Decision for dispute CAC-UDRP-106036

Case number	CAC-UDRP-106036
Time of filing	2023-12-04 10:43:19
Domain names	bfobnak.site

Case administrator

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

Complainant

Organization	BFORBANK

Complainant representative

Organization	NAMESHIELD S.A.S.

Respondent

Name	facil nowassil

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 bases its Complaint on the following trademark:

- European Union trademark “BFORBANK”, no. 8335598, filed on 2 June 2009, registered on 8 December 2009, for goods and services in classes 9, 35, 36, 38.

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 (consumer and real estate) services for more than 200 000 customers.

The Complainant is the owner of several trademarks BFORBANK, such as the European Union trademark “BFORBANK”, no. 8335598 (cited above).

The Complainant also owns a number of domain names which include its trademark BFORBANK, such as the domain name <bforbank.com>, registered on 16 January 2009.

The disputed domain name <bfobnak.site> was registered on 7 November 2023 and is currently inactive and reported as fraudulent.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

The Complainant's contentions are the following:

The disputed domain name <bfobnak.site> is confusingly similar to the Complainant's earlier trademark BFORBANK, that the Respondent lacks rights or legitimate interests in the disputed domain name for a number of reasons and that the disputed domain name was registered and is being used in bad faith.

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 Panel agrees that the disputed domain name <bfobnak.site> is confusingly similar to the Complainant's earlier trademark BFORBANK. The misspelling of the trademark BFORBANK of the Complainant, namely the deletion of the letter “R” from the word part “FOR” and the reversal of the letters “A” and “N” from the word part "BANK", is not sufficient to escape the finding that the disputed domain name is confusingly similar to the Complainant’s trademark and it does not change the overall impression of the designation as being connected to the trademark BFORBANK.

Moreover, the extension “.site” is not to be taken into consideration when examining the similarity between the Complainant’s trademark and the disputed domain name (WIPO Case No. D2005-0016, Accor v. Noldc Inc.). The mere adjunction of a gTLD such as “.site” is irrelevant as it is well established that the generic Top Level Domain is insufficient to avoid a finding of confusing similarity (WIPO Case No. 2013-0820, L’Oréal v Tina Smith, WIPO Case No. D2008-0820 Titoni AG v Runxin Wang and WIPO Case No. D2009-0877, Alstom v. Itete Peru S.A.).

Therefore, the Panel is satisfied that the first condition under the Policy is met.

2. Lack of Respondent's rights or legitimate interests

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 proof 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, a complainant is generally deemed to have satisfied paragraph 4(a)(ii) of the Policy.

Based on the available evidence, the Respondent does not appear to be known by the disputed domain name as such is not identified in the WHOIS database as the disputed domain name. The Respondent is not a licensee of, nor has any kind of relationship with, the Complainant. The Complainant has never authorised the Respondent to make use of its trademark, nor of a confusingly similar trademark in the disputed domain name.

The disputed domain is at the date of the decision inactive and reported as fraudulent. Such use does not amount to a bona fide offering of goods or services, or to a legitimate noncommercial or fair use of the disputed domain name.

The Panel notes that the Respondent had an opportunity to comment on the Complaint's allegations by filing a Response, which the Respondent failed to do.

Thus, the Panel is satisfied that the Complainant has at least established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. Accordingly, the Panel takes the view that also the second requirement under the Policy is met.

3. Bad Faith

The Complainant's trademark BFORBANK predates the registration date of the disputed domain name. The Respondent has chosen to register the disputed domain name containing a misspelling version of the Complainant's BFORBANK trademark in order to create a confusion with such trademark. Therefore, the Panel concludes that at the time of registration of the disputed domain name, the Respondent was well aware of the Complainant's trademark and has intentionally registered one in order to create confusion with such trademark.

In the present case, the following factors should be considered:

(i) the Complainant's trademark predates the registration date of the disputed domain name;

(ii) the Respondent failed to submit any response and has not provided any evidence of actual or contemplated good faith use of the disputed domain name;

(iii) the Respondent registered the disputed domain name containing a misspelling version of a registered trademark;

(iv) the Respondent has no business relationship with the Complainant, nor was ever authorised to use a domain name similar to the Complainant's trademark;

(v) the disputed domain is at the date of the decision inactive and reported as fraudulent. Considering the above, in the Panel's view, it is inconceivable that the Respondent will be able to make any good faith use of the disputed domain name.

In light of the foregoing, the Panel concludes that the Respondent has registered and has been using the disputed domain name in bad faith. Thus, also the third and last condition under the Policy is satisfied.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **bfobnak.site**: Transferred

PANELLISTS

Name	**Delia-Mihaela Belciu**

DATE OF PANEL DECISION 2024-01-10

Publish the Decision