

Decision for dispute CAC-UDRP-105684

Case number	CAC-UDRP-105684
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Time of filing	2023-08-04 10:16:48
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Domain names	bforbank-auth-fr.com
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Case administrator

Name	Olga Dvořáková (Case admin)
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Complainant

Organization	BforBank
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Complainant representative

Organization	NAMESHIELD S.A.S.
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Respondent

Name	Jim Hines
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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, BforBank, is the owner of European Union trademark n° 8335598 BforBank, filed on 2 June 2009 and registered on 11 December 2009 for products and services in classes 9, 35, 36 and 38.

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:

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 240 000 customers.

The Complainant is the owner of several trademarks BFORBANK®, such as the European trademark n° 8335598 registered since 2 June 2009.

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

The disputed domain name was registered on 12 July 2023 and is inactive.

1. The disputed domain name is confusingly similar to a trademark or service mark in which the Complainant has rights

The Complainant states that the disputed domain name is confusingly similar to its trademark BFORBANK®. The domain name includes the trademark in its entirety.

The addition of the terms “AUTH” (for “Authentication”) and “FR” is not sufficient to escape the finding that the domain name is confusingly similar to the trademark and branded goods BFORBANK®. 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”. Please see WIPO Case No. D2003-0888, Dr. Ing. h.c. F. Porsche AG v. Vasily Terkin.

Furthermore, the Complainant contends that the additions of the gTLD “.COM” does not change the overall impression of the designation as being connected to the Complainant’s trademark. It does not prevent the likelihood of confusion between the disputed domain names and the Complainant, its trademark and its domain names associated.

Finally, the Complainant’s rights over the term “BFORBANK” have been confirmed by previous Panels. Please see for instance: WIPO Case No. D2022-1972, BFORBANK v. alexandre monserrat <bforbankfrance.net>; CAC Case No. 103192, BforBank v. mlk <borbank.com>.

1. 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 the Whois database as the disputed domain name, but as “Jim Hines”. 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. Thus, the Respondent is not known as the disputed domain name. For instance Forum Case No. FA 1781783, Skechers U.S.A., Inc. and Skechers U.S.A., Inc. II v. Chad Moston / Elite Media Group <bobsfromsketchers.com> (“Here, the WHOIS information of record identifies Respondent as “Chad Moston / Elite Media Group.” The Panel therefore finds under Policy ¶ 4(c)(ii) that Respondent is not commonly known by the disputed domain name under Policy ¶ 4(c)(ii).”).

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 is inactive. The Complainant contends that the Respondent did not make any use of disputed domain name since its registration, and it confirms that Respondent has no demonstrable plan to use the disputed domain name. It demonstrates a lack of legitimate interests in respect of the disputed domain name. Please see for instance Forum Case No. FA 1773444, Ashley Furniture Industries, Inc. v. Joannet Macket / JM Consultants (“The Panel finds that Respondent’s lack of content at the disputed domain shows the lack of a bona fide offering of goods or services or a legitimate noncommercial or fair use per Policy ¶¶ 4(c)(i) and (iii).”).

1. The disputed domain name was registered and is being used in bad faith

The disputed domain name is confusingly similar to the Complainant's trademark BFORBANK®.

The Respondent has registered the disputed domain name several years after the registration of the trademark BFORBANK® by the Complainant, which has established a strong reputation while using this trademark. Indeed, the Complainant is well known, BFORBANK offers daily banking, savings, investment and credit (consumer and real estate) services for 240 000 customers and all the results of a

research for the term “BFORBANK” refers to the Complainant.

Thus, given the distinctiveness of the Complainant's trademark 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.

The disputed domain name is inactive. The Complainant contends that the Respondent has not demonstrated any activity in respect of the disputed domain name, and it is not possible to conceive of any plausible actual or contemplated active use of the domain name by the Respondent that would not be illegitimate, such as by being a passing off, an infringement of consumer protection legislation, or an infringement of the Complainant's rights under trademark law.

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 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. RIGHTS

The disputed domain name is confusingly similar to the Complainant's BFORBANK registered trademark.

As stated in *Crédit Industriel et Commercial v. Manager Builder, Builder Manager*, WIPO Case No. D2018-2230:

“The disputed domain name incorporates the CIC trademark in its entirety. Numerous UDRP panels have recognized that incorporating a trademark in its entirety can be sufficient to establish that the disputed domain name is at least confusingly similar to a registered trademark (see e.g., *PepsiCo, Inc. v. PEPSI, SRL (a/k/a P.E.P.S.I.)* and *EMS Computer Industry (a/k/a EMS)*, WIPO Case No. D2003-

0696). Moreover, it has been held in many UDRP decisions and has become a consensus view among panelists (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“WIPO Overview 3.0”), section 1.8), that where the relevant trademark is recognizable within the disputed domain name, the addition of other terms would not prevent a finding of confusing similarity under the first element of the UDRP.

Accordingly, the addition of the term “banks”, which even is the English translation of the French term “banques” as it is reflected in Complainant’s CIC BANQUES trademark, does not avoid the confusing similarity arising from the incorporation of Complainant’s CIC trademark in the disputed domain name.”

In this case, the Complainant’s BFORBANK is clearly recognizable, despite the addition of the terms “AUTH” (presumably for “Authentication”) and “FR”.

2. NO RIGHTS OR LEGITIMATE INTERESTS

The Respondent has not submitted any response. Therefore, they have submitted no information on possible rights or legitimate interests they might hold. On its part, the Complainant has submitted information and arguments which, *prima facie*, allow it to be reasonably assumed that the Respondents have no rights or legitimate interest in the domain names in dispute.

As the WIPO Arbitration and Mediation Center pointed out in UDRP case No. D2002-0856:

“As mentioned, [in the decision], the Respondent has not filed a Response and is therefore in default. In those circumstances when the Respondent has no obvious connection with the disputed domain name, the *prima facie* showing by the Complainant that the Respondent has no right or legitimate interest is sufficient to shift the burden of proof to the Respondent to demonstrate that such a right or legitimate interest exists.” WIPO Case No. D20020273 <sachsenanhalt>; WIPO Case No. D20020521 <volvovehicles.com>.

Furthermore, the Complainant has proved that its trade mark is well known and BFORBANK is not a preexisting word. Therefore, it is very unlikely that the Respondent may allege any right or legitimate interest.

3. BAD FAITH

The Respondent has, as a result of his default, not invoked any circumstances which could invalidate the Complainant’s allegations and evidence with regard to the Respondent’s registration and use of the disputed domain name in bad faith.

The Complainant has filed evidence of the well-known character of its BFORBANK trademark. It can only be concluded that the Respondent’s intention is to take advantage of the Complainant’s position in the sector. Because of the renown of the Complainant’s trademark, the Panel agrees that the disputed domain name was registered in bad faith.

The fact that the disputed domain name does not host an active website does not preclude a finding of bad faith. From the inception of the UDRP, panelists have found that the non-use of a domain name (including a blank or “coming soon” page) would not prevent a finding of bad faith under the doctrine of passive holding.

While panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant’s mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent’s concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put.

(“WIPO Overview 3.0”, section 3.3)

As mentioned in Andrey Ternovskiy dba Chatroulette v. Alexander Ochki, WIPO Case No. D2017-0334:

"It is clear in the Panel's view that in the mind of an Internet user, the disputed domain names could be directly associated with the Complainant's trademark, which is likely to be confusing to the public as suggesting either an operation of the Complainant or one associated with or endorsed by it (see AT&T Corp. v. Amjad Kausar, WIPO Case No. D2003-0327)."

It has, therefore, been satisfactorily demonstrated to the Panel that the disputed domain name has been registered and used in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

- 1. **bforbank-auth-fr.com**: Transferred

PANELLISTS

Name	José Ignacio San Martín
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DATE OF PANEL DECISION 2023-09-08

Publish the Decision