

Decision for dispute CAC-UDRP-105888

Case number CAC-UDRP-105888

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Domain names b4banking.com

Case administrator

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

Complainant

Organization BFORBANK

Complainant representative

Organization NAMESHIELD S.A.S.

Respondent

Organization AMITRAWAT

Respondent representative

Name Mr Amit Rawat

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 relies on its registered European trademark:

Mark	Territory	Registration No.	Application date	Registration date	Classes
BFORBANK (word)	EM	008335598	02 June 2009	08 December 2009	9, 35, 36, 38

The Complainant also owns the domain name <bforbank.com>, registered since January 16, 2009.

FACTUAL BACKGROUND

On October 5, 2023, the Respondent registered the disputed domain name <b4banking.com>.

On October 12, 2023, the Complainant filed this UDRP complaint concerning the disputed domain name.

On October 18, 2023, the Respondent submitted an informal response via the domain name dispute resolution service provider ("Provider") online platform.

On October 19, 2023, the Complainant emailed a template settlement form to the Respondent.

On October 27, 2023, the Complainant sent a follow-up e-mail to the Respondent regarding the completion of the settlement form.

According to the record, it does not appear that the Respondent replied to either of the Complainant's e-mails mentioned above regarding a potential settlement.

On November 2, 2023, the Respondent filed its formal response via the Provider online platform.

On November 2, 2023, the Complainant filed an offer for amicable settlement via the Provider online platform.

PARTIES CONTENTIONS

COMPLAINANT:

Key aspects of the Complainants' contentions are summarized below.

Complainant's Background

The Complainant is a 100% online bank launched in October 2009 by the French Crédit Agricole Regional Banks. The Complainant, through its BFORBANK brand, offers daily banking, savings, investment and credit (consumer and real estate) services for more than 200 000 customers.

Registration of the disputed domain name

On October 5, 2023, the Respondent Amit Rawat - located in India - registered the disputed domain name <b4banking.com>. The disputed domain name resolves to a parking page with commercial links, and has MX servers configured.

First UDRP Element - disputed domain name is Confusingly Similar to Complainant's Trademark

The Complainant asserts that the disputed domain name is confusingly similar to its BFORBANK registered trademark, because (i) the substitution of the letters "FOR" by the number "4" (pronounced "four") is phonetically identical to those letters and is a very common abbreviation for this syllable; (ii) the addition of the letters "ING" is not sufficient to rule out a risk of confusion as the term "BANKING" refers to the Complainant's activity, and (iii) the inclusion of the top level TLD ".com" should be disregarded.

Second UDRP Element – The Respondent has no Rights or Legitimate Interests in the disputed domain name

The Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name because Respondent (i) is not commonly known as the disputed domain name, (ii) is not known to or affiliated with or authorized by or under license to the Complainant, (iii) the use of the disputed domain name for a website with commercial links is not a bona fide offering of goods or services or a legitimate use.

Third UDRP Element – The disputed domain name was Registered and is Being Used in Bad Faith

The Complainant asserts that because (i) the disputed domain name is confusingly similar to Complainant's trade mark, (ii) the registration of the disputed domain name happened several years after the registration of the Complainant's trade mark, during which time it established a strong reputation therein, and (iii) all the results of a Google search of the term "B4 BANKING" refer to Complainant; it is therefore "inconceivable" that the Respondent could have registered the disputed domain name without actual knowledge of the Complainant's rights in the trademark.

The Complainant contends the Respondent has attempted to attract Internet users for commercial gain to his own website thanks to the Complainant's trademarks for its own commercial gain, which is evidence of bad faith, because the disputed domain name resolves to a parking page with commercial links.

Further, the Complainant contends because the disputed domain name has been set up with MX servers, it could be used for email purposes and any email emanating from the disputed domain name could not be used for good faith purposes.

RESPONDENT:

Key aspects of the Respondent's contentions are summarized below.

First UDRP Element - disputed domain name is Confusingly Similar to Complainant's Trademark

The Respondent claims that the disputed domain name <b4banking.com> may be distinguished from the Complainant's "bforbank" mark.

Second UDRP Element – The Respondent has no Rights or Legitimate Interests in the disputed domain name

Regarding their proposed use, the Respondent contends that they intended to use the disputed domain name for "personal use" and that they had hired people to work on the project associated therewith.

Third UDRP Element – The disputed domain name was Registered and is Being Used in Bad Faith

The Respondent asserts they first heard of the Complainant due to the instant proceedings. The Respondent claims they had no knowledge of any trademarks or potential conflicts at the time of acquisition of the disputed domain name.

The Respondent stated that they would be open to an amicable settlement and the transfer of the disputed domain name to the Complainant for "compensation" and a "resolution that benefits both parties". The Respondent claims "I am already incurring losses as I have hired a few people to start working on this project in advance".

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 not, 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 not, 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

LANGUAGE OF PROCEEDING

According to Paragraph 11 in the Rules for Uniform Domain Name Dispute Resolution Policy, (the "Rules") "...the language of the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding."

According to the information on the case file, the Registrar confirmed that the Respondent is the current registrant of the disputed domain name, and that the language of the respective registration agreement is English. Thus, the default language of the proceedings is English, unless otherwise agreed by the parties or the Panel determines that there is a compelling reason to deviate from English. The Panel should also take into consideration the goal of expeditious proceedings, in accordance with its general powers enumerated in Paragraph 10 of the Rules.

Because neither party has requested deviation from the default language, and both party submissions are in English, the Panel concludes it is appropriate to continue these proceedings in the default manner, that is, in English, the language of the registration agreement.

PRINCIPAL REASONS FOR THE DECISION

THREE ELEMENTS COMPLAINANT MUST ESTABLISH UNDER THE POLICY

According to Paragraph 4(a) of the Policy, the Complainant is required to prove each of the following three elements to obtain an order that a disputed domain name should be transferred or cancelled:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; 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.

The Panel has examined the evidence available to it and has come to the following conclusions concerning the satisfaction of the three elements of paragraph 4(a) of the Policy in these proceedings:

(A) THE COMPLAINANT'S RIGHTS AND CONFUSING SIMILARITY OF THE DISPUTED DOMAIN NAME TO THE COMPLAINANT'S RIGHTS

Sufficient evidence has been submitted by the Complainant of its trademark rights in the term BFORBANK in classes 9, 35, 36, 38 in the European Union. Such trademark rights were created and registered well over a decade prior to October 5, 2023, the creation date of the disputed domain name. A nationally or regionally registered trademark confers on its owner sufficient rights to satisfy the requirement of having trademark rights for the purposes of standing to file a UDRP case. The disputed domain name has similarities to Complainant's BFORBANK mark because (i) the first part of the mark "BFOR" is substituted for the phonetically identical "B4" denomination, (ii) the "BANK" part of the mark is included, (iii) there is the addition of the suffix "ING", which is related to Complainant's business and (iv) the inclusion of gTLD ".com". Because this first element is well accepted as a standing requirement, confusing similarity can be established when the subject mark is recognizable within the disputed domain name. Although there are spelling differences, a phonetically identical version of the Complainant's mark is recognizable within the disputed domain name, namely "B4BANK" which can be pronounced the same as "BFORBANK". Accordingly, for the purpose of standing, the Panel finds that the Complainant possesses rights in its BFORBANK trademark such that it has standing under the Policy.

The TLD may usually be ignored for the purpose of determination of identity or confusing similarity between a domain name and the Complainant's trademark as it is technical requirement of registration (see paragraph 1.11.1 WIPO Overview 3.0). No relevant factors.

Therefore, the Panel concludes that the Complainant has satisfied the requirement under paragraph 4(a)(i) of the Policy and the disputed domain name is confusingly similar to Complainant's mark for the purposes of this proceeding.

(B) RESPONDENT'S LACK OF RIGHTS OR LEGITIMATE INTERESTS IN THE DISPUTED DOMAIN NAME

The Panel finds that the Respondent has rights or legitimate interests in the disputed domain name in accordance with paragraph 4(a)(ii) of the Policy.

The second element of the Policy requires that the Complainant establishes that the Respondent has no rights or legitimate interests in the disputed domain name. The generally adopted approach, when considering the second element, is that if a complainant makes out a prima facie case, the burden of proof shifts to the respondent to rebut it; see, for example, WIPO Overview 3.0, section 2.1 ("While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of 'proving a negative', requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element."). However, the burden of proof still remains with the Complainant to make out its prima facie case on a balance of probabilities. Moreover, the wording of paragraph 4(a)(ii) of the Policy requires a complainant to establish that the respondent has no rights or legitimate interests in the domain name in issue. Simply establishing that the complainant also has rights in the domain name in issue is insufficient.

As a preliminary matter, the Complaint confirms that it has no relationship with the Respondent. Thus, the Respondent has not been conferred with any rights relating to the Complainant's BFORBANK trademark.

Paragraph 4(a)(ii) of the Policy contemplates an examination of the available facts to determine whether a respondent has rights or legitimate interest in the domain name. Paragraph 4(c) sets out a list of circumstances through which a respondent may demonstrate that it does have such rights or interests.

The first circumstance, under Paragraph 4(c)(i), is where "before any notice to you of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services". Here, the Complainant submitted evidence regarding the use of the disputed domain name in a screenshot

showing that it resolved to a page with pay-per-click (“PPC”) commercial links. The PPC links shown in the screenshot are related to the dictionary term “banking” which is contained within the disputed domain name, for example “Compte Entreprise en Ligne” (“online business account”) “Ouverture Compte Pro en Ligne” (“opening professional account online”) and “Compte Bancaire Qonto” (“Qonto bank account”). As described in section 2.9 of WIPO Overview 3.0: “Panels have recognized that the use of a domain name to host a page comprising PPC links would be permissible – and therefore consistent with respondent rights or legitimate interests under the UDRP – where the domain name consists of an actual dictionary word(s) or phrase and is used to host PPC links genuinely related to the dictionary meaning of the word(s) or phrase comprising the domain name, and not to trade off the complainant’s (or its competitor’s) trademark.” This instant case is such as example, because the PPC links genuinely relate to the dictionary word within the disputed domain name which is “banking”. Thus, here the use of the disputed domain name for PPC links in this context can support a finding of Respondent rights or legitimate interests in the disputed domain name.

Respondent asserts that they were intending to use the disputed domain name in connection with a bona fide offering of goods or services because they (i) acquired the disputed domain name for personal use, (ii) had hired people to work on the associated project, and (iii) their “intent was not to harm the company financially or misuse the domain in any way”. While no evidence was submitted by Respondent in regards to their claimed intended use of the disputed domain name, in this case there was only a week between the registration of the disputed domain name and the filing of the Complaint. Because business plans and operations can reasonably take more than a week to develop, and because the disputed domain name includes the common dictionary terms “b4” – a common abbreviation for “before” and “banking”, the Panel finds the Respondent’s assertions in this regard to be plausible, despite the lack of supporting evidence, see section 2.2 WIPO Overview 3.0: “Acknowledging that business plans and operations can take time to develop, panels have not necessarily required evidence of such use or intended use to be available immediately after registration of a domain name, but the passage of time may be relevant in assessing whether purported demonstrable preparations are bona fide or pretextual. ”

In these circumstances, on the balance of probabilities, the Respondent has demonstrated rights or legitimate interests in the disputed domain name. The Complainant has therefore failed to satisfy the second element under paragraph 4(a)(ii) of the Policy.

(C) BAD FAITH REGISTRATION AND USE OF THE DISPUTED DOMAIN NAME

In light of its finding that the Complainant has not satisfied the burden required under the second element of paragraph 4(a)(ii) of the Policy, it is not strictly necessary to make a determination as to the Complainant’s contentions under the third element.

However, for completeness, the Panel concludes that the requirements of 4(a)(iii) of the Policy have not been made out by the Complainant such as to establish the Respondent registered and used the disputed domain name in bad faith.

This third element of the Policy requires Complainant to show that the disputed domain name has been registered and used in bad faith under paragraph 4(a)(iii) of the Policy. See, e.g. Hallmark Licensing, LLC v. EWebMall, Inc., WIPO Case No. D2015-2202 (“The standard of proof under the Policy is often expressed as the “balance of the probabilities” or “preponderance of the evidence” standard. Under this standard, an asserting party needs to establish that it is more likely than not that the claimed fact is true.”).

Further, Paragraph 4(b) of the Policy sets out a non-exhaustive list of four circumstances, any one of which may be evidence of the registration and use of a domain name in bad faith. The four specified circumstances are:

- (i) circumstances indicating that the respondent has registered or 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 the respondent’s 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 site or location.

Insufficient evidence of targeting

Evidence of targeting of the Complainant by the Respondent is lacking. The disputed domain name is made up of variations of dictionary terms, namely “B4” which is a common abbreviation for “before” and “BANKING”. The Respondent claims to have been unaware of the Complainant’s mark before receiving notice of this dispute. The Panel finds the Respondent’s claimed lack of awareness of the Complainant to be credible because: (i) Complainant provided no evidence that its mark is registered or used anywhere outside of the European Union, while the Respondent is located in India; (ii) according to Complainant’s own evidence, a Google search of the term “B4 BANKING” returns results related to several different businesses, which appear to be in the banking and finance sector. While the top two results refer to Complainant, the remaining results point variously to: <b4finance.com>; <b4-business.com>; <b4payments.com>; and “B4 BANKING” YouTube account; and <fmb4banking.com>, thus even the first page of the Google search demonstrates varied use of the dictionary terms contained within the disputed domain name; and (iii) as noted, the disputed domain name includes dictionary terms which could reasonably and plausibly be intended for use unrelated to the Complainant. Accordingly, the Panel is not prepared to infer that the Respondent knew or should have known that its registration would be confusingly similar to the Complainant’s mark at the time of registration. Thus, Panel finds that the Complainant has not proved that the disputed domain name was acquired by the Respondent in bad faith.

PPC links

The use of the disputed domain name for commercial PPC links in this case is insufficient, without more, to establish that the Respondent is using the disputed domain name in bad faith by intentionally attempting to attract, for commercial gain, internet users to its web site or online location, by creating a likelihood of confusion with the Complainant's BFORBANK mark. While the evidence shows the disputed domain name resolved to a parking page with PPC links that could have commercial benefits, as discussed above, the PPC links are related the dictionary term "banking" as included within the disputed domain name. As such the PPC links are not improperly trading off the Complainant's trademark rights such that would indicate bad faith use.

MX records

Cyberfraud and phishing is a very real threat and concern. Panels have consistently held that a respondent's use of a domain name to send deceptive e-mails is evidence of bad faith. The Complainant's concern about the potential for the disputed domain name to be used for phishing due to the presence of MX servers is reasonable. However, no evidence of actual phishing was submitted, and the Respondent provided a plausible legitimate reason for registering the disputed domain name. In this case the Respondent could conceivably send e-mails from the disputed domain name for reasons associated with their intended use of the domain, that would not constitute phishing and/or bad faith. Accordingly, the mere existence of MX records - in the circumstances of this case - is not sufficient for a finding of bad faith registration and use.

In light of the above analysis, the Panel concludes that the Complainant has failed to establish that the disputed domain name was registered and is being used in bad faith, and thus has not satisfied the requirements under paragraph 4(a)(iii) of the Policy.

REVERSE DOMAIN NAME HIJACKING

Paragraph 15(e) of the UDRP Rules provides that, "If after considering the submissions the Panel finds that the complaint was brought in bad faith, for example in an attempt at Reverse Domain Name Hijacking or was brought primarily to harass the domain-name holder, the Panel shall declare in its decision that the complaint was brought in bad faith and constitutes an abuse of the administrative proceeding."

UDRP panels have found a mere lack of success of the complaint is not itself sufficient for a finding of reverse domain name hijacking ("RDNH"). Further, it is not necessary for a respondent to seek a RDNH finding for a Panel to find the same. Established reasons for finding RDNH include circumstances where the complainant (i) knew it could not succeed as to any of the three elements of the Policy, (ii) clearly ought to have known it could not succeed under any fair interpretation of the facts available to it at the time of filing the complaint, (iii) unreasonably ignored policy precedent, (iv) provided false evidence, or otherwise intended to mislead the panel, (v) provided intentionally incomplete material evidence, (vi) failed to disclose that a case is a UDRP refiling, (vii) filed the complaint after an unsuccessful attempt to acquire the disputed domain name from the respondent without a plausible legal basis, (viii) bases a complaint on only the barest of allegations without any supporting evidence.

In the present case the Panel has already found that the Complainant has trademark rights in the disputed domain name sufficient to satisfy the threshold requirement under paragraph 4(a) of the Policy.

The Panel finds that because of Complainant's trademark rights, and the Complainant's legitimate concerns regarding the MX records associated with the disputed domain name, Complainant had at least a colourable claim under the UDRP, such that a finding of RDNH does not arise under circumstances (i), (ii) or (iii) outlined above.

On the other hand, the Panel is concerned by the Complainant's claim pertaining to the Google search results that, "all the results of the term "B4 BANKING" refers to the Complainant (Annex 7)." According to the Complainant's own evidence submitted at Annex 7, this claim is inaccurate, because only the first two Google results refer to the Complainant, the remaining results refer to banking and financial businesses and links unrelated to the Complainant. Further, Complainant asserts, "given the distinctiveness of the Complainant's trademark and reputation, 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." [emphasis added]. A non-abusive registration of a domain name containing two common dictionary terms, namely "b4" meaning "before" and "banking" is conceivable, especially for registrants located outside of Europe, given the limited geographic use and reputation of the Complainant's mark.

The Panel considers the above points are weaknesses in Complainant's case but nonetheless insufficient to warrant the censure of a finding of RDNH. Weighing in favour against such a finding, the Complainant owns the BFORBANK trademark which long predates the date of registration of the disputed domain name. The disputed domain name is confusingly similar to the Complainant's BFORBANK trademark, and the Complainant therefore succeeded in the first element of the Policy. The Complainant expressed concern about the existence of MX records, meaning that e-mails could originate from the disputed domain name with the potential for phishing fraud. While the Complainant overstated its case and included an inaccurate statement concerning the Google search results, the Complainant apparently did not know at the time of filing that the Respondent would have a plausible legitimate explanation for its acquisition of the disputed domain name. Although Complainant could have sought to establish the facts before commencing the Complaint by communicating with the Respondent, Complainant's failure to do so, given its legitimate phishing-related concerns, is understandable.

In conclusion, despite the mentioned weaknesses in Complainant's case, Complainant's filing of the Complaint does not amount to an abuse of process that justifies a finding of reverse domain name hijacking.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Rejected

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

1. **b4banking.com**: Remaining with the Respondent
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PANELLISTS

Name	Claire Kowarsky
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DATE OF PANEL DECISION **2023-11-21**

Publish the Decision
