

Decision for dispute CAC-UDRP-105752

Case number	CAC-UDRP-105752
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Time of filing	2023-09-06 10:53:12
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Domain names	BFORBANC.COM
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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

Organization	1337 Services LLC
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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 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 wording BFORBANK, such as the domain name <bforbank.com>, registered since January 16, 2009.

FACTUAL BACKGROUND

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

The Complainant is the owner of several trademarks BFORBANK and also a number of domain names, including the wording BFORBANK.

The disputed domain name was registered on June 29, 2023 and redirects to a parking page.

The Complainant states that the disputed domain name is confusingly similar to its prior trademark BFORBANK.

The obvious misspelling of the Complainant's trademark BFORBANK (*i.e.* the changing of the letter "K" by "C" in the trademark) is in the view of Complainant characteristic of a *typosquatting* practice intended to create confusing similarity between the Complainant's trademark and the disputed domain name.

It does not in the view of the Complainant alter the phonetic similarity between the disputed domain name and the trademark. Previous panels have found that the slight spelling variations does not prevent a domain name from being confusing similar to the Complainant's trademark.

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 name and the Complainant, its trademark, and its domain name associated.

The Complainant asserts that the Respondent is not identified in the Whois database as the disputed domain name. 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, in the view of the Complainant the Respondent is not known as the disputed domain name. 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, or apply for registration of the disputed domain name.

Moreover, the Complainant also claims that the disputed domain name is 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.

The Complainant contends that the Respondent did not use the disputed domain name, and it confirms that the Respondent has no demonstrable plan to use the disputed domain name.

The disputed domain name is confusingly similar to the Complainant's trademark BFORBANK.

The Respondent has registered the disputed domain name several years after the registration of the trademark BFORBANK by the Complainant, which has established in the view of the Complainant a strong reputation while using this trademark. Indeed, the Complainant's contents he is well-known,

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.

Moreover, the Complainant states the misspelling of the trademark BFORBANK was intentionally designed to be confusingly similar with the Complainant's trademark. Previous UDRP Panels have seen such actions as evidence of bad faith.

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 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.

PARTIES CONTENTIONS

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

A. The domain name is confusingly similar to a trademark or service mark in which the Complainant has rights

The Panel acknowledges that the Complainant has established rights in the BFORBANK trademark.

The Panel agrees that the disputed domain name is confusingly similar to the trademark of Complainant BFORBANK.

The Panel agrees with the Complainant, that the obvious misspelling of the Complainant's trademark BFORBANK (the changing of the letter "K" by "C" in the trademark) is characteristic of a *typosquatting* practice intended to create confusing similarity between the Complainant's trademark and the disputed domain name. Phonetically the trademark and the second-level domain are identical. Previous panels have found that slight spelling variations do not prevent a domain name from confusing, similar to the Complainant's trademark (WIPO Case No. D2020-3457, *ArcelorMittal (Société Anonyme) v. Name Redacted <arcelormital.com>* ("As the disputed domain name differs from the Complainant's trademark by just two letters, it must be considered a prototypical example of *typosquatting* – which intentionally takes advantage of Internet users that inadvertently type an incorrect address (often a misspelling of the complainant's trademark) when seeking to access the trademark owner's website. WIPO Overview 3.0 at section 1.9 states that "[a] domain name which consists of a common, obvious, or misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element.").

The addition of the GTLD ".COM" does not change the overall impression of the designation as being connected to Complainant's trademark. It does not prevent the likelihood of confusion between the disputed domain name and the Complainant, its trademark and its domain name associated.

Thus, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark.

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

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 UDRP.

The Complainant asserts that it has not authorized the Respondent to use its trademark, and there is no evidence to suggest that the Respondent has used, or undertaken any demonstrable preparations to use, the disputed domain name in connection with a bona fide offering of goods or services.

Thus, the Complainant has established its *prima facie* case with satisfactory evidence.

The Respondent did not file a formal response and has therefore failed to assert factors or put forth evidence to establish that it enjoys rights or legitimate interests in the disputed domain name. As such, the Panel concludes that the Respondent has failed to rebut the Complainant's *prima facie* showing of the Respondent's lack of rights or legitimate interests in the disputed domain name, and that none of the circumstances of paragraph 4(c) of the Policy is applicable in this case.

Accordingly, the Respondent has no rights or legitimate interests on the disputed domain name.

C. The domain name was registered and is being used in bad faith

The disputed domain name is confusingly similar to the Complainant's trademark BFORBANK.

The Respondent has registered the disputed domain name almost 15 years after the registration of the trademark BFORBANK by the Complainant, which has established a reputation while using this trademark. The internet search engine Google even autocorrects the word BFORBANC with the trademark of the Complainant BFORBANK. The Panel is therefore of the view that the Respondent registered the disputed domain name with full knowledge of the Complainant's trademark rights because even a simple internet search

would have revealed the trademark of the Complainant.

Thus, given the distinctiveness of the Complainant's trademark and the use and reputation, the Panel agrees with the Complainant that it is inconceivable that the Respondent could have registered the disputed domain name without actual knowledge of Complainant's rights in the trademark.

Moreover, the Complainant states the misspelling of the trademark BFORBANK was intentionally designed to be confusingly similar with the Complainant's trademark. Previous UDRP Panels have seen such actions as evidence of bad faith. NAF Case No. FA 877979, *Microsoft Corporation v. Domain Registration Philippines* ("In addition, Respondent's misspelling of Complainant's MICROSOFT mark in the <microssoft.com> domain name indicates that Respondent is typosquatting, which is a further indication of bad faith registration and use pursuant to Policy ¶ 4(a)(iii).").

The Panel finds, that Respondent's registration and use of a domain name that differs from Complainant's long trademark by only one letter at the end of the disputed domain name, which is phonetically identical, indicates "typosquatting", which is evidence of bad faith registration and use (see NAF Case No. 157321, *Computerized Sec. Sys., Inc. v. Bennie Hu*).

Finally, the disputed domain name is not used. The Respondent has not demonstrated any activity in respect of the disputed domain name, and it is very likely that a typosquatting domain name very similar to a bank is used to target the customer base of the bank. The Panel can not see 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.

On these bases, the Panel concludes that the Respondent has registered and is using the disputed domain name in bad faith.

For the reasons stated above, it is the decision of this Panel that the Complainant has satisfied all three elements of paragraph 4(a) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

- 1. **BFORBANC.COM**: Transferred

PANELLISTS

Name	Jan Schnedler
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DATE OF PANEL DECISION	2023-09-30
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Publish the Decision