

ADMINISTRATIVE PANEL DECISION

Belfius Bank S.A. / Belfius Bank N.V. v. Privacy Administrator, Anonymize, Inc.

Case No. D2022-1047

1. The Parties

The Complainant is Belfius Bank S.A / Belfius Bank N.V., Belgium, internally represented.

The Respondent is Privacy Administrator, Anonymize, Inc., United States of America (“United States”).

2. The Domain Name and Registrar

The disputed domain name <app-belfius.com> is registered with Epik, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 25, 2022. On March 31, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 1, 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 April 1, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. On April 8, 2022, the Center received an email from the Complainant indicating that since the data communicated is clearly still anonymized data, it will indeed not amend the Complaint in light of the notice.

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 April 11, 2022. In accordance with the Rules, paragraph 5, the due date for Response was May 1, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 2, 2022.

The Center appointed Zoltán Takács as the sole panelist in this matter on May 6, 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

With more than 5,000 employees and over 650 agencies as well as 100% government shareholding, the Complainant is a renowned Belgian bank and financial service provider.

Among others the Complainant owns the European Union Trademark Registration (“EUTM”) No. 010581205 for the word mark BELFIUS registered since May 24, 2012, for goods and services of classes 9, 16, 35, 36, 41 and 45 of the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks.

Since January 23, 2012, the Complainant owns the domain name <belfius.be>, which links to its institutional website. The Complainant also owns the domain name <belfius.com>, registered since January 20, 2012, which redirects to its official website at “www.belfius.be”.

The disputed domain name was registered on December 1, 2021, and has not resolved to an active website since registration.

5. Parties’ Contentions

A. Complainant

The Complainant contends that the disputed domain name is confusingly similar to its BELFIUS trademark, because it fully incorporates the trademark with addition of the descriptive term “app”.

The Complainant further alleges that the Respondent has no rights or legitimate interests in respect of the disputed domain name and is unable to rely on any of the circumstances set out in paragraphs 4(c)(i), (ii), or (iii) of the Policy.

The Complainant claims that the Respondent was most likely aware of the Complainant and its activities and has registered the disputed domain name to take unfair advantage of the Complainant’s BELFIUS and the value attached to it.

The Complainant requests that the disputed domain name be transferred from the Respondent to the Complainant.

B. Respondent

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

6. Discussion and Findings

Paragraph 15(a) of the Rules requires that the Panel’s decision be made “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”.

It has been a consensus view in UDRP decisions that a respondent’s default (*i.e.*, failure to submit a response) would not by itself mean that the complainant is deemed to have prevailed; a respondent’s default is not necessarily an admission that the complainant’s claims are true. See section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”).

A complainant must satisfy each of the three elements required by paragraph 4(a) of the Policy in order to succeed on the complaint, namely that;

- (i) the 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 domain name; and
- (iii) the domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

Under paragraph 4(a)(i) of the Policy, there are two requirements which the Complainant must establish, first that it has rights in a trademark or service mark, and second that the disputed domain name is identical or confusingly similar to the trademark or service mark.

It has been a consensus view among UDRP panels that if the complainant owns a trademark, then it generally satisfies the threshold requirement of having trademark rights.

The Complainant produced proper evidence of having registered rights in the BELFIUS trademark and for the purpose of this proceeding the Panel establishes that the EUTM No. 010581205 satisfies the requirement of having trademark rights for the purpose of the Policy.

Having determined the presence of the Complainant's trademark rights, the Panel next assesses whether the disputed domain name is identical or confusingly similar to the Complainant's trademark.

According to section 1.7 of the [WIPO Overview 3.0](#), 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 disputed domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name.

According to section 1.8 of the [WIPO Overview 3.0](#), where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element.

According to section 1.11.1 of the [WIPO Overview 3.0](#), the applicable Top-Level Domain ("TLD") in a domain name (e.g., ".com", ".club", ".nyc") is viewed as a standard registration requirement and as such is generally disregarded under the first element confusingly similar test.

The Complainant's BELFIUS trademark is fully incorporated in the disputed domain name. The addition of the term "app" and a hyphen does not avoid a finding of confusing similarity.

The Panel finds that the disputed domain name is confusingly similar to the Complainant's BELFIUS trademark and that requirement of paragraph 4(a)(i) of the Policy is satisfied.

B. Rights or Legitimate Interests

Under paragraph 4(c) of the Policy, a respondent may demonstrate its rights or legitimate interests in a domain name by showing any of the following circumstances, in particular but without limitation:

- (i) its use of, or demonstrable preparation to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods and services;
- (ii) it has been commonly known by the domain name;

(iii) it is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert customers or to tarnish the trademark or service mark at issue.

In the present case, the Complainant has submitted sufficient evidence that it holds well-established rights in the BELFIUS trademark.

The Complainant has never authorized the Respondent to use its BELFIUS trademark in any way, and its prior rights in the BELFIUS trademark precede the date of registration of the disputed domain name.

According to section 2.1 of the [WIPO Overview 3.0](#), while the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of “proving a negative”, requiring information that is often primarily within the knowledge or control of the respondent.

As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with the relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.

The Respondent failed to respond, and by doing so failed to offer the Panel any type of evidence set forth in paragraph 4(c) of the Policy, or otherwise counter the Complainant’s *prima facie* case.

The Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name in accordance with paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy lists a number of factors which, if found by the panel to be present, shall be evidence of registration and use of a domain name in bad faith. This non-exclusive list includes:

(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 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 your website or location or of a product or service on your website or location.

The Complainant’s BELFIUS trademark, which the disputed domain name incorporates in its entirety, has no dictionary meaning. It is a term coined by the Complainant comprising the terms “Bel” as of “Belgium”, “fi” as of “finances” and the English pronoun “us”. A basic Internet search against the disputed domain name returns solely the Complainant and its businesses.

The Respondent’s reproduction of the Complainant’s inherently distinctive BELFIUS trademark in the disputed domain name convinces the Panel that the Respondent was aware of the Complainant’s trademark at the time of obtaining the disputed domain name and chose to register it in order to exploit the reputation

behind the Complainant's BELFIUS trademark without any authorization or rights to do so. Moreover, the Panel finds that the addition of the term "app" in the disputed domain name is likely to lead Internet users into believing that it is related to an application of the Complainant, or otherwise associated with the Complainant.

The disputed domain name has not resolved to an active website since registration. There is no evidence that the disputed domain name has been used in any active way.

According to section 3.3 of the [WIPO Overview 3.0](#), from the inception of the UDRP, UDRP panels have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding.

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 or 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 Respondent's lack of any rights or legitimate interests in the disputed domain name, absence of any conceivable good faith use of the disputed domain name by the Respondent, failure to react to the Complainant's complaint and cease-and-desist letter, in view of this Panel, support an undisputed presumption of the Respondent's evident targeting of the Complainant's trademark rights and suggest that the Respondent's non-use of the disputed domain name is in bad faith.

In view of this Panel, noting the above discussed facts and circumstances, paragraph 4(a)(iii) of the Policy is satisfied.

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 <app-belfius.com> be transferred to the Complainant.

/Zoltán Takács/

Zoltán Takács

Sole Panelist

Date: May 16, 2022