Decision for dispute CAC-UDRP-106653

Case number	CAC-UDRP-106653
Time of filing	2024-06-28 09:30:49
Domain names	bforbk.com

Case administrator

Name	Olga Slanařová (Case admin)

Complainant

Organization	BFORBANK

Complainant representative

Organization	NAMESHIELD S.A.S.

Respondent

Name	Roger Campana

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, submitting an extract from the EUIPO database, proved that it is the owner of the EU trademark reg. no. 008335598 for BFORBANK filed on June 2, 2009 and registered on December 8, 2009 in classes 9, 35, 36 and 38.

The Complainant also proved to own the domain name <bforbank.com> since at least January 16, 2009 .

The disputed domain name was registered on June 25, 2024.

FACTUAL BACKGROUND

The Complainant is an online bank launched in October 2009 by the Crédit Agricole Regional Banks. The Complainant offers daily banking, savings, investment and credit (consumer and real estate) services. It counts over 230 000 clients and around 400 employees.

The Complainant indicates also owning a number of domain names, including the same distinctive wording “BFORBANK”, such as the domain name <bforbank.com>, registered since January 16, 2009.

The disputed domain name <bforbk.com> was registered on June 25, 2024 and is inactive as per the screenshot provided by the

Complainant. According to the Registrar, waiving the Whois privacy, the Respondent is 'Physical person', with an address in Belgium.

It is specified that the MX servers are configured.

PARTIES CONTENTIONS

The Complainant contends that the requirements of the Policy have been met and that the disputed domains names should be transferred to it. The Complainant makes a number of legal arguments and also supplies a set of annexes providing evidence of its activities and of the Respondent's use of the disputed domain name.

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.

Notification of the Respondent

No administratively compliant Response has been filed. It ought to be indicated that neither the written notice of the Complaint nor the advice of delivery thereof was returned to the Czech Arbitration Court. The Panel is therefore unaware whether the written notice was received by the Respondent or not.

The e-mail notice sent to <postmaster@bforbk.com> was returned back undelivered as the e-mail address had permanent fatal errors. The e-mail notice was also sent to rogercampana1960@gmail.com (registrant´s contact email), but the CAC never received any proof of delivery or notification of undelivery.

No further e-mail address could be found on the disputed domain name´s site. The Respondent never accessed the online platform.

The respondent never contacted the CAC nor provided any contentions.

PRINCIPAL REASONS FOR THE DECISION

In accordance with paragraph 4(a) of the Policy, in order to obtain the transfer of the disputed domain name, the Complainant has to demonstrate that:

(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.

IDENTICAL OR CONFUSINGLY SIMILAR

The first requirement that the Complainant must establish is that the disputed domain name is identical with, or confusingly similar to, the Complainant's trademark or service mark rights.

There are two elements of this test: the Complainant must demonstrate that it has rights in a trademark or service mark and, if so, the disputed domain name must be shown to be identical or confusingly similar to the trademark or service mark.

The Complainant has proven ownership of the registered trademark "BFORBANK", identified in section "Identification of rights" above.

On the question of identity or confusing similarity, what is required is simply a comparison and assessment of the disputed domain name itself to the Complainant's trademark.

The disputed domain name differs from the Complainant's trademark "BFORBANK" only by the deletion of the letters "AN" and by the top-level domain ".COM".

It is well established that where the relevant trademark is recognizable within the disputed domain name, minor changes usually do not prevent a finding of confusing similarity under the first element (see, for example, WIPO Case No. D2021-2571).

The Panel observes that, due to its phonetic similarity and to the fact that the word "BK" indicates "BANK" (see, for example CAC Case No. 103352), notwithstanding the deletion of the letters "AN", the relevant trademark is recognizable within the disputed domain name. This could be classified as a case of typosquatting, which is a practice whereby a domain name registrant deliberately introduces typographical errors or misspellings into a trademark, when registering the domain name. In addition, according to the Merriam-Webster Online Dictionary, "BK" may stand as an abbreviation for "BANK".

It is well established that the top-level domain may generally be disregarded in the confusing similarity test (for example WIPO case No. D2016-2547).

In the light of the above, the Panel considers that the disputed domain name is confusingly similar to the Complainant's trademark.

Accordingly, the Panel finds that the Complainant has satisfied paragraph 4(a)(i) of the Policy.

RIGHTS OR LEGITIMATE INTERESTS

The second requirement that the Complainant must prove is that the Respondent has no rights or legitimate interests in the disputed domain name.

Paragraph 4(c) of the Policy provides that the following circumstances can be situations in which the respondent has rights or legitimate interests in a domain name:

(i) before any notice to [the Respondent] of the dispute, [the Respondent's] use of, or demonstrable preparations to use, the [disputed] domain name or a name corresponding to the [disputed] domain name in connection with a bona fide offering of goods or services; or

(ii) [the Respondent] (as an individual, business, or other organization) [has] been commonly known by the [disputed] domain name, even if [the Respondent] [has] acquired no trademark or service mark rights; or

(iii) [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 trademark or service mark at issue.

This is a non-exhaustive list of circumstances in which a respondent can show rights or legitimate interests in a domain name.

The onus of proving this requirement falls on the Complainant. UDRP panels have recognized that proving that a respondent lacks rights or legitimate interests in a domain name may result in the often-impossible task of "proving a negative".

Accordingly, it is usually sufficient for a complainant to raise a prima facie case against the respondent and the burden of proof on this requirement shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in a domain name.

The Panel finds that the Complainant has made out a prima facie case that the Respondent does not have rights or legitimate interests in the disputed domain name.

In particular, the Complainant states that:

- the Respondent is not identified in the Whois database as the disputed domain name;

- the Respondent is not known by the Complainant;

- the Respondent is not affiliated with nor authorized by the Complainant in any way;

- the Respondent 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 BFORBANK or apply for registration of the disputed domain name;

- the disputed domain name resolves to a parking page and the Respondent did not make any use of the disputed domain name since its registration.

There is no indication in the present case that the Respondent is commonly known by the disputed domain name.

Furthermore, the Respondent did not provide any arguments as regards the second element of the Policy.

The Respondent does not appear to make any legitimate non-commercial or fair use of the disputed domain name, nor any use in connection with a bona fide offering of goods or services.

The Panel considers that, on the balance of probability, the Respondent knew the Complainant's trademark and registered the disputed domain name with knowledge of the Complainant's rights. Indeed, it is not conceivable that the Respondent did not have the Complainant's trademark in mind, when registering and using the disputed domain name. Under these circumstances, it cannot be concluded that the Respondent is making a "fair" use of the disputed domain name.

Taking into account that the Respondent is not commonly known by the disputed domain name, that the disputed domain name resolves to an inactive page and that no authorization has been granted to apply for registration of the disputed domain name, the Panel cannot envisage any possible legitimate justification for this use, and the Respondent has not come forward with any explanation that demonstrates any rights or legitimate interests in the disputed domain name.

Accordingly, the Panel finds that the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

REGISTERED AND USED IN BAD FAITH

Under the third requirement of the Policy, the Complainant must establish that the disputed domain name has been both registered and used in bad faith by the Respondent.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, including:

(i) circumstances indicating that [the Respondent] [has] registered or [has] acquired the [disputed] domain name primarily for the purpose of selling, renting, or otherwise transferring the [disputed] 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 [disputed] domain name; or

(ii) [the Respondent] [has] registered the [disputed] 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 [disputed] domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the [disputed] domain name, [the Respondent] [has] intentionally attempted to attract, for commercial gain, Internet users to [the Respondent's] web site 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] web site or location or of a product or service on [the Respondent's] web site or location.

The Panel, on the basis of the evidence presented, agrees with the Complainant's contentions that the disputed domain name was registered in bad faith and that it has been used in bad faith.

The Panel finds that the Complainant has established that the disputed domain name was registered by the Respondent and is being used by the Respondent in bad faith. For this purpose, the Complainant has successfully put forward prima facie evidence that the Respondent has not made use, or demonstrable preparations to use, of the disputed domain name in connection with a bona

fide offering of goods or services, or of making a legitimate non-commercial or fair use of the disputed domain name. The disputed domain name presents an inactive webpage. This prima facie evidence was not challenged by the Respondent.

Other panels considered that a passive holding of a disputed domain name combined with a well-known complainant may indicate bad faith use (see, for example, CAC Case No. 105960). The Panel agrees with this view and considers that this applies to the circumstance of this case.

Furthermore, the MX servers are configured. Such making use of the disputed domain name, obviously in a potential fraudulent manner, neither qualifies as a bona fide nor as a legitimate noncommercial or fair use under the UDRP and may not of itself confer rights or legitimate interests in the disputed domain name. The potential collection of personal data or passwords via phishing process being one possible fraudulent act (see CAC Case No. 104862).

The Respondent, for not responding to the complaint, has failed to demonstrate any activity in respect of the disputed domain names, and it is not possible to conceive of any plausible actual or contemplated active use of the disputed domain name by the Respondent that would not be illegitimate, by passing off, infringement of consumer protection legislation, or infringement of the Complainant's rights under trademark law.

In the absence of a Response and given the renown of the Complainant and its trademark, company name and domain name as supported by the Complainant's evidence, the Panel must conclude that the Respondent was fully aware of the Complainant's trademark, domain name and company name "BFORBANK" at the time of registering the disputed domain name <bforbk.com.>.

The Panel concludes that the Respondent has registered and is using the disputed domain name in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy). The Complainant has therefore also satisfied the requirement 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. **bforbk.com**: Transferred

PANELLISTS

Name	**David-Irving Tayer**

DATE OF PANEL DECISION 2024-07-20

Publish the Decision