

ADMINISTRATIVE PANEL DECISION

BPCE v. Mathieux Montepiot
Case No. D2023-1069

1. The Parties

The Complainant is BPCE, France, represented by DBK Law Firm, France.

The Respondent is Mathieux Montepiot, France.

2. The Domain Name and Registrar

The disputed domain name <bpcegroupbk.com> is registered with Cosmotown, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 9, 2023. On March 10, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 12, 2023, 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 (Unknown) and contact information in the Complaint. The Center sent an email communication to the Complainant on March 16, 2023 providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on March 16, 2023.

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 March 28, 2023. In accordance with the Rules, paragraph 5, the due date for Response was April 17, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 1, 2023.

The Center appointed Fabrice Bircker as the sole panelist in this matter on May 8, 2023. 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, BPCE, is a French company acting as the central institution responsible for the two banking networks Banques Populaires and Caisses d'Épargne.

It is the second largest banking group in France.

Besides, with 105,000 employees and 36 million customers, the Complainant is also active in more than 40 countries.

The Complainant's activities are notably protected through the following trademarks registrations:

- BPCE, French trademark registration No. 3653852 registered on November 6, 2009, duly renewed since then, and designating products and services of classes 9, 16, 35, 36, 38, 41, and 45,
- BPCE, European Union trademark No. 8375842, registered on January 12, 2010, duly renewed since then, and designating services of class 36.

The Complainant has also an online presence, in particular through the <groupebpce.com> domain name, which was registered on February 25, 2009 and which redirects to its official website.

The disputed domain name, <bpcegroupbk.com>, was registered on January 10, 2023.

According to uncontested evidence, at the time of the filing of the Complaint, it resolved to a website purporting offering banking services under the names BPCE GROUP BANK (on the header of the page), BPCE GROUP BANQUE ("banque" being the French word for "bank") accompanied with a logo, and BPCE GROUP or BPCE BANK in the body of the displayed texts.

At the time of the drafting of this decision, the disputed domain name does not resolve to an active website.

5. Parties' Contentions

A. Complainant

The Complainant requests the transfer of the disputed domain name, and its arguments can be summarized as follows:

Identical or Confusingly Similar

The Complainant contends that the disputed domain name is confusingly similar to its BPCE trademark because it incorporates said trademark in its entirety and the latter remains recognizable within it.

Rights or Legitimate Interests

First, the Complainant argues that the Respondent has no trademarks or trade names corresponding to the disputed domain name.

Then, the Complainant asserts that it has never authorized the Respondent to use its trademark, included as a domain name.

Finally, the Complainant contends that, as the disputed domain name is used to redirect to a website offering competing banking services, whereas its BPCE trademark is older and well-known, the Respondent has no legitimate interest in said disputed domain name because it is not used in connection with a *bona fide* offering of services.

Registered and Used in Bad Faith

The Complainant argues that the disputed domain name has been registered in bad faith because the BPCE prior trademark is well known, which makes more than likely that the Respondent knew said trademark at the time of the registration of the disputed domain name.

The Complainant also puts forward that the Respondent is using the disputed domain name to create a likelihood of confusion with the BPCE prior trademark and to unduly take advantage of its goodwill and reputation.

At last, the Complainant contends that the concealment of the Respondent's identity and the provision of inaccurate contact details to the Registrar are further evidence of the Respondent's bad faith.

B. Respondent

The Respondent did not reply to the Complainant's contentions.

6. Discussion and Findings

Pursuant to paragraph 4(a) of the Policy, for obtaining the transfer of the disputed domain name, the Complainant must establish each of the following three elements:

- 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.

Besides, paragraph 15(a) of the Rules provides that “[a] Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable”.

Paragraphs 10(b) and 10(d) of the Rules also provide that “[i]n all cases, the Panel shall ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case” and that “[t]he Panel shall determine the admissibility, relevance, materiality, and weight of the evidence”.

Besides, the Respondent's failure to reply to the Complainant's contentions does not automatically result in a decision in favor of the Complainant, although the Panel is entitled to draw appropriate inferences therefrom, in accordance with paragraph 14(b) of the Rules (see section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”)).

Taking the foregoing provisions into consideration the Panel finds as follows.

A. Identical or Confusingly Similar

Pursuant to paragraph 4(a)(i) of the Policy, the Complainant must first establish rights in a trademark or service mark and secondly establish that the disputed domain name is identical or confusingly similar to its trademark.

The Panel finds that the Complainant is the owner of trademark registrations for BPCE, such as those detailed in section 4 above.

Turning to whether the disputed domain name is identical or confusingly similar to the Complainant's trademark, as indicated in [WIPO Overview 3.0](#), section 1.7, "[w]hile each case is judged on its own merits, in cases where a domain name incorporates the entirety of a trade mark [...], the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing".

This test is satisfied here, as the disputed domain name identically reproduces the BPCE trademark in its entirety, and because the added elements do not prevent a finding of confusing similarity.

Indeed, these added elements consist in the term "group", and in the letters "bk" which are not only weakly noticeable, but which can also be perceived as an abbreviation for "bank". As a consequence, these elements do not prevent the Complainant's trademark from remaining recognizable within the disputed domain name. In this respect, there is a consensus view among UDRP panels 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 Policy (see [WIPO Overview 3.0](#), section 1.8).

Besides, the generic Top-Level Domain ".com" may be ignored for the purpose of assessing the confusing similarity, because it only plays a technical function.

As a result of all the above, the Panel concludes that the requirements of paragraph 4(a)(i) of the Policy are satisfied.

B. Rights or Legitimate Interests

Under the Policy, a complainant is required to make out a *prima facie* case that the respondent lacks rights or legitimate interests in the disputed domain name. Once such a *prima facie* case is made, the respondent carries the burden of demonstrating rights or legitimate interests in the disputed domain name. If the respondent fails to do so, the complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy (see [WIPO Overview 3.0](#), section 2.1).

In the present case, the Complainant contends that it has not given its consent for the Respondent to use its BPCE trademark in a domain name registration or in any other manner.

In addition, there is nothing in the record of the case likely to indicate that the Respondent may genuinely be commonly and legitimately known by the disputed domain name.

On the contrary, before being deactivated and according to uncontested evidence, the disputed domain name resolved to a website offering banking services under the names BPCE GROUP, BPCE BANK and BPCE GROUP BANQUE, which only distinctive element reproduces the Complainant's trademark.

Such use was of commercial nature and may have infringed upon the Complainant's trademark by creating a likelihood of confusion.

Indeed, the Complainant's BPCE trademark which protects banking services and which reputation has already been recognized on many occasions (e.g., *BPCE v. WhoisGuard Protected, WhoisGuard, Inc. / Francis Coamo, Danstic*, WIPO Case No. [D2020-0967](#); *BPCE v. Pierre Agou Michel*, WIPO Case No. [D2020-2361](#); *BPCE v. Emmanuel Asamoah*, WIPO Case No. [D2022-3866](#); or *BPCE v. Seymi Lozano*, WIPO Case No. [D2022-4185](#)), predates the Respondent's registration and use, and is entirely reproduced within the disputed domain name and within the website to which it resolved (being indicated that, as the added elements are deprived of any distinctive feature, their presence cannot dispel the likelihood of confusion).

In this respect, it is of constant case law that a respondent's use of a complainant's mark to redirect users to a competing website cannot support a claim to rights or legitimate interests (see [WIPO Overview 3.0](#), section 2.5.3).

In view of all the above, the Panel finds that the Complainant has discharged its burden of proof that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

The burden of production now shifts to the Respondent to show that it does have rights or legitimate interests in the disputed domain name.

The Respondent, which has not replied to the Complainant's contentions, has not come forward with any explanation that demonstrates any rights or legitimate interests in the disputed domain name.

Taking all the above into consideration, the Panel concludes that the Respondent has no rights or legitimate interests in the disputed domain name, and therefore that the Complainant has satisfied the second element in paragraph 4(a) of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(a)(iii) of the Policy provides that the Complainant must establish that the Respondent registered and subsequently used the disputed domain name in bad faith.

The circumstances listed in paragraph 4(b) of the Policy are only examples and therefore are not exhaustive of the situation of bad faith. Registration in Bad Faith

The Panel notes that:

- the disputed domain name reproduces the Complainant's BPCE trademark,
- this trademark predates the registration of the disputed domain name by almost 15 years,
- the BPCE trademark is well known (*cf.* decisions mentioned at section B),
- the terms of the disputed domain name added to "bpce" refer to the Complainant (the presence of the term "group" makes the disputed domain name very close to the <groupebpce.com> domain name which is used by the Complainant to resolve to its official website, and the "bk" element may be perceived as the abbreviation for "bank"),
- according to the information provided by the Registrar, the Respondent is located in France, where the Complainant is particularly active on the market,
- when registering the disputed domain name, the Respondent has provided the Registrar with inaccurate contact details (in that regard the courier service in charge of the delivery of the written notice of the Complaint was not able to reach the Respondent), and
- the Respondent has not put forward any argument intended to establish his good faith.

In view of these elements, the Panel finds that the Respondent registered the disputed domain name with the Complainant's trademark in mind, that is to say in bad faith. Use in Bad Faith

Before being deactivated, the disputed domain name resolved to a website competing with the Complainant and on which the BPCE trademark was reproduced.

As mentioned above in section B., such use was of commercial nature and was liable to generate a likelihood of confusion with the Complainant's prior rights.

As a consequence, and taken into account the fact that the Respondent could not be unaware of the Complainant's rights at the time of the registration of the disputed domain name, the Panel finds that the present case falls within the scope of paragraph 4(b)(iv) of the Policy, namely: "by using the disputed

domain name, [the Respondent has] intentionally attempted to attract, for commercial gain, Internet users to [the Respondent's] 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 Respondent's] website or location or of a product or service on [the Respondent's] website or location."

In addition, because of the competing situation between the parties, this case also falls within the scope of paragraph 4(b)(iii), namely "the respondent has registered the disputed domain name primarily for the purpose of disrupting the business of a competitor".

At last, the fact that the disputed domain name is currently inactive does not prevent a finding of bad faith use, not only because this deactivation seems purely opportunistic, but also because the present situation clearly falls within the doctrine of passive holding.

Indeed, all the relevant factors for applying the passive holding doctrine are met here: (i) the Complainant's mark is intrinsically distinctive and enjoys a reputation, (ii) the Respondent has failed to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the Respondent's concealed its identity and even used false contact details, and (iv) given all the above-mentioned findings and the conditions in which the disputed domain name was previously used, any good faith use of said disputed domain name by the Respondent seems implausible (See [WIPO Overview 3.0](#), section 3.3).

In conclusion, for all the reasons set out above, the Panel concludes that the disputed domain name was registered and is being used in bad faith, within the meaning of paragraph 4(a)(iii) 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 <bpcegroupbk.com> be transferred to the Complainant.

/Fabrice Bircker/

Fabrice Bircker

Sole Panelist

Date: May 22, 2023