Decision for dispute CAC-UDRP-106211

Case number	CAC-UDRP-106211
Time of filing	2024-01-31 10:30:43
Domain names	bforbankc.online, bforbankk.com, bforbankk.online, bforbankr.online

Case administrator

Name	Olga Slanařová (Case admin)

Complainant

Organization	BFORBANK

Complainant representative

Organization	NAMESHIELD S.A.S.

Respondent

Name	Darlene Russell

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 names.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of EU trademark registration number 008335598 for BforBank in Classes 9, 35, 36, 38, filed on February 6, 2009 and registered on August 12, 2009.

FACTUAL BACKGROUND

The Complainant is an online bank launched in October 2009 by the Crédit Agricole Regional Banks. It offers daily banking, savings, investment and credit (consumer and real estate) services. The Complainant is the owner of several registrations for the trademark BFORBANK, such as the European trademark number 8335598 registered since June 2 , 2009. The Complainant also owns a number of related domain names including <bforbank.com>, registered since January 1,2009. The disputed domain names were registered on January 26 , 2024 and resolve to parking pages with commercial links, some of them related to the Complainant.

The disputed domain name is identical or confusingly similar to the Complainant's trademark as they are obvious misspellings thereof. The domain names also add either the ".com" or the ".online" TLD. Further, the disputed domain names resolve to websites sponsoring links to other businesses, many of them including mention of the Complainant's name. The Respondent thus has no rights or legitimate interests in the disputed domain name, it is not authorised to use the Complainant's trademark, it is not commonly known by the name, and it is not making a bona fide or fair use of the disputed domain names. Further, typosquatting of

the Complainant‘s trademark for domain names that resolve to websites with monetized links indicates that the disputed domain names were registered and used in bad faith.

PARTIES CONTENTIONS

Complainant´s contentions are summarized above

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain names are 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 names (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 names have been registered and are 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. Trademark Rights and Identity or Confusing Similarity

Sufficient evidence of trademark rights in the term BFORBANK for various banking and other financial services has been submitted by the Complainant in the form of screenshots from the European Intellectual Property Office website which shows the details of its trademark registration. As such, the Panel finds that the Complainant possesses rights in its asserted trademark.

Further, while the Complainant claims to be the owner of the domain name <bforbank.com> and has provided a copy of the WHOIS record, such ownership does not, of itself, serve to create any trademark rights.

Next, UDRP panels have consistently held that where the asserted trademark is recognizable within a disputed domain name, a minor misspelling does not prevent a finding of confusing similarity under paragraph 4(a)(i) of the Policy. The disputed domain names are misspellings of the trademark BFORBANK adding the letters “c”, “k” or “r”. The domain names further add either the “.com” or „.online“ gTLDs. Thus, the Complainant asserts that the disputed domain names are confusingly similar to the asserted trademark and will lead internet users to wrongly believe that the disputed domain names originate from or are endorsed by the Complainant. Prior panels have found confusing similarity under similar fact situations. Star Stable Entertainment AB v. Carolina Rodrigues, 103789 (CAC May 5, 2021) (“The disputed domain name [<starstsble.com>] consists of the Complainant's whole trademark (STAR STABLE), written in a misspelled way, with an ‘s’ instead of an ‘a’ in the middle of the second word. Such misspelling is not sufficient to escape the finding that the disputed domain name is confusingly similar to the trademark of the Complainant.”).

Furthermore, the extensions ".com" and „.online" typically add little or no meaning or distinctiveness to a disputed domain name and are usually disregarded in the paragraph 4(a)(i) analysis. Novartis AG v. Wei Zhang, 103365 (CAC December 9, 2020) ("it is generally accepted that the addition of the top-level suffix in the domain name (e.g., '.com') is to be disregarded under the confusing similarity test.").

In light of the above, the Panel concludes that the Complainant possesses rights to its claimed trademark and that each of the disputed domain names is confusingly similar thereto under Paragraph 4(a)(i) of the Policy.

2. Rights or Legitimate Interests

The Complainant must first make a prima facie case that Respondent lacks rights and legitimate interests in the disputed domain name under Policy paragraph 4(a)(ii). Should it succeed in that effort, the burden then shifts to Respondent to show that it does have rights or legitimate interests. See PepsiCo, Inc. v Smith power production, UDRP-102378, (CAC March 8, 2019) ("The Panel finds that the Complainant has made out a prima facie case that arises from the considerations above. All of these matters go to make out the prima facie case against the Respondent. As the Respondent has not filed a Response or attempted by any other means to rebut the prima facie case against it, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.").

Paragraph 4(a)(ii) of the Policy directs an examination of the facts to determine whether a respondent has rights or legitimate interest in a domain name. Paragraph 4(c) lists a number of ways in which a respondent may demonstrate that it does have such rights or interests.

The first example, 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". Past decisions under the Policy have held that use of a confusingly similar domain name to host monetized pay-per-click pages is not a bona fide offering of goods or services. See, e.g., Loro Piana S.p.A. v. Y. v. Oostendorp, 101335 (CAC March 26, 2018) (use of a disputed domain name that copies the complainant's trademark to resolve to a pay-per-click website "cannot be considered a bona fide offering of goods or services...."). Here, the Respondent is using the disputed domain name to resolve to a parking page that contains pay-per-click links bearing such titles as "bforbank login", "bforbank espace client", "bforbank france", and "Banque Pro en Ligne". Therefore, this Panel concludes that the Respondent is using the disputed domain name to seek click revenue through those diverted Internet users who are trying to reach the Complainant but, due to the confusing similarity of the disputed domain names with the Complainant's trademark, end up at the Respondent's website instead.

The second example, under Paragraph 4(c)(ii), is a scenario in which a respondent is commonly known by the domain name. In considering this issue, relevant information can include the WHOIS record and any other assertions by a complainant regarding the nature of its relationship with a respondent. See LABORATOIRE NUXE v. Domains For Sale, UDRP-106079 (CAC January 25, 2024) ("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."). See also Z&V v. Mecara Untech (Mecara Untech), UDRP-106222 (CAC February 27, 2024) (no rights or legitimate interests found where "[n]either license nor authorization has been granted to the Respondent to make any use of the Complainant's trademark."). The WHOIS records for the disputed domain names identify the registrants as "Darlene Russell". The Complainant further asserts that "[n]either license nor authorization has been granted to the Respondent to make any use of the Complainant's trademark BFORBANK…". The Respondent has not participated in this case and so it does not offer any information or evidence to argue against the Complainant's assertions. Accordingly, the Panel finds no ground upon which to conclude that the Respondent is commonly known by the disputed domain name under Policy paragraph ¶ 4(c)(ii).

As to the third example, under Paragraph 4(c)(iii) of the Policy, there is no evidence that the Respondent is making a legitimate non-commercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the BFORBANK trademark. As the disputed domain names resolve to classic pay-per-click websites with links to the Complainant and its competitors in the financial services field, this does not rebut the assertion that its use is not fair as Respondent's activity does not fit into any accepted category of fair use such as news reporting, commentary, political speech, education, nominative or generic use, etc.

In light of the above analysis, and with no Response or other submission in this case to rebut the Complainant's assertions, this Panel finds that the facts of this case do not demonstrate that the Respondent has any rights or legitimate interest in the disputed domain names under Paragraph 4(a)(ii) of the Policy.

3. Bad Faith Registration and Use

Finally, the Complainant must prove, by a preponderance of the evidence, that the disputed domain names have been registered and used in bad faith under paragraph 4(a)(iii) of the Policy. Hallmark Licensing, LLC v. EWebMall, Inc., Case No. D2015-2202 (WIPO, February 12, 2016) ("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.").

The Complainant first asserts that the Respondent was on actual notice of the BFORBANK trademark at the time it registered the disputed domain names. Actual knowledge of a complainant's trademark may form the foundation upon which to build a case for bad faith under Policy paragraph 4(a)(iii). See, Facebook, Inc. v. DNS Admin / OT NetWork, FA 1827546 (FORUM Feb. 28, 2019) ("The Panel finds on the balance of probabilities that, at the time of registration of the Domain Name, June 12, 2018, Respondent had actual knowledge of Complainant's FACEBOOK mark. The website to which the Domain Name resolved to makes direct references to Complainant."). Here, the Complaint states that "given the distinctiveness of the Complainant's trademarks and reputation, the Complainant contends that it is inconceivable that the Respondent could have registered the disputed domain names without actual knowledge of Complainant's rights in the trademark". While no evidence is presented regarding the reputation of the BFORBANK trademark, apart from a single screenshot from the Complainant's www.bforbank.com website, the Panel does find persuasive the Respondent's use of typographical variations of the trademark in the disputed domain names. Based on the Respondent's actions, the Panel concludes that it is more likely than not that the term BFORBANK has been used in the disputed domain name with actual knowledge of the Complainant's trademark rights.

Next, the Complaint asserts that the disputed domain name is being used for a pay-per-click website to divert users to other websites based upon confusion with its trademarks. Such activity has routinely been held to demonstrate bad faith use of a domain name that is confusingly similar to a complainant's trademark. Arla Foods Amba v. I S / ICS INC, 101764 (CAC December 22, 2017) (bad faith is found in a case where "the Disputed domain name is pointing to a pay-per click website using advertisements and is not used with real content."). See also, Focus Do It All Group v. Athanasios Sermbizis, D2000-0923 (WIPO Oct. 12, 2000) (the Panel found that "[I]t is enough that commercial gain is being sought for someone" for a use to be commercial."). As the monetized links on the Respondent's pay-per-click websites bear the labels noted above, the Panel concludes that the disputed domain names are being used to seek commercial gain based on a likelihood of confusion with the Complainant's trademark under paragraph 4(b)(iv) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **bforbankc.online**: Transferred
2. **bforbankk.com**: Transferred
3. **bforbankk.online**: Transferred
4. **bforbankr.online**: Transferred

PANELLISTS

Name	**Steven Levy**

DATE OF PANEL DECISION 2024-02-28

Publish the Decision