

ADMINISTRATIVE PANEL DECISION

Ally Financial Inc. v. James Promise
Case No. D2022-0484

1. The Parties

The Complainant is Ally Financial Inc., United States of America, represented by CSC Digital Brand Services Group AB, Sweden.

The Respondent is James Promise, Nigeria.

2. The Domain Name and Registrar

The disputed domain name <allysbank.com> (“Domain Name”) is registered with OwnRegistrar, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 11, 2022. On February 11, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On February 11, 2022, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that the 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 February 16, 2022. In accordance with the Rules, paragraph 5, the due date for the Response was March 8, 2022. The Respondent did not submit any Response. Accordingly, the Center notified the Respondent’s default on March 9, 2022.

The Center appointed Jon Lang as the sole panelist in this matter on March 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 was founded in 1919 by General Motors Corporation as the General Motors Acceptance Corporation (GMAC) to be a provider of financing services to automotive customers. In 2009, GMAC rebranded itself as Ally and became a public company.

The Complainant is the owner of trademark registrations across various jurisdictions for ALLY BANK and ALLY, for instance, United States Patent and Trademark Office (USPTO) trademark Registration No. 3667814 (for ALLY) with a Registration Date of August 11, 2009, and European Union Intellectual Property Office (EUIPO) trademark Registration No. 014567911 (for ALLY BANK) with a Registration Date of January 11, 2016. ALLY and ALLY BANK are marks used by the Complainant in connection with financial services since 2009.

The Complainant has a strong Internet presence through its websites and owns several domain names, including <ally.com> and <allybank.com>.

The Domain Name was registered on November 28, 2021. The Respondent's original use of the Domain Name was to resolve to a website which copied the colour scheme and logo of the Complainant's banking website and purported to offer online banking service.. The Domain Name currently resolves to an inactive site.

5. Parties' Contentions

A. Complainant

The following is a brief summary of the key contentions of the Complainant.

The Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

The Complainant is the owner of the ALLY BANK and ALLY trademarks thus satisfying the threshold requirement of having trademark rights for the purposes of standing to file a UDRP case. The generic Top-Level Domain (gTLD) ".com" is a standard registration requirement and is to be disregarded for the purposes of determining confusing similarity. The Domain Name varies from the Complainant's trademark by the addition of the letter "s" added between "ally" and "bank". The Domain Name is a purposeful misspelling of the Complainant's ALLY BANK trademark and must be considered confusingly similar. It is also aurally and visually confusingly similar.

As the Domain Name differs from the Complainant's trademark by the addition of just one letter, the Domain Name should be considered a typical example of typosquatting.

The Respondent has no rights or legitimate interests in respect of the Domain Name.

The Respondent is not sponsored by or affiliated with the Complainant in any way. The Complainant has not given the Respondent permission to use the Complainant's trademarks in any manner, including in domain names. The Respondent is not commonly known by the Domain Name.

The Respondent's original website created the impression that it was authorized and administered by the Complainant, thus taking advantage of the fame of the Complainant's trademarks and goodwill so as to, at a minimum, illegitimately increase traffic to the Respondent's website for personal gain and at worst, to "phish" personal information from the Complainant's customers. Such use of the Domain Name, presumably for commercial gain, and with devious, nefarious motives, clearly fails to constitute a *bona fide* offering of goods or services.

The Respondent is currently using the Domain Name to redirect Internet users to a website that resolves to a blank page. The Respondent has not demonstrated any attempt to make legitimate use of the Domain Name, which evinces a lack of rights or legitimate interests.

The Respondent registered the Domain Name on November 28, 2021, significantly later than when the Complainant filed for registration of its ALLY BANK and ALLY trademarks, significantly later than the Complainant's first use in commerce of its trademarks on May 15, 2009, and significantly later than the Complainant's registration of its <allybank.com> domain name on March 10, 2008.

The Domain Name was registered and is being used in bad faith.

The Complainant and its ALLY and ALLY BANK trademarks are known internationally, with registrations across numerous countries. The Complainant has marketed and sold its goods and services using these trademarks since 2009, which is well before the Respondent's registration of the Domain Name. It is not possible to conceive of a plausible situation in which the Respondent would have been unaware of the Complainant's brands at the time the Domain Name was registered given its trademark registrations, its worldwide reputation, several industry awards and recognitions, and presence on the Internet.

By registering a domain name that is a purposeful misspelling, the Respondent has created a domain name that is confusingly similar to the Complainant's trademarks, as well as its <allybank.com> domain name.

Typosquatting itself is evidence of bad faith registration and use.

The ALLY BANK mark is so closely linked and associated with the Complainant that the Respondent's use of the mark, or any minor variation of it, strongly implies bad faith.

The Respondent's original use of the Domain Name was to copy the look and logo of the Complainant's banking website and pose as the Complainant in an apparent phishing exercise. After creating a strong likelihood of confusion by misappropriating the Complainant's trademarks in the Domain Name, the Respondent attempted to create an online "E-Banking" website to gain access to customers' accounts. The Respondent's efforts to masquerade as the Complainant in an attempt to solicit sensitive, financial information from unsuspecting people constitutes fraud, which must be considered bad faith registration and use of the Domain Name.

The Domain Name currently resolves to an inactive site and is not being used, but bad faith use does not require a positive act on the part of the Respondent and a passive holding of a domain name can constitute a factor in finding bad faith registration and use.

The Domain Name can only be taken as intending to cause confusion among Internet users as to its source, and thus must be considered as having been registered and used in bad faith. Indeed, 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.

It is more likely than not that the Respondent knew of and targeted the Complainant's trademarks.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy requires a complainant to prove that a respondent has registered a domain name which is: (i) identical or confusingly similar to a trademark or service mark in which a complainant has rights; and (ii) that the respondent has no rights or legitimate interests in respect of the domain name; and

(iii) that the domain name has been registered and is being used in bad faith. A complainant must prove each of these three elements to succeed.

A. Identical or Confusingly Similar

The Complainant is the registered owner of the ALLY BANK and ALLY trademarks and clearly has rights for the purposes of the Policy.

Ignoring the gTLD “.com” (as the Panel may do for comparison purposes), the Domain Name incorporates the ALLY BANK trademark in its entirety but adds the letter “s” between “ally” and “bank”. The Domain Name also incorporates the ALLY trademark, adding the letter “s” and the word “bank”. The ALLY BANK and ALLY trademarks, and Domain Name are therefore not identical and thus the issue of confusing similarity must be considered. Application of the confusing similarity test under the UDRP 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” (section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (the “[WIPO Overview 3.0](#)”). Section 1.7 of the [WIPO Overview 3.0](#) goes on to provide “[...] in cases where a domain name incorporates the entirety of a trademark, [...] the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing”.

Both the ALLY BANK and ALLY trademarks are incorporated in their entirety within the Domain Name. Each are clearly recognizable within the Domain Name. The addition of the letter “s” does not prevent a finding of confusing similarity in respect of the ALLY BANK trademark, and the addition the letter “s” and word “bank” does not prevent a finding of confusing similarity in respect of the ALLY trademark.

The Panel finds that the Domain Name is confusingly similar to the ALLY BANK and ALLY trademarks for the purposes of the Policy and thus paragraph 4(a)(i) of the Policy has been established.

B. Rights or Legitimate Interests

By its allegations, the Complainant has made out a *prima facie* case that the Respondent lacks rights or legitimate interests in the Domain Name.

Accordingly, the burden of production shifts to the Respondent to come forward with arguments or evidence demonstrating that it does in fact have such rights or legitimate interests. The Respondent has not done so and accordingly, the Panel is entitled to find, given the *prima facie* case made out by the Complainant, that the Respondent indeed lacks rights or legitimate interests in the Domain Name. Despite the lack of any answer to the Complainant’s contentions however, the Panel is entitled to consider whether there would be anything inappropriate in such a finding.

A respondent can show it has rights to or legitimate interests in a domain name in various ways even where, as is the case here, it is not licensed by or affiliated with a complainant. For instance, it can show that it has been commonly known by the domain name or that it is 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. Here, however, the Respondent is not commonly known by the Domain Name. Nor can it be said that there is legitimate noncommercial or fair use. There appears to be no active use at all at present. As to earlier use, this appears to have been to deceive Internet users into believing that the site to which the Domain Name earlier resolved was that of the Complainant or connected to it, for what are likely to have been illegitimate purposes. Such earlier use could not of course qualify as legitimate use. In any event, any legitimate noncommercial or fair use must be without intent to mislead, but the Domain Name is inherently misleading because it inevitably creates a false impression of, or association with, the Complainant.

A respondent can also show that it is using a domain name in connection with a *bona fide* offering of goods or services. The Respondent’s initial use of the Domain Name would not of course constitute a *bona fide*

offering of goods or services. As no use is being made of the Domain Name at present, there can be no current *bona fide* offering either. The inevitability of a false impression being created if the Domain Name were to be used in the future (even leaving aside past illegitimate use), would make any finding in favour of the Respondent on this basis, even if he were to contend for it, extremely improbable.

There is no evidence before this Panel that the Respondent has rights or legitimate interests in the Domain Name. The Respondent has not come forward with a Response and it can only be assumed that there is nothing he could say that might support an assertion that he does in fact have rights or legitimate interests in the Domain Name.

The contentions of the Complainant, by which it has made out a *prima facie* case that the Respondent has no rights or legitimate interests, have not been contradicted, challenged, or cast into doubt by the brief analysis set out above. Accordingly, the Panel finds that the Complainant has fulfilled the requirements of paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy provides a number of non-exclusive scenarios which may evidence a respondent's bad faith. They include, for instance, a respondent registering a domain name in order to prevent an owner of the trademark or service mark to which it is said to be confusingly similar or identical, from reflecting the mark in question in a corresponding domain name (provided that the respondent has engaged in a pattern of such conduct). A respondent registering a domain name primarily for the purposes of disrupting the business of a competitor is another scenario, as is a respondent intentionally attempting to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with a complainant's mark as to the source, sponsorship, affiliation or endorsement of its website or of products or services on it.

Sometimes, particularly in cases where it appears nothing is done with a domain name, it is not possible for a complainant to demonstrate a precise literal application of one of the paragraph 4(b) scenarios. However, the paragraph 4(b) scenarios are non-exclusive and simply illustrative, and thus other circumstances demonstrating that a respondent seeks to take unfair advantage of, or to abuse a complainant's trademark (such behaviour being broadly understood to constitute bad faith for the purposes of the Policy) are usually enough to establish this third limb of paragraph 4(a) the Policy (even if not falling within one of the paragraph 4(b) scenarios).

The Respondent must have known of the Complainant. It must have known that it would have rights in the well-known ALLY BANK and ALLY trademarks. The fact that the Respondent set out to copy the colour scheme and logo of the Complainant's banking website would seem to put this beyond doubt.

It is difficult to see how the Respondent would not appreciate that any use (by him) of the Domain Name would be anything other than inherently deceptive, in that it would likely mislead Internet users into believing that the Domain Name or any website or email address associated with it, was that of (or associated with) the Complainant. The addition of the letter "s" between "ally" and "bank" in the Domain Name would hardly ameliorate the risk of Internet users being deceived, as the Respondent must well have known.

The Domain Name has the hallmarks of bad faith registration and use. It is inherently deceptive and ripe to be used in a phishing scam, as perhaps initially intended, or for other illegitimate activity.

The fact that no active use is being made of the Domain Name at present (and hence currently can be treated as being passively held), does not prevent a finding of bad faith registration and use. Indeed, a passive holding of a domain name can support a finding of bad faith. UDRP panels must examine all the circumstances of the case.

Section 3.3 of the [WIPO Overview 3.0](#), provides:

“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.”

The Domain Name is confusingly similar to the well-known and distinctive ALLY BANK and ALLY trademarks. No Response was filed or evidence of actual or contemplated good-faith use provided. Indeed, any good-faith use of the confusingly similar, indeed inherently deceptive Domain Name would seem highly implausible. The passive holding of the Domain Name in the circumstances of this Complaint, supports a finding of bad faith.

In all the circumstances, the Panel finds that, for the purposes of the Policy, there is evidence of both registration and use of the Domain Name 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 Domain Name <allysbank.com> be transferred to the Complainant.

/Jon Lang/

Jon Lang

Sole Panelist

Date: March 25, 2022