

Decision for dispute CAC-UDRP-105650

Case number CAC-UDRP-105650

Time of filing 2023-07-25 10:22:19

Domain names **bbforbank.online**

Case administrator

Name Olga Dvořáková (Case admin)

Complainant

Organization **BFORBANK**

Complainant representative

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

Respondent

Name **alin eloi**

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 submitted evidence that it is the owner of the EU word trademark "BforBank", registration no. 008335598, filed on June 2nd, 2009 and registered on December 8th, 2009, valid, for a list of goods and services in classes 9, 35, 36 and 38 (Nice) (hereinafter the "Trademark").

FACTUAL BACKGROUND

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

The Complainant states that it is a 100% online bank launched by the Crédit Agricole Regional Banks, offering daily banking, savings, investments and credit. The Complainant claims to have 240.000 customers.

The Complainant provided evidence that it is the owner of the Trademark as referred to above. The Complainant also provided evidence that it is the owner of the domain name <bforbank.com>, created on January 16th, 2009.

The disputed domain name <bbforbank.online> was registered on June 3rd, 2023. The Complainant proves that the disputed domain is inactive.

PARTIES CONTENTIONS

The Complainant contends that the requirements of the Policy have been met and that the disputed domain name should be transferred to it.

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

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

1. Confusing similarity

The disputed domain name consists of the Complainant's Trademark "BFORBANK" with the addition of the letter "B". According to the Complainant, the misspelling of the Complainant's Trademark by adding the letter "B" is an obvious characteristic of a typosquatting practice intended to create confusing similarity between its Trademark and the disputed domain name. The Complainant referred to decisions of previous panels which have decided that slight spelling variations do not prevent a domain name from being confusingly similar to a trademark". Furthermore, the Complainant argues that the gTLD ".online" does not change the overall impression of the designation as being connected to the Trademark.

The Panel notes that the disputed domain name incorporates the entirety of the Complainant's "BFORBANK" Trademark, with the addition of the letter "B" in the beginning.

The Panel remarks that Section 1.7 of WIPO Overview 3.0, clearly states that, "in cases where a domain name contains the whole of a trademark, or where at least one dominant feature of the relevant trademark is recognisable in the domain name, the domain name shall normally be considered confusingly similar to that trademark for the purposes of UDRP status".

The Panel is of the opinion that the sole addition of the letter "B" is not sufficient to prevent a finding of confusing similarity under the first element of paragraph 4(a) of the Policy. The addition of a second letter "B" does not add meaning or distinctiveness to the disputed domain name.

This is supported by section 1.9 of WIPO Overview 3.0, which clearly states: "A domain name which consists of a common, obvious or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element".

The gTLD ".online" may be disregarded when considering whether a domain name is confusingly similar to a trademark in which the Complainant has rights. In this regard, section 1.11.1 of WIPO Overview 3.0 clearly states: "The applicable Top Level Domain ("TLD") in a domain name (e.g., ".com", ".club", ".nyc") is viewed as a standard registration requirement and as such is disregarded under the

first element confusing similarity test.”.

For these reasons, the Panel concludes that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights within the meaning of paragraph 4(a)(i) of the Policy.

2. Rights or legitimate interests

As regards paragraph 4(a)(ii) of the Policy, while the overall burden of proof rests with the Complainant, it is commonly accepted that this should not result in an often-impossible task of proving a negative. Therefore, numerous previous Panels have found that 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 burden of production shifts to the Respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the disputed domain name. If the Respondent fails to come forward with such appropriate allegations or evidence, the Complainant is generally deemed to have satisfied paragraph 4(a)(ii) of the Policy. If the Respondent does come forward with some allegations or evidence of relevant rights or legitimate interests, the panel then must weigh all the evidence, with the burden of proof always remaining on the Complainant.

The Complainant argues that:

- The Respondent is not identified in the Whois database as the disputed domain name. Therefore, the Respondent is not known as the disputed domain name.
- The Respondent is not known by the Complainant. The Respondent is not affiliated with nor authorized by the Complainant. The Respondent does not carry out any activity for nor has any business with the Complainant.
- No license or authorisation was granted to the Respondent to make use of the Complainant’s Trademark or to apply for registration of the disputed domain name.
- The disputed domain name is a “typosquatted version” of the Trademark.
- The disputed domain name is inactive. The Complainant contends that the Respondent did not use the disputed domain name. The Complainant argues that this confirms that the Respondent has no demonstrable plan to use the disputed domain name.

The Panel finds that the Respondent does not appear to have any rights or legitimate interests in respect of the disputed domain name from the following facts:

- The disputed domain name includes the entire Trademark of the Complainant. The letter “B” is an intentional misspelling of the Trademark (speculating on such misspelling by internet users), without adding any meaning to the Trademark.
- There is no evidence that the Respondent is or has been commonly known, by the disputed domain name or by the terms “BBFORBANK” or “BFORBANK”. The WHOIS information does not provide any information that might indicate any rights to use of the terms “BBFORBANK” or “BFORBANK”.
- The Complainant’s Trademark has been used well before the registration date of the disputed domain name. The disputed domain name was registered on June 3rd, 2023, whereas the trademark of the Complainant was filed on June 2nd, 2009 and registered on December 8th, 2009.
- The Respondent does not actively use the disputed domain name. However, since the domain name is of a relatively recent date, this should not weigh heavily against the Respondent.
- There is no evidence to show that the Respondent is making a legitimate non-commercial or fair use of the disputed domain name, without intent for commercial gain or to misleadingly divert consumers. On the contrary, it appears that the Respondent is taking advantage (or at least intends to take advantage) of the Complainant's name and registered Trademark to attract consumers who have made a typographical mistake (a practice known as “typo squatting”).

- The Respondent does not seem to have any consent or authorisation to use the Trademark or variations thereof and does not seem to be related in any way to the Complainant.
- The Respondent did not show to have any trademark rights or other rights regarding the terms “BBFORBANK” or “BFORBANK”.
- The Respondent did not file an administratively compliant (or any) response. The Respondent did not provide evidence that it has rights or legitimate interests in the disputed domain name (the Respondent could, inter alia, have provided evidence of the factors mentioned in paragraph 4(c) of the Policy, but failed to do so).

In sum, on the balance of probabilities, and in the absence of any evidence to the contrary or any administratively compliant response being put forward by the Respondent, the Panel finds that the Complainant has made a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name.

The Panel concludes that the Respondent does not have rights or legitimate interests in the disputed domain name.

3. Bad faith

The Complainant argues that the Respondent has registered the domain name with full knowledge of the Complainant and its Trademark, given the distinctiveness and reputation of the Trademark. In this regard, the Complainant emphasizes the fact that the Complainant has 240.000 customers and that all the Google search results for the term “BBFORBANK” refer to the Complainant (the Panel notes that the Complainant in fact submitted evidence of search results for “BFORBANK”, since Google automatically “corrected” the search term; the Panel does not weigh this against the Complainant and is of the opinion that this confirms the Complainant’s arguments).

The Complainant argues that the misspelling was intentionally designed to be confusingly similar with the Trademark.

The Complainant contends that the Respondent has not demonstrated any activity in respect of the disputed domain name. The Complainant states that 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.

The Panel weighs these arguments and facts as follows:

First, as mentioned already, the disputed domain name reproduces the Complainant's Trademark "BFORBANK" entirely, with the mere repetition of the first letter “B” at the beginning of the domain name. The addition of the letter “B” speculates on a misspelling of the Trademark by internet users. The addition of the letter “B” in the disputed domain name does not add any meaning to the Trademark.

Second, the Complainant’s Trademark predates the registration of the disputed domain name with more than 10 years.

Third, the Trademark covers the territory of France, i.e., the Respondent’s home country. The Complainant is a French company, and the Respondent submitted an address in Paris at the time of registering the disputed domain name. Even though this address does not seem to be a genuine address (a fact that is weighed against the Respondent), the Respondent’s self-confirmed connection with France makes it unlikely that the Respondent would not have known the Complainant and its registered Trademark (or, put otherwise, makes it likely that he had actual knowledge of the Complainant and its Trademark).

Fourth, the Respondent uses the disputed domain name for an inactive webpage, but, as mentioned above, this should not weigh heavily in the analysis since the disputed domain name is of a relatively recent date.

Fifth, the Respondent chose the top-level domain “.online”, corresponding to the complainant’s area of business activity being “online banking”.

It is therefore inconceivable that the Respondent would have come up with a domain name consisting of the term “BBFORBANK” without having prior knowledge of the Complainant and its Trademark and activities. On the balance of probabilities, it is evident that the Respondent had knowledge of the existence of the Complainant and its activities, and of the existence of the Complainant's Trademark and the scope of the Trademark at the time of registration and use of the disputed domain name.

The Respondent did not contest any of the Complainant’s arguments and did not provide any explanation concerning its choice for registering and/or using a domain name that includes the Complainant’s registered Trademark in combination with the letter “B”.

Given the above, the Panel finds that the disputed domain name is not being used for any bona fide offering of goods or services. The disputed domain name is rather used to mislead internet users who made a typo when typing the Trademark of the Complainant (“typo squatting”). The Panel is convinced that the Respondent had the Trademark of the Complainant in mind when registering and subsequently using the disputed domain name. The Panel concludes that the disputed domain name is being used for the purpose of misleading Internet users. There is no evidence whatsoever of a bona fide offering of goods.

For all the reasons set out above, the Panel concludes that the disputed domain name was registered and is being used in bad faith within the meaning of 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. **bbforbank.online**: Transferred

PANELLISTS

Name	Bart Van Besien
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DATE OF PANEL DECISION **2023-08-25**

Publish the Decision
