

ADMINISTRATIVE PANEL DECISION

Bitpanda GmbH v. Onder Cavdar
Case No. D2022-2939

1. The Parties

The Complainant is Bitpanda GmbH, Austria, represented by Schonherr Rechtsanwälte GmbH, Austria.

The Respondent is Onder Cavdar, Netherlands, represented by Taspinar Advocatuur B.V., Netherlands.

2. The Domain Name and Registrar

The disputed domain name <bitpanda.tech> (the “Disputed Domain Name”) is registered with Cronon AG (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 9, 2022. On August 9, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On August 10, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Disputed Domain Name which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on August 17, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. Also on August 17, 2022, the Center transmitted an email in English and Dutch to the Parties regarding the language of the proceeding. The Complainant confirmed its request that English be the language of the proceeding on the same day. The Respondent requested Dutch to be the language of the proceeding on August 19, 2022. The Complainant filed an amended Complaint on August 22, 2022. On August 24, 2022, the Center referred to the Respondent’s communication of August 19, 2022 and informed the parties of the possibility to suspend the proceedings to implement a settlement. In that regard, the Complainant could submit a request for suspension by August 31, 2022. The Complainant did not submit such request.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on September 7, 2022. In accordance with the Rules, paragraph 5, the due date for Response was September 27, 2022. On September 14, 2022, the Complainant submitted a supplemental filing. The Response was filed with the Center on September 30, 2022.

The Center appointed Flip Jan Claude Petillion as the sole panelist in this matter on October 11, 2022. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

4. Factual Background

The Complainant, Bitpanda GmbH, is an Austria-based provider of digital assets services. The Complainant operates a trading platform under the name BITPANDA for assets including cryptocurrency, precious metals, equities, and exchange-traded funds. The Complainant currently has more than 700 team members and 3,5 million users.

The Complainant is the owner of various registrations consisting of, or including, the term BITPANDA, including the following:

- BITPANDA, European Union Trade Mark registered on March 12, 2018, under number 017496894 in classes 9, 36, and 42.

The Complainant operates its principal website at “www.bitpanda.com”.

The Disputed Domain Name was registered on August 16, 2021. According to evidence provided by the Complainant, the website linked to the Disputed Domain Name resolved to a website which appeared to depict digital artworks and to provide information on non-fungible tokens (“NFTs”) under the title “BIT PANDA – NFT Art Ethereum Blockchain Platform”. According to this website, one of the artworks “was one of the first crypto collectible NFT-type projects on the Ethereum blockchain”. The Panel observes that the website linked to the Disputed Domain Name has been slightly adapted afterwards, including by removing all references to NFTs.

5. Parties’ Contentions

A. Complainant

The Complainant considers the Disputed Domain Name to be identical to a trademark in which it claims to have rights.

The Complainant further claims that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name. According to the Complainant, the Respondent is not authorized to use the Complainant’s trademark. Also, according to the Complainant, the current use of the Disputed Domain Name by the Respondent does not imply potential legitimate interests of the Respondent. The Complainant argues that there is no evidence that the Respondent is commonly known by the Disputed Domain Name. In the Complainant’s view, both the Complainant and the Respondent operate in the same market sector relating to crypto assets, as the artworks depicted on the website linked to the Disputed Domain Name are offered for sale on an NFT trading platform on which you can only pay with cryptocurrency. The Complainant claims that the Respondent registered the Disputed Domain Name after the Respondent registered as a customer on the Complainant’s platform, which indicates that the Respondent rather tries to exploit the reputation of the famous BITPANDA trademark of the Complainant.

Finally, the Complainant claims that the Disputed Domain Name was registered and is being used in bad faith. According to the Complainant, it is inconceivable that the Respondent registered the Disputed Domain Name without being aware of the Complainant, its activities, and its trademarks. The Complainant contends that in the circumstances of this case, and given the strong reputation of its brand, it is practically impossible to imagine any use of the Disputed Domain Name that would be legitimate.

In its Supplemental Filing of September 14, 2022, the Complainant submits evidence of correspondence between the parties after the Center's communication of August 24, 2022, regarding the possibility to discuss a settlement.¹ The Complainant claims this correspondence serves as additional proof that the Respondent intentionally registered the Disputed Domain Name for its potential to opportunistically exploit the reputation and goodwill of the Complainant and its trademarks for the Respondent's own pecuniary benefit by subsequently offering to sell the Disputed Domain Name to the Complainant for a profit, *i.e.* an amount exceeding the Respondent's out-of-pocket costs of registration.

B. Respondent

The Respondent contests the Complainant's description of the use of the Disputed Domain Name. According to the Respondent, the website linked to the Disputed Domain Name is purely informative and creative, and only contained a link to a third party NFT platform without promoting or selling anything. The Respondent indicates that this link has been removed from the website.

According to the Respondent, the Disputed Domain Name is not identical or confusingly similar to the Complainant's trademarks. The Respondent contends that the ".tech" Top-Level Domain cannot be ignored given that the content and the objective of the website linked to the Disputed Domain Name is totally different from the Complainant's activities. According to the Respondent, the Disputed Domain Name is the abbreviation for "binary digit panda technology".

The Respondent further claims that he has rights and legitimate interests in respect of the Disputed Domain Name. In the Respondent's view, the use of the Disputed Domain Name is linked to art, is noncommercial, and does not try to misleadingly divert consumers or to damage the Complainant's mark. The Respondent also contests the fact that both parties are active in the same market sector as the Respondent is an artist and is not active in crypto assets.

Finally, the Respondent contests that the Disputed Domain Name was registered and is used in bad faith. The Respondent repeats his previous arguments regarding the artistic purpose of the website linked to the Disputed Domain Name, which has nothing to do with the Complainant's business. The Respondent claims that he has registered the Disputed Domain Name in good faith with his own trademark and sign, and that the Disputed Domain Name has a name, mark, content and sign different from the Complainant. The Respondent adds that he has no intention to take advantage from the Complainant's marks for his own commercial benefit, that he did not register the Disputed Domain Name with a view to transfer it to the Complainant for valuable consideration in excess of the Respondent's documented out-of-pocket costs directly related to the Disputed Domain Name, that he did not register the Disputed Domain Name to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name and did not engage in a pattern of such conduct, and finally that he did not register the Disputed Domain Name to disrupt the business of the Complainant.

6. Discussion and Findings

6.1. Preliminary procedural issue: Language of proceedings

Pursuant to the Rules, Paragraph 11, in the absence of an agreement between the Parties, or specified

¹ For the reasons set out under section 6.2 below, the Panel accepts the Complainant's Supplemental Filing.

otherwise in the registration agreement, the language of the administrative proceeding shall be the language of the registration agreement, subject to the authority of the Panel to determine otherwise.

According to information received from the Registrar, the language of the registration agreement for the Disputed Domain Name is Dutch. The Complaint has been submitted in English.

Previous UDRP panels have found that certain scenarios may warrant proceeding in a language other than that of the registration agreement. Such scenarios include:

- evidence showing that the respondent can understand the language of the complaint;
- potential unfairness or unwarranted delay in ordering the complainant to translate the complaint;
- other *indicia* tending to show that it would not be unfair to proceed in a language other than that of the registration agreement.

On UDRP panel appointment, both parties' arguments are provided to the UDRP panel for its determination as to the language of proceedings. This may include accepting the complaint as filed, and a response in the language of the registration agreement, thereby seeking to give both parties a fair opportunity to present their case (see section 4.5 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)")).

In the present case, the Complainant requested that English be the language of the proceedings, *i.a.* because the website linked to the Disputed Domain Name is operated in English only.

The Respondent requested that Dutch be the language of the proceedings, *i.a.* because his knowledge of legal English would be insufficient.

In its Amended Complaint, the Complainant replied on the Respondent's assertion, including with the following observations:

- the Respondent indicated that he intends to engage a lawyer to assist him to put forward a response (which means that he would not have to be particularly proficient in legal English himself);
- the Respondent requested an extension of the deadline to respond to the Complaint explicitly referring to the Rules (the content of which he obviously had knowledge); notably, the Rules are only available in a few languages, including English, but not Dutch.

The Panel observes that the Respondent was made aware of the present proceedings and further informed of the procedure with both English and Dutch communications from the Center. By accepting the terms and conditions of the registration agreement in Dutch and by the Center's bilingual communications, the Panel finds that the Respondent was sufficiently informed about the purpose of these administrative proceedings, also noting that the Respondent is represented by counsel. Moreover, the content of the website linked to the Disputed Domain Name indeed indicates that the Respondent understands English.

In such circumstances, the Panel finds that it would be a disadvantage for the Complainant to be forced to translate the Complaint. Therefore, the Panel accepts the Complaint in English but also accepts the Response in Dutch, thereby guaranteeing the rights of the Respondent to fairly defend itself and the right to equal treatment (see *INTS IT IS NOT THE SAME, GmbH (dba DESIGUAL) v. Two B Seller, Estelle Belouard*, WIPO Case No. [D2011-1978](#)).

For these reasons and given the circumstances of this case as further explained below, the Panel determines that the language of the proceedings is English.

6.2. Preliminary procedural issue: the Complainant's Supplemental Filing

On September 14, 2022, the Complainant filed a supplemental filing providing evidence of and commenting on correspondence between the parties after the Center's communication of August 24, 2022, regarding the

possibility to discuss a settlement.

The Rules provide for the submission of the Complaint by the Complainant and the Response by the Respondent. No express provision is made for supplemental filings by either party, except in response to a deficiency notification or if requested by the Center or the Administrative Panel.

Paragraphs 10 and 12 of the Rules in effect grant the Panel sole discretion to determine the admissibility of supplemental filings (including further statements or documents) received from either Party. Accordingly, it will be in the sole discretion of the Panel to determine whether to consider and/or admit the supplemental filing in rendering its decision, and whether to order further procedural steps, if any.

When submitting an unsolicited supplemental filing, the Complainant should clearly show the relevance of the supplemental filing to the case and why it was unable to provide the information contained therein in its complaint (e.g., owing to some “exceptional” circumstance) (see section 4.6 of the [WIPO Overview 3.0](#)).

In the present case, the Complainant’s unsolicited supplemental filing was clearly used to provide information which was not available at the time of filing its Amended Complaint. Moreover, the Panel observes that the Complainant’s supplemental filing was submitted before the Response, therefore allowing the Respondent to comment on this supplemental filing.

Therefore, the Panel will take the Complainant’s supplemental filing into consideration.

6.3. Substantive elements of the Policy

Paragraph 15 of the Rules provides that the Panel is to decide the Complaint on the basis of the statements and documents submitted in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

The onus is on the Complainant to make out its case and it is apparent, both from the terms of the Policy and the decisions of past UDRP panels, that the Complainant must show that all three elements set out in paragraph 4(a) of the Policy have been established before any order can be made to transfer the Disputed Domain Name. The standard of proof is the balance of probabilities.

Thus, for the Complainant to succeed it must prove, within the meaning of paragraph 4(a) of the Policy, 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.

The Panel will therefore deal with each of these requirements.

A. Identical or Confusingly Similar

To prove this element, the Complainant must first establish that there is a trademark or service mark in which it has rights. The Complainant has clearly established that there is a trademark in which it has rights. The Complainant’s BITPANDA trademark has been registered and used in connection to its electronic trading platform.

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the complainant’s trademark and the disputed domain name. This test typically involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether

the mark is recognizable within the disputed domain name (see section 1.7 of the [WIPO Overview 3.0](#)).

The second-level portion of the Disputed Domain Name is identical to the Complainant's trademark. It is well established that the generic Top-Level Domain ("gTLD"), here ".tech", may be disregarded when considering whether the Disputed Domain Name is confusingly similar to a trademark in which the Complainant has rights (see section 1.11 of the [WIPO Overview 3.0](#)).

The content of the website associated with the domain name is usually disregarded by UDRP panels when assessing confusing similarity under the first element (see section 1.15 of the [WIPO Overview 3.0](#)).

In light of the above, the Panel considers the Disputed Domain Name to be identical to the Complainant's BITPANDA trademark.

B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name.

According to the information provided by the Registrar, the Respondent is "Onder Cavdar". The Respondent does not provide any evidence showing that he acquired trademark or service mark rights in a name corresponding to the Disputed Domain Name. In the Panel's view, the Respondent does not show either that he has been commonly known (as opposed to merely incidentally being known) by the relevant moniker, apart from the Disputed Domain Name (see section 2.3 of the [WIPO Overview 3.0](#)). The Respondent's use and registration of the Disputed Domain Name was not authorized by the Complainant. There are no indications that a connection between the Complainant and the Respondent exists or existed, except for the Complainant's claim that the Respondent actually registered on the Complainant's platform before the Respondent registered the Disputed Domain Name (see more below).

Fundamentally, a respondent's use of a domain name will not be considered "fair" if it falsely suggests affiliation with the trademark owner; the correlation between a domain name and the complainant's mark is often central to this inquiry. Where a domain name is identical to a complainant's trademark, UDRP panels have largely held that it carries a high risk of implied affiliation (see section 2.5.1 of the [WIPO Overview 3.0](#)). The Disputed Domain Name incorporates the Complainant's BITPANDA mark in its entirety without any addition but the gTLD ".tech". In the Panel's view, the combination with the gTLD ".tech" even increases the risk for confusion as it may be considered to refer to the Complainant. Indeed, the Complainant provides evidence showing it is known as a fintech ("financial technology") startup and won several prizes including "Best FinTech Startup" at the Central European Startup Awards.

The Respondent claims that the Disputed Domain Name is the abbreviation for "binary digit panda technology". However, the website linked to the Disputed Domain Name does not refer to "binary digit panda technology". Said website either mentions the terms "bit panda" in capitals on their own, which virtually corresponds to the Complainant's mark, or adds the term "art" (e.g. "Binary Digit Panda Art" or "Binary Bit Panda Art"). In any event, the Panel finds that the Disputed Domain Name in itself carries a high risk of implied affiliation with the Complainant and its BITPANDA mark.

Beyond looking at the domain name and the nature of any additional terms appended to it, UDRP panels assess whether the overall facts and circumstances of the case, such as the content of the website linked to the disputed domain name, support a fair use or not (see sections 2.5.2 and 2.5.3 of the [WIPO Overview 3.0](#)).

According to the evidence provided by both parties, the Panel observes that the Disputed Domain Name resolves to a website depicting a few digital artworks and which used to include a link to an NFT trading platform on which NFTs related to these artworks are offered for sale. Although the Respondent generally contested all the Complainant's allegations, the Respondent did not specifically contest that he is the account holder and owner of the NFT collection offered on this NFT trading platform. The Respondent only

claimed that nothing is promoted or sold on the website linked to the Disputed Domain Name. The Panel finds that in these circumstances, it is more likely than not that the Respondent did indeed use the website linked to the Disputed Domain Name to promote digital artworks for commercial gain or other such purposes inhering to the Respondent's benefit, albeit indirectly. The Respondent indicated that he removed the link to avoid any confusion but in the Panel's view, nothing prevents the Respondent from changing the website again.

As was already confirmed in previous UDRP cases, the Panel finds that the Complainant's BITPANDA trademark constitutes a distinctive, coined term which is widely recognized by the public in connection with cryptocurrency and related services (see *Bitpanda GmbH v. Gela*, WIPO Case No. [D2021-4346](#); *Bitpanda GmbH v. Daniel Hall*, WIPO Case No. [D2021-4221](#); *Bitpanda GmbH v. ALVIN VICIENT*, WIPO Case No. [D2021-3473](#); *Bitpanda GmbH v. Domain Admin, Whois Privacy Corp.*, WIPO Case No. [D2021-3092](#); *Bitpanda GmbH v. Super Privacy Service LTD c/o Dynadot / Jing Yang*, WIPO Case No. [D2022-2052](#)). The Complainant also shows that when searching for the term "bitpanda" on Google, the first page only provides results related to the Complainant.

Moreover, according to evidence provided by the Complainant, the Respondent has registered himself on the Complainant's platform in 2017, more than four years before the registration of the Disputed Domain Name. The Panel observes that the Respondent did not specifically contest this fact or related evidence. Therefore, the Panel finds that on the balance of probabilities, the Respondent targeted the Complainant's mark for its own benefit. The Panel agrees with the Respondent that the parties are not active in the same market sector but, in the Panel's opinion, this does not mean that the Respondent cannot benefit from the Complainant's mark through the use of the Disputed Domain Name.

In light of the foregoing, and taking into account the additional circumstances as explained below under section 6.3.C., the Panel finds that the Respondent's conduct does not rise to the required level necessary to have legitimate interests to or rights in the Disputed Domain Name within the meaning of paragraph 4(a)(ii) of the Policy. There is nothing wrong in making, promoting or even selling (digital) art related to panda bears but the Panel considers more likely than not that, the Respondent registered the Disputed Domain Name for the purpose of taking an unfair advantage due to the identity between the Second-Level of the Disputed Domain Name and the Complainant's BITPANDA trademark.

In the circumstances of this case and on the balance of probabilities, the Panel does not consider the use of the Disputed Domain Name to be *bona fide*, legitimate or fair.

The Complainant therefore succeeds on the second element of the Policy.

C. Registered and Used in Bad Faith

The Complainant must prove on the balance of probabilities both that the Disputed Domain Name was registered in bad faith and that it is being used in bad faith (see section 4.2 of the [WIPO Overview 3.0](#) and, for example, *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#) and *Control Techniques Limited v. Lektronix Ltd*, WIPO Case No. [D2006-1052](#)).

Paragraph 4(b) of the Policy provides a non-exclusive list of factors, any one of which may demonstrate bad faith. Among these factors demonstrating bad faith registration and use is the use of a domain name to intentionally attempt to attract, for commercial gain, Internet users to a website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the website or location or of a product or service on the website or location.

In the present case, the Panel finds that it is very unlikely that the Respondent was unaware of the Complainant and its trademark rights when it registered the Disputed Domain Name. The Disputed Domain Name matches the Complainant's trademark in its entirety, the Complainant provided evidence of its trademark's reputation (as confirmed by various UDRP panels), and the Respondent did not specifically contest the fact that he registered himself on the Complainant's platform years before registering the

Disputed Domain Name. In the Panel's view, the Respondent's awareness of the Complainant's trademark rights at the time of the Disputed Domain Name registration suggests bad faith (see *Red Bull GmbH v. Credit du Léman SA, Jean-Denis Deletraz*, WIPO Case No. [D2011-2209](#); *BellSouth Intellectual Property Corporation v. Serena, Axel*, WIPO Case No. [D2006-0007](#)).

The Respondent has used the Disputed Domain Name to resolve to a website:

- mentioning "bit panda" in capitals and in large characters as the title of the website;
- which used to include a link to an NFT trading platform on which NFTs related to these artworks are offered for sale.

In the Panel's view, the above circumstances (including the Respondent very likely knowledge of the Complainant's mark and the distinctive character of this mark) indicate that the Respondent has intentionally attempted to attract Internet users to its website for commercial gain or other such purposes inhering to the Respondent's benefit, by creating a likelihood of confusion with the Complainant and its trademark.

The fact that the Respondent later removed the link to the third party NFT trading platform does not prevent a finding of bad faith. Even if the Respondent would have no intent to sell his artworks, the Panel finds that the likelihood of confusion between the Complainant's trademark and the Disputed Domain Name enables the Respondent to enjoy more visibility of his website.

In addition, the Complainant provides evidence showing that, following the Complainant's offer to settle the matter by paying the Respondent's out-of-pocket expenses for registration and maintenance of the Disputed Domain Name in exchange for its transfer, the Respondent offered to sell the Disputed Domain Name for an amount in cryptocurrency corresponding to approximately EUR 460,000. The Respondent subsequently indicated that this offered amount was an error and should correspond to approximately EUR 45,000 instead. Even though the Respondent's offer was triggered by the initial offer of the Complainant to cover the Respondent's out-of-pocket expenses for its registration and maintenance, the Panel considers the amount of approximately EUR 45,000 requested by the Respondent to be a further indication of the Respondent's bad faith in the circumstances of the present case.

Therefore, the Panel finds that, on the balance of probabilities, it is established that the Disputed Domain Name was registered and is being used in bad faith. In light of the above, the Complainant also succeeds on the third and last element of the Policy.

7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the Disputed Domain Name <bitpanda.tech> be transferred to the Complainant.

/Flip Jan Claude Petillion/

Flip Jan Claude Petillion

Sole Panelist

Date: October 25, 2022