

Decision for dispute CAC-UDRP-105651

Case number **CAC-UDRP-105651**

Time of filing **2023-07-25 10:22:55**

Domain names **be-for-ban-k.com**

Case administrator

Name **Olga Dvořáková (Case admin)**

Complainant

Organization **BFORBANK**

Complainant representative

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

Respondent

Organization **Hosting Concepts BV d/b/a Registrar.eu**

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 EU trademark registration no. 008335598 “BforBank”, registered on December 8, 2009.

The Complainant owns the domain name <bforbank.com>.

The Respondent registered the disputed domain name on July 2, 2023. Currently, the disputed domain name to a wordpress template untitled “My Shop BforBank”.

FACTUAL BACKGROUND

BFORBANK is a 100% online bank launched in October 2009 by the Crédit Agricole Regional Banks. BFORBANK offers daily banking, savings, investment and credit services for 240,000 customers.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

COMPLAINANT:

The Complainant contends that the disputed domain name is confusingly similar to the BFORBANK mark on the basis that the disputed domain name consists of the misspelled mark, the additional letter “e” and the top-level domain name suffix (“TLDs”) “.com” and are thus insufficient to avoid the finding that the disputed domain name is confusingly similar to its BFORBANK mark.

The Complainant also argues that the Respondent does not have any rights or legitimate interests in the disputed domain name. The Respondent has not acquired any rights in a trademark or trade name corresponding to the disputed domain name. In addition, the Respondent is not known or affiliated with the Complainant and the Complainant did not license or authorize the Respondent to use the BFORBANK mark. The Complainant also argues that the disputed domain name is a typosquatted version of the trademark. Further, the disputed domain name resolves to a wordpress template untitled “My Shop BforBank” displaying the trademark of the Complainant and could mislead customers into believing that they are accessing to a Complainant’s website under construction.

The Complainant further asserts that the disputed domain name has been registered and is being used in bad faith as the Respondent should have known of the Complainant’s well-known BFORBANK mark at the time of registration of the disputed domain name. The misspelling of the Complainant’s BFORBANK trademark was intentionally designed to be confusingly similar to the Complainant’s BFORBANK mark. The Complainant also asserts that as the Respondent’s website does not contain any information about the Respondent, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to his websites, by creating a likelihood of confusion with the Complainant and its mark.

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

A. Identical or Confusingly Similar

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

A registered trademark provides a clear indication that the rights in the mark shown on the trademark certificate belong to its respective owner. The Complainant has provided evidence that it owns the trademark registrations of the BFORBANK mark.

It is well-established that 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 (see WIPO Overview 3.0, section 1.9). The disputed domain name which incorporates the Complainant’s marks in its entirety and adds the additional letter “e” to Complainant’s mark is a clear misspelling of the Complainant’s BFORBANK mark. It is therefore a typosquatting attempt by the Respondent which does not avoid confusingly similarity between the Complainant’s mark and the disputed domain name. It is well established that where

the trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0"), section 1.8.

It is also well established that 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. (See WIPO Overview 3.0, section 1.9.)

The disputed domain name also contains hyphens which are not present in the Complainant's mark. The hyphens separate the disputed domain name into the following phrases "be", "for", "ban", and "k". This is similar to how the Complainant's BFORBANK mark is pronounced. The addition of the hyphens therefore do not avoid confusing similarity between the Complainant's mark and the disputed domain name.

In addition, the disputed domain name comprises the Complainant's BFORBANK mark in its entirety and the generic Top-Level Domain ("gTLD") ".com". It is well established that the addition of a gTLD ".com" does not avoid confusing similarity between the Complainant's trademark and the disputed domain name (see WIPO Overview 3.0, section 1.11.1).

Consequently, the Panel finds that the Complainant has shown that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights.

B. Rights or Legitimate Interests

Once the complainant establishes a *prima facie* case that the respondent lacks rights or legitimate interests in the disputed domain name, the burden of production shifts to the respondent to show that it has rights or legitimate interests in respect to the disputed domain name (see WIPO Overview 3.0, section 2.1).

In the present case, the Complainant has demonstrated *prima facie* that the Respondent lacks rights or legitimate interests in respect of the disputed domain name and the Respondent has failed to assert any such rights or legitimate interests.

The Complainant has provided evidence that it owns trademark registrations of the BFORBANK mark long before the date that the disputed domain name was registered and that it is not affiliated with nor has it licensed or otherwise permitted the Respondent to use the Complainant's trademark (see *LEGO Juris A/S v. DomainPark Ltd, David Smith, Above.com Domain Privacy, Transure Enterprise Ltd, Host master*, WIPO Case No. D2010-0138).

The Complainant also provided evidence that the Respondent is not commonly known by the disputed domain name (NAF 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).")) (see WIPO Overview 3.0, section 2.3).

Further, the Respondent did not submit a Response in the present case and did not provide any explanation or evidence to show rights or legitimate interests in the disputed domain name which would be sufficient to rebut the Complainant's *prima facie* case.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

C. Registered and Used in Bad Faith

The complainant must also show that the respondent registered and is using the disputed domain name in bad faith (see Policy, paragraph 4(a)(iii)). Paragraph 4(b) of the Policy provides circumstances that may evidence bad faith under paragraph 4(a)(iii) of the Policy.

The Complainant provided evidence that the disputed domain name resolves to a website with a Wordpress template bearing the BFORBANK trademark that does not appear to be an active website. The site also states that it is a "sample page". It has been held by prior panels that in circumstances such as the present case the passive holding of the disputed domain name is sufficient evidence of bad faith. (See *Telstra Corporation Limited. v. Nuclear Marshmallows*, WIPO Case No. D2000-0003; *Intesa Sanpaolo S.p.A. v. Kara Turner*, WIPO Case No. D2018-0639; WIPO Overview 3.0, section 3.3).

Further, the disputed domain name incorporates a typosquatting variation of the Complainant's BFORBANK mark which the Panel finds is an attempt by the Respondent to confuse and/or mislead Internet users seeking or expecting the Complainant. Previous UDRP panels ruled that in such circumstances "a likelihood of confusion is presumed, and such confusion will inevitably result in the diversion of Internet traffic from the Complainant's site to the Respondent's site" (see *Edmunds.com, Inc v. Triple E Holdings Limited*, WIPO Case No. D2006-1095). To this end, prior UDRP panels have established that attracting Internet traffic by using a domain name that is identical or confusingly similar to create a likelihood of confusion with a registered trademark may be evidence of bad faith under the Policy. Further, the Complainant has submitted evidence which shows that the Respondent registered the disputed domain name long after the Complainant registered the BFORBANK trademark. Given the evidence presented to the Panel, the Panel finds that it is highly likely that the Respondent was aware of the Complainant and its BFORBANK trademark at the time of registering the disputed domain name and specifically targeted the Complainant and its goodwill.

In addition, the Respondent did not submit a Response in this proceeding. Under the circumstances of this case, this is an additional indication of the Respondent's bad faith, which was considered by the Panel.

Accordingly, given the particular circumstances of this case, the reputation of the Complainant's trademark, and based on the evidence presented to the Panel, including (1) the registration of the disputed domain name long after the registration of the Complainant's trademark, (2) the typosquatting nature of the disputed domain name and confusing similarity with the Complainant's trademark, (3) the Respondent's use of a single page website which appears not to be making any bona fide use of the disputed domain name, and, (4) the failure of the Respondent to submit a response, the Panel draws the inference that the disputed domain name was registered and is being used in bad faith.

Accordingly, having regard to the circumstances of this particular case, the Panel finds that the Complainant has met its burden 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. **be-for-ban-k.com**: Transferred

PANELLISTS

Name	Jonathan Agmon
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DATE OF PANEL DECISION 2023-08-30

Publish the Decision