

ADMINISTRATIVE PANEL DECISION

Belfius Bank SA / Belfius Bank NV v. Nest Pasol
Case No. D2022-5045

1. The Parties

The Complainant is Belfius Bank SA / Belfius Bank NV, Belgium, internally represented.

The Respondent is Nest Pasol, Belgium.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 29, 2022. On January 3, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On the same day, 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 (Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint.

The Center sent an email communication to the Complainant on January 4, 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 the same January 4, 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 January 9, 2023. In accordance with the Rules, paragraph 5, the due date for Response was January 29, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on January 30, 2023.

The Center appointed Benoit Van Asbroeck as the sole panelist in this matter on February 3, 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 is a bank and financial services provider. The Complainant is the owner of registered trademarks in the mark BELFIUS including, *inter alia*:

- European Union Trademark No. 010581205 for BELFIUS, registered on May 24, 2012, in International Classes 9, 16, 35, 36, 41 and 45;
- Benelux Trademark No. 0914650 for BELFIUS, registered on May 10, 2012, in International Classes 9, 16, 35, 36, 41 and 45;
- Benelux Trademark No. 0915962 for BELFIUS (figurative), registered on June 11, 2012, in International Classes 9, 16, 35, 36, 41 and 45;
- Benelux Trademark No. 0915963 for BELFIUS (figurative), registered on June 11, 2012, in International Classes 9, 16, 35, 36, 41 and 45.

The Complainant also owns *inter alia* the domain names <belfius.be>, which resolves to its official website where it offers banking and insurance services, and <belfius.com>, which resolves to website intended for institutional partners and journalists.

The disputed domain name was registered on November 14, 2022, well after the Complainant secured rights to the abovementioned trademarks. The disputed domain resolves to an inactive website.

5. Parties' Contentions

A. Complainant

The Complainant asserts that each of the three elements specified in paragraph 4(a) of the Policy are present. The three elements being: (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; (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.

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

The Complainant contends that the disputed domain name is identical or confusingly similar to its trademarks since it incorporates the BELFIUS mark in its entirety, differing only by the replacement of the "i" by a "u". Furthermore, the Complainant points out that the applicable generic top-level domain ("gTLD") in a domain name is viewed as a standard registration requirement and as such is to be disregarded for the purpose of determining whether a domain name is identical or confusingly similar to a trademark.

(ii) The Respondent has no rights or legitimate interests in respect of the disputed domain name.

The Complainant claims that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant confirms that the Respondent is in no way associated with the Complainant and has not been authorized to use the Complainant's trademarks. Furthermore, the Complainant contends

that there is no evidence of the Respondent's use of the disputed domain name or a name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services. The Complainant points out that the Respondent is not using the disputed domain name or making demonstrable preparations to use it.

(iii) The disputed domain name has been registered and is being used in bad faith.

The Complainant contends that the disputed domain name has been registered and is being used in bad faith. The Complainant claims that the Respondent had or should have had knowledge of the Complainant's trademarks and business at the time when it registered the disputed domain name. Furthermore, the Complaint asserts that the passive holding of the disputed domain name amounts to bad faith use since it is difficult to imagine any plausible future active use of the disputed domain name by the Respondent that would be legitimate and not infringing the Complainant's well-known mark or unfair competition and consumer protection legislation. Moreover, by registering a domain name which is only one letter different from the Complainant's trademarks ("typosquatting"), the Respondent is attempting to take advantage of the Complainant's reputation by capturing traffic from Internet users looking for the Complainant, but misspelling its name. Finally, the Respondent claims that the Respondent's concealment of its identity is a further indicator of bad faith.

B. Respondent

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

6. Discussion and Findings

The Panel finds that it has jurisdiction to hear this dispute as the Policy has been incorporated by reference into the registration agreement between the Registrar and the Respondent.

The Panel notes that while the Respondent has been duly notified, it did not reply to the Complainant's contentions within the time period established by the Rules. Pursuant to paragraph 14 of the Rules the Panel shall nonetheless proceed to a decision on the Complainant's complaint and it may draw such inferences from the Respondent's failure to respond as it considers appropriate.

Paragraph 4(a) of the Policy requires that in order for its complaint to succeed, the Complainant must prove that the following three elements are present:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (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 above three elements will each be discussed in further detail below.

A. Identical or Confusingly Similar

The Complainant is required to establish: (1) that it owns rights in a trademark or service mark, and, if so, (2) that the disputed domain name is identical or confusingly similar to its trademarks.

Firstly, the Panel finds that the Complainant has clearly evidenced that it owns registered trademark rights to BELFIUS. The Panel is satisfied with the evidence provided in support of the existence of trademarks for or containing the word "belfius". It should be noted that paragraph 4(a)(i) of the Policy does not set minimum

requirements as to the jurisdictions of the trademarks a complainant relies on, nor as to the number, nature or scope of protection of such trademarks.

Secondly, the Panel finds that the disputed domain name is confusingly similar to the Complainant's registered trademarks. The Panel agrees that the disputed domain name is confusingly similar to the abovementioned Complainant's registered trademarks since the only difference is that the letter "i" has been replaced by the letter "u", which is adjacent to the letter "i" on a "qwerty" keyboard. The BELFIUS mark is clearly recognizable in a side-by-side comparison with the disputed domain name and the Panel agrees with the Complainant that is a clear case of "typosquatting" since the disputed domain name is a slight misspelling of the Complainant's registered trademark (see Section 1.9 of the [WIPO Overview 3.0](#)).

Finally, as for the applicable gTLD, *i.e.*, the suffix ".com", the Panel holds that this can be disregarded under the first element confusing similarity test (*CANAL + FRANCE v. Franck Letourneau*, WIPO Case No. [DTV2010-0012](#); *Bentley Motors Limited v. Domain Admin / Kyle Rocheleau, Privacy Hero Inc.*, WIPO Case No. [D2014-1919](#); and *SAP SE v. Mohammed Aziz Sheikh, Sapteq Global Consulting Services*, WIPO Case No. [D2015-0565](#)).

On the basis of the foregoing findings, and according to paragraph 4(a)(i) of the Policy, this Panel finds and concludes that the disputed domain name is confusingly similar to the Complainant's trademarks.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy non-exhaustively lists three circumstances that shall demonstrate a right or legitimate interest:

"Any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate your rights or legitimate interests to the domain name for purposes of paragraph 4(a)(ii):

- (i) before any notice to you of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or
- (ii) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or
- (iii) you are making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue."

It is a well-established view of UDRP panels, with which the Panel agrees, that a *prima facie* case advanced by a complainant is generally sufficient to satisfy the requirements under paragraph 4(a)(ii) of the Policy, and the burden of production shifts to the respondent to provide relevant evidence demonstrating rights or legitimate interests in the disputed domain name (*AGUAS DE CABREIROA, S.A.U. v. Hello Domain*, WIPO Case No. [D2014-2087](#); *Spigen Korea Co., Ltd., Spigen Inc. v. Domain Admin, Whois Privacy Corp.*, WIPO Case No. [D2016-0145](#); and *HubSpot, Inc. v. WhoisGuard Protected, WhoisGuard, Inc. / Steve Johnson*, WIPO Case No. [D2016-1338](#)).

The Panel notes that the Respondent has not responded to any of the Complainant's contentions, let alone submitted evidence to the contrary, and that, pursuant to paragraph 14 of the Rules, the Panel may draw such inferences from the Respondent's failure to respond as it considers appropriate. In the present case, taking into consideration the Respondent's default, this Panel finds that the Complainant has made out an un rebutted *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name, in view of the circumstances of this case, including the following factors.

The Panel agrees with the Complainant that there is no evidence that the Respondent is using the disputed domain name in connection with a *bona fide* offering of goods or services. The fact that the disputed domain name does not currently resolve to an active website indeed supports this. In addition, the Complainant confirmed that the Respondent is not affiliated with the Complainant in any way nor has the Complainant licensed, authorized, or permitted the Respondent to register domain names incorporating the Complainant's trademarks. The Panel has taken note of the Complainant's confirmation in this regard and has not seen any evidence that would suggest the contrary. In the absence of any license or permission from the Complainant to use its trademarks, no actual or contemplated *bona fide* or legitimate use of the disputed domain name could reasonably be claimed (see, e.g., *Sportswear Company S.P.A. v. Tang Hong*, WIPO Case No. [D2014-1875](#); and *LEGO Juris A/S v. DomainPark Ltd, David Smith, Above.com Domain Privacy, Transure Enterprise Ltd, Host master*, WIPO Case No. [D2010-0138](#)).

For all the foregoing reasons, the Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy non-exhaustively lists four circumstances that, if found by the Panel to be present, shall be evidence of the registration and use of the domain name in bad faith:

“(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or

(ii) you have 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) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location.”

The Panel finds that the circumstances and evidence presented by the Complainant offer sufficient proof that both the Respondent's registration and current use of the disputed domain name are in bad faith.

The Panel believes that the Respondent knew or, at least, should have known at the time of registration that the disputed domain name included the Complainant's abovementioned trademarks. Knowledge of the BELFIUS trademarks may be inferred from the fact that these trademarks have been registered in different countries and existed for a long time prior to the Respondent's registration of the disputed domain name (see, e.g., *SembCorp Industries Limited v. Hu Huan Xin*, WIPO Case No. [D2001-1092](#); and *American Funds Distributors, Inc. v. Domain Administration Limited*, WIPO Case No. [D2007-0950](#)).

The Panel finds that bad faith registration and use is further demonstrated by the fact that the disputed domain name is a clear example of “typosquatting”. As mentioned under the first element, the disputed domain name only differs one letter from the Complainant's BELFIUS trademarks: the letter “i” has been replaced by the letter “u” which is adjacent to the letter “i” on a “qwerty” keyboard, meaning registration of the disputed domain name has clearly been done to attract Internet users by creating a likelihood of confusion with the Complainant's trademarks. This, in combination with the Respondent's clear absence of rights or legitimate interests in the disputed domain name, is another indicator of bad faith (see Section 3.1.4 of the [WIPO Overview 3.0](#) and e.g. *Estée Lauder Inc. v. estelauder.com, estelauder.net and Jeff Hanna*, WIPO

Case No. [D2000-0869](#); *Go Daddy Software, Inc. v. Daniel Hadani*, WIPO Case No. [D2002-0568](#); *Sanofi-aventis v. Elizabeth Riegel and Andrew Riegel*, WIPO Case No. [D2005-1045](#); and *Randstad Holding nv v. Pinaki Kar*, WIPO Case No. [D2013-1796](#)).

In addition, the Panel agrees with the Complainant that the doctrine of passive holding applies here. It is a well-established view of UDRP panels, including in *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#), and *Jupiters Limited v. Aaron Hall*, WIPO Case No. [D2000-0574](#), that the non-use of a domain name does not prevent a finding of bad faith. The Panel agrees with this view and finds that the fact that the Complainant's trademark is well-known and that the disputed domain name is a clear example of "typosquatting", makes it implausible that the disputed domain name will be put to any good faith use in the future. The Panel agrees with the Complainant that there is also no evidence of any actual or intended use of the disputed domain name in good faith. Finally, the fact that, as shown by the Complainant, the Respondent appears to have provided incomplete contact details only further supports a finding of bad faith use.

In light of the above, the Panel finds that the disputed domain name was registered and is being used by the Respondent in bad faith.

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, <belfuus.com> be transferred to the Complainant.

/Benoit Van Asbroeck/

Benoit Van Asbroeck

Sole Panelist

Date: February 17, 2023