2009. It offers daily banking, savings, investment, and credit services for 240 000 customers. It owns a number of domain names, such as <bforbank.com>, registered since January 16, 2009.

The disputed domain name was registered on May 16, 2023, and is not used in connection with an active website. However, it is connected to MX servers.

#### PARTIES CONTENTIONS

COMPLAINANT:

The Complainant argues that the disputed domain name is confusingly similar to their Trademark. They claim that the addition of the letter "E" and of the term "EPARGNE" (meaning "saving") to the domain name doesn't change the fact that it's confusingly similar to Trademark. They further argue that the association of the term "EPARGNE" with the Trademark worsens the likelihood of confusion between the disputed domain name and the Trademark as it refers directly to the Complainant's products. Additionally, they state that the TLD ".com" does not prevent confusion either.

The Complainant also asserts that the Respondent has no rights or legitimate interest in the disputed domain name. They explain that the Respondent is not identified in the Whois database as the disputed domain name, that neither license nor authorization has been granted to the Respondent to make any use of the Trademark or apply for registration of the disputed domain name, that the disputed domain name is a typosquatted version of the Trademark and that typosquatting can be evidence that a respondent lacks rights and legitimate interests in the domain name, and that the disputed domain name is inactive and the Respondent has no demonstrable plan to use the disputed domain name.

Regarding bad faith, the Complainant states that the disputed domain name was registered and is being used in bad faith. They claim that the Respondent has registered the disputed domain name several years after the registration of the Trademark by the Complainant, which has established a strong reputation while using this trademark, and that the term "BEFORBANKEPARGNE" does not have any signification, except in relation with the Complainant. They further argue that the misspelling and the addition of the term "EPARGNE" were intentionally designed to be confusingly similar to the Trademark and that it is inconceivable that the Respondent could have registered the disputed domain name without actual knowledge of Complainant's rights in the Trademark. With regard to bad faith use, the Complainant states 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 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. Finally, the Complainant states that MX servers are configured which suggests that the disputed domain name may be actively used for email purposes.

#### RESPONDENT:

No administratively compliant Response has been filed.

The Respondent sent an email following the CAC's notice about the commencement of the administrative proceedings. The Respondent firstly wrote "What is this?" by email from June 22, 2023. The case administrator provided the Respondent details about the UDRP proceedings by email from June 23, 2023. The Respondent then wrote "hi I bought that domain just like that, I don't understand what I have to do !" on June 26, 2023. The CAC repeatedly provided the Respondent with information how to access the case file and file a response by email sent on June 26, 2023. The Respondent accessed the online platform on June 26, 2023 but never submitted any response neither did he provide any kind of reaction to the CAC email which was sent on June 26, 2023.

Given the reasonable measures employed by CAC the Panel is satisfied that it is possible to proceed by submitting this panel decision without further statements of the Respondent.

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#### 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).

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#### 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).

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#### 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).

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#### 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.

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## PRINCIPAL REASONS FOR THE DECISION

Under paragraph 4(a) of the Policy, the Complainant must prove that each of the following three elements is present:

- (i) the disputed domain name is identical or confusingly similar to the Complainant's trademark; 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.

1. The Panel accepts that the disputed domain name is confusingly similar to the Trademark. The term "beforebank" included in the disputed domain name is phonetically identical and visual highly similar to the Complainant's trademark "BforBank". The additional French term "epargne" (meaning "saving" in English) even increases the similarity to the Trademark it directly refers to the Complainant's services.

2. The Complainant has substantiated that the Respondent has no rights or legitimate interests in the disputed domain name. The Panel finds that the Complainant has fulfilled its obligations under paragraph 4(a)(ii) of the Policy. The Respondent did not deny these assertions in any way and, therefore, failed to prove any rights or legitimate interests in the disputed domain name. Based on the evidence on file, the Panel cannot find any rights or legitimate interests of the Respondent either, as the disputed domain name is not actively used. Accordingly, the Panel finds that the Complainant has proven that the Respondent has no rights or legitimate interests in respect of the disputed domain name under paragraphs 4(a)(ii) and 4(c) of the Policy.

3. The Panel is convinced, that the Respondent registered the disputed domain name with full knowledge of the Complainant and its rights in the Trademark. This finding is supported by the facts that the disputed domain name includes a French generic term which clearly refers to the French Complainant and its business, and that the Trademark has been registered and used online for over a decade before the disputed domain name has been registered.

Furthermore, the Panel accepts the Complainant's contentions that the disputed domain name has been used in bad faith under the principles of passive holding. It is the consensus view that the lack of active use of a domain name does not, as such, prevent a finding of bad faith under the Policy. In such cases, the panel must examine all the circumstances of the case to determine whether a respondent is acting in bad faith. Examples of circumstances that can indicate bad faith include a complainant having a well-known trademark, no response to the complaint, the respondent's concealment of identity, and the impossibility of conceiving a good faith use of the domain name (cf *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. D2000-0003; *Jupiters Limited v. Aaron Hall*, WIPO Case No. D2000-0574; *Ladbroke Group Plc v. Sonoma International LDC*, WIPO Case No. D2002-0131). The Panel is convinced that the Trademark is long-established. Furthermore, the Respondent failed to file a Response and, therefore, did not provide evidence of any actual or contemplated good-faith use of the disputed domain name. In the view of the Panel, the facts of this case do not allow for any plausible actual or contemplated active use of the disputed domain name by the Respondent in good faith. The Panel is therefore convinced that, even though the disputed domain name has not yet been actively used, the Respondent's non-use of the disputed domain name equals use in bad faith.

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FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **beforbankepargne.com**: Transferred

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## PANELLISTS

Name	<b>Peter Müller</b>
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DATE OF PANEL DECISION **2023-07-31**

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Publish the Decision

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