Decision for dispute CAC-UDRP-106962

Case number	CAC-UDRP-106962
Time of filing	2024-10-21 10:18:42
Domain names	bforbk-espace.com

Case administrator

Name	Olga Slanařová (Case admin)

Complainant

Organization	BFORBANK

Complainant representative

Organization	NAMESHIELD S.A.S.

Respondent

Name	Lyam Grisson

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 owns several trademarks for “BFORBANK”, such as the European trademark No. 8335598, registered since June 2,2009.

The Complainant also owns multiple domain names that include the wording “BFORBANK”, such as the domain name <bforbank.com>, registered since January 16,2009.

FACTUAL BACKGROUND

The Complainant is an 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. It counts approximately 230,000 clients and 400 employees.

PARTIES CONTENTIONS

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

The deletion of the letters “AN” and the addition of the generic term “ESPACE” (French for “SPACE”) and the suffix “.com” does not suggest otherwise. It does not change the overall impression of the disputed domain name being connected to the Complainant’s trademark and does not prevent the likelihood of confusion between the disputed domain name and the Complainant's trademark.

The Complainant also states that the **Respondent has no rights or legitimate interests in respect** of the disputed domain name.

The Complainant asserts that the Respondent is not identified in Whois Records, is not commonly known and not known by the Complainant as "BFORBK-ESPACE". The Respondent is neither affiliated with nor authorized by the Complainant in any way and the Complainant has no rights or legitimate interests in respect of the disputed domain name. The Complainant does not carry out any activity for or have any business with the Respondent. Neither license nor authorization have been granted to the Respondent to make any use of the Complainant’s trademark “BFORBANK” or apply for registration of the disputed domain name.

Furthermore, the Complainant states that the **disputed domain name was registered and is being used in bad faith**.

The Complainant claims that the Respondent has registered the disputed domain name several years after the registration of the trademark “BFORBANK”, when the Complainant had already established a strong reputation. Also due to the distinctiveness of the Complainant's trademark it is inconceivable that the Respondent could have registered the disputed domain name without any knowledge of the Complainant's rights. Furthermore, the Respondent has not demonstrated any activity in respect of the disputed domain name. The disputed domain name resolves to a blank page. Therefore, it is impossible to imagine any plausible actual or contemplated use of the disputed domain name by the Respondent that would not be illegitimate. Finally, the disputed domain name has been set up with MX Resource Records which would suggest that it may be actively used for email purposes.

The Complainant contends that the requirements of the Policy have been met and that the disputed domain name should be transferred to it.

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

As the Respondent did not file an administratively compliant Response, pursuant to paragraph 14 (b) of the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules"), the Panel may draw such inferences therefrom as it considers appropriate. Thus, the Panel accepts the contentions of the Complainant as admitted by the Respondent. Taking the statements and documents submitted by the Complainant under careful consideration, the Panel concludes, that the Complainant has established all the elements entitling it to claim the transfer of the disputed domain name.

I. Identical or Confusingly Similar disputed domain name

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 Uniform Domain Name Dispute Resolution Policy (the “Policy”).

The deletion of the letters “AN” in “BFORBANK” is not sufficient to avoid the conclusion that the disputed domain name is confusingly similar to the Complainant’s trademark, nor is the addition of the generic term "espace" nor the addition of the top level domain ".com". The Panel agrees with the reasoning in CAC Case No. 106564, BFORBANK v. Bruce Kalva (regarding the domain name <bforbk-clients.com>): Using “bforbk” instead of “bforbank” could be classified as a case of typosquatting and could be seen as an abbreviation of “BANK” (according to the Merriam-Webster Online Dictionary). Therefore, the disputed domain name is confusingly similar to the Complainants trademark “BFORBANK”.

II. Respondent’s Rights or Legitimate Interests in the disputed domain name

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.

The Complainant has established a prima facie proof that the Respondent has no rights or legitimate interests in the disputed domain name, since the Respondent is not a licensee of the Complainant nor has the Complainant granted any permission or consent to use its trademark in a domain name. Further, the disputed domain name does not correspond to the name of the Respondent nor is he commonly known as “BFORBANK” prior to or after the registration of the disputed domain name.

Additionally, the disputed domain name resolves to a blank page. There is no indication that there is a legitimate use of the disputed domain name by the Respondent.

Thus, there is no evidence for a use of the disputed domain name for any bona fide offer of goods or services or a legitimate non-commercial or fair use.

III. The disputed domain name has been registered and is being used in Bad Faith

The Respondent has also registered and is using the disputed domain name in bad faith within the meaning of Paragraph 4 (a) (iii) of the Policy.

Paragraph 4 (b) of the Policy states that for these purposes, the following circumstances, in particular but without limitation, shall be evidence of the registration and use of a domain name in bad faith:

(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 […]; 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 you have 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 your web site or other online location, by creating a likelihood of confusion with the complainant's mark […].

The burden of proof lies with the Complainant, see paragraph 4 (a) sentence 2 of the Policy.

Because the disputed domain name resolves to a blank page, the Complainant asserts that it is not possible to imagine any plausible actual or intended use of the disputed domain name by the Respondent that would not be illegitimate. Instead, the Respondent would only act to cause confusion, violate consumer protection law or infringe the Complainant's trademark rights.

The Complainant inferred this from the fact that the Respondent did not use the disputed domain name at all and instead remained inactive.

The Respondent's inactivity by itself may not allow any conclusions to be drawn as to whether the disputed domain name has been registered and is being used in good or bad faith (WIPO Case No. D2000-0003, Telstra Corporation Limited v. Nuclear Marshmallows, paragraph 7.8).

However, under certain circumstances, inactivity can lead to an unnamed case of bad faith under Art. 4 (b) of the Policy (note the wording: “including but without limitation”). This consideration requires close attention to all the circumstances of the Respondent’s behaviour, considering all circumstances of the individual case (WIPO Case No. D2000-0003, Telstra Corporation Limited v. Nuclear Marshmallows, paragraph 7.11).

In this case, the facts presented by the Complainant do, when considered as a whole, provide sufficient indication of having registered and using the disputed domain name in bad faith.

The following circumstances argue in favor of bad faith:

- At the time the Respondent registered the disputed domain name, the Complainant was already well known and had established a strong reputation while using the trademark BFORBANK.

The fact that the Complainant's trademark is well-known is a strong indication of bad faith, please see paragraph 3.1.4 of WIPO Jurisprudential Overview 3.0: “Panels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith.”

This also leads to the conclusion that the Respondent knew or at least should have known that the disputed domain name could infer with the well-known trademark, please see paragraph 3.2.2 of WIPO Jurisprudential Overview 3.0: “Noting the near instantaneous and global reach of the Internet and search engines, and particularly in circumstances where the complainant’s mark is widely known (including in its sector) or highly specific and a respondent cannot credibly claim to have been unaware of the mark (particularly in the case of domainers), panels have been prepared to infer that the respondent knew, or have found that the respondent should have known, that its registration would be identical or confusingly similar to a complainant’s mark.“

Moreover, the Respondent is also domiciled in France and uses the French word "espace" for “space” for the disputed domain name. Therefore, it is difficult to imagine that the Respondent registered the disputed domain name without having the Complainant’s trademark in mind.

Additionally, the disputed domain name has been set up with MX Resource Records which suggests that it may be actively used for email purposes. This presents a substantial risk of phishing.

On the other hand, the Respondent has not provided any evidence of any actual or contemplated good faith use by it of the disputed domain name, that could refute this prima facie assessment.

In the light of the foregoing, the Panel finds that the Respondent's registering and passive holding of the disputed domain name has happened in bad faith according to 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-espace.com**: Transferred

PANELLISTS

Name	**Dominik Eickemeier**

DATE OF PANEL DECISION 2024-11-25

Publish the Decision