

Decision for dispute CAC-UDRP-104625

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| Case number | CAC-UDRP-104625 |
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| Time of filing | 2022-06-03 09:20:19 |
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| Domain names | www-bforbank.com |
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Case administrator

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| Organization | Denisa Bilík (CAC) (Case admin) |
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Complainant

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| Organization | BFORBANK |
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Complainant representative

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| Organization | NAMESHIELD S.A.S. |
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Respondent

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| Organization | Anonymize, Inc. |
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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 is the registered owner of European Union Trade Mark BFORBANK, registration number 008335598, registered on June 2, 2009 for goods and services in classes 9, 35, 36 and 38.

FACTUAL BACKGROUND

The Complainant has rights in the BFORBANK trademark and service mark acquired by its use of the mark for its online bank since October 2009 and its ownership of European Union Trade Mark BFORBANK, registration number 008335598 registered since June 2, 2009.

The Complainant also owns a number of domain names, including the same distinctive wording BFORBANK including <bforbank.com>, registered since January 16, 2009.

The disputed domain name <www-bforbank.com> was registered on May 23, 2022 and resolves to a website on which the Respondent is purporting to represent as being Complainant's official site and includes a fake login page that invites Internet users to input their personal data and bank account login details.

There is no information available about Complainant except for that provided in the Complaint, the Registrar's Whois and the information provided by the Registrar in response to the request by the Center for details of the registration of the disputed domain name.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant claims rights in the BFORBANK trademark and service mark acquired by its ownership of the European Union Trademark Registration described above and its use of the mark in its online banking business since October 2009, and submits that these rights have been confirmed in previous decisions under the Policy including BforBank v. mlk CAC Case No. 103192, <borbank.com>; BforBank SA v. Cameron David Jackson WIPO Case No. D2016-0643 <bforbank.xyz>.

The Complainant alleges that the disputed domain name <www-bforbank.com> is confusingly similar to its BFORBANK mark arguing that it is well-established that "a domain name that wholly incorporates a Complainant's registered trademark may be sufficient to establish confusing similarity for purposes of the UDRP". See Dr. Ing. h.c. F. Porsche AG v. Vasiliy Terkin, WIPO Case No. D2003-0888.

The Complainant argues that the addition of the letters "www" does not change the overall impression of the designation as being connected to the Complainant nor does it prevent a finding of confusing similarity between the disputed domain name and the BFORBANK mark. The Complainant submits that it is well-established that "a domain name that wholly incorporates a Complainant's registered trademark may be sufficient to establish confusing similarity for purposes of the UDRP". See Dr. Ing. h.c. F. Porsche AG v. Vasiliy Terkin, WIPO Case No. D2003-0888.

Moreover, the Complainant contends that the addition of the generic Top-Level Domain ("gTLD") suffix <.com> does not change the overall impression of the designation as being connected to the BFORBANK mark nor does it prevent a finding of confusing similarity between the disputed domain name and the Complainant's trademark.

The Complainant next alleges that the Respondent has no rights or legitimate interests in the disputed domain name, arguing that the Respondent is not commonly known by the disputed domain name and is not identified as the disputed domain name in the Whois database. Past panels have held that a respondent was not commonly known by a domain name at issue, if the registrant information on the Whois was not similar to the disputed domain name. See Skechers U.S.A., Inc. and Skechers U.S.A., Inc. II v. Chad Moston / Elite Media Group Forum Case No. FA 1781783, <bobsfromsketchers.com> ("Here, the WHOIS information of record identifies Respondent as "Chad Moston / Elite Media Group." The Panel therefore finds under Policy paragraph 4(c)(ii) that Respondent is not commonly known by the disputed domain name under Policy paragraph 4(c)(ii).")

The Complainant asserts that neither license nor authorization has been granted to the Respondent to make any use of the Complainant's BFORBANK mark or to apply for registration of the disputed domain name.

The Complainant submits that the website to which the disputed domain name resolves contains a statement in the French language entitled "Espace Client: accédez à vos comptes - BforBank" (which means in English "Customer area: "access your accounts - BforBank") and asking the Complainant's customers their credentials.

This Panel notes that the Complainant has not however submitted a copy of this webpage. Instead, the Complainant has annexed to the Complaint screen captures of a page on the website to which the disputed domain name resolves and of a page from Complainant's own official website to which the Complainant's own domain name <bforbank.com> resolves.

Each of the two webpages are identical.

Each has the identical layout, images and text and the Complainant submits that the Respondent has posted an exact copy of Complainant's website which shows the image of a young man holding a phone, text that includes a warning in the French

language against the dangers of phishing, advice not to pass the login details or other information to anyone. Each of the webpages invite login information to access the user's bank account with the Complainant including the user's date of birth.

The Complainant argues that these screen captures show therefore that the Respondent registered the disputed domain name in order to create a likelihood of confusion between the disputed domain name and the Complainant's mark and to phish for personal banking information, which is not a bona fide offering of goods and services nor a legitimate non-commercial or fair use. See *BOURSORAMA SA v. zack levy* CAC Case No. 103849, ("Use of a domain name for fraudulent purposes self-evidently does not comprise use in connection with a bona fide offering of goods and services.").

The Complainant next alleges that the disputed domain name was registered and is being used in bad faith arguing that the registrant had constructive knowledge/prior knowledge of potential rights and that the Respondent is engaged in phishing.

The Complainant argues that the disputed domain name <www-bforbank.com> is confusingly similar to the Complainant's distinctive trademark BFORBANK and submits that the term "BFORBANK" has no meaning, except in relation with the Complainant.

The Complainant refers to a screen capture of a Google search that shows that all the results refer to the Complainant.

The Complainant further contends that given the distinctiveness of the Complainant's trademark and the fact that the disputed domain name resolves to a replica of the Complainant's customer login page it is evident that the Respondent registered the disputed domain name with full knowledge of the Complainant's trademark.

Furthermore, the Complainant contends that the screen capture of the website to which the disputed domain name resolves, shows that the Respondent is attempting to pass itself off as the Complainant in order to phish for personal banking information, which is a hallmark of bad faith. See *BOURSORAMA SA v. ROSAURA SAGESE* (CAC Case No. 103186, "The circumstances of this case, in particular the Respondent's approach to ask customers for their ID and password on a website using the same color scheme as the Complainant indicates that the Respondent registered and used the disputed domain name primarily with the intention of attempting to attract, for commercial gain, Internet users to its website or other online locations, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of such website or location, or of a product or service on such website or location.").

RESPONDENT:

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

The Complainant has provided convincing uncontested evidence that it has rights in the BFORBANK trademark and service mark, established by its ownership of the European Union Trade Mark described above and its long use of the mark in its online banking business.

The disputed domain name <www-bforbank.com> consists of the Complainant's mark in its entirety, in combination with the pre-fix "www", a hyphen and the gTLD extension <.com>.

The Complainant's BFORBANK mark is the dominant and only distinctive element in the disputed domain name.

Neither the letters "www" nor the hyphen adds any distinguishing character to the disputed domain name. In the context of a domain name, the letters "www" are an acronym for the "world wide web" and are typically part of a website address. The hyphen has no significance in context except to separate the letters "www" from the Complainant's trademark.

Additionally, the gTLD extension <.com> may be disregarded when assessing whether the disputed domain name is similar to the trademark in which the Complainant has rights as it would be considered by Internet users as a necessary technical requirement for a domain name.

This Panel finds therefore that the disputed domain name <www-bforbank.com> is confusingly similar to the BFORBANK mark in which Complainant has rights and Complainant has therefore succeeded in the first element of the test in Policy paragraph 4(a)(i).

The Complainant has made out a prima facie case that the Respondent has no rights legitimate interests in the disputed domain name arguing that

- the Respondent is not commonly known by the disputed domain name and is not identified as the disputed domain name in the Whois database;
- the Complainant has granted neither license nor authorization to the Respondent to make any use of the Complainant's BFORBANK mark, or apply for registration of the disputed domain name;
- the screen capture of the website to which the disputed domain name resolves shows that the content of the Respondent's website is an identical copy of the Complainant's official customer access page on its own website to which its domain name <bforbank.com> resolves;
- the content illustrates that the Respondent is using the disputed domain name as a website address purporting to impersonate the Complainant with content with identical layout, images and text, and invites Internet users to access their online bank account with Complainant, by providing login information including the user's date of birth;
- the Respondent is using the disputed domain name to create a likelihood of confusion and phish for personal banking information, which is not a bona fide offering of goods and services nor a legitimate non-commercial or fair use.

It is well established that once a complainant makes out a prima facie case that a respondent has no rights or legitimate interests in the domain name at issue, the burden of production shifts to the respondent to prove its rights or legitimate interests.

The Respondent has failed to discharge that burden and therefore this Panel must find that the Respondent has no rights or legitimate interests in the disputed domain name.

The Complainant has therefore succeeded in the second element of the test in Policy paragraph 4(a)(ii).

The uncontested evidence shows that the Complainant owned and used the BFORBANK trademark and service mark and its own eponymous <bforbank.com> domain name long before the disputed domain name was registered.

The Complainant's BFORBANK trademark is the only distinctive element in the disputed domain name. The mark is distinctive and has no apparent meaning other than as the Complainant's trademark. The structure of the disputed domain name shows that that the registrant's initial intention in registering the disputed domain name was to refer to the Complainant, its trademark and business because the additional elements "www" and the hyphen in the disputed domain name, are likely to be unnoticed by Internet users as they refer to the Internet and would be expected to appear in a website address.

Furthermore it is improbable that the registrant of the disputed domain name did not become aware of the Complainant's own

domain name <bforbank.com> in the course of the registration process.

On the balance of probabilities therefore, this Panel finds that the disputed domain name was registered in bad faith with the intention of targeting and taking predatory advantage of the Complainant's reputation and goodwill in the BFORBANK mark.

The uncontested evidence shows that the Respondent is using the disputed domain name as the address of a website that not only is impersonating Complainant, but that the content of the Respondent's website is an identical copy of the Complainant's website. Of great concern is that the Respondent is inviting Internet users to input their personal data and bank login details while impersonating the Complainant.

This Panel finds therefore that the uncontested evidence shows that on the balance of probabilities the Respondent is using the disputed domain name as the address of a website for the purposes of phishing for Internet users' personal data and confidential information.

Such intentional use of the disputed domain name in an attempt to attract, for commercial gain, Internet users to Respondent's website by creating a likelihood of confusion with Complainant's mark as to the source, sponsorship, affiliation, or endorsement of Respondent's web site and the services purported to be offered by Respondent on its web site constitutes use of the disputed domain name in bad faith for the purposes of the Policy.

As this Panel has found that the disputed domain name was registered and is being used in bad faith, the Complainant has succeeded in the third element of the test in Policy paragraph 4(a)(iii).

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **WWW-BFORBANK.COM**: Transferred

PANELLISTS

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| Name | Mr James Jude Bridgeman |
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| DATE OF PANEL DECISION | 2022-07-08 |
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Publish the Decision
