

## **ADMINISTRATIVE PANEL DECISION**

Bank S.A. / Belfius Bank N.V. v. Privacy service provided by Withheld for Privacy ehf / Debora hilaurai, mikas oppo, Ads Bro  
Case No. D2022-2186

### **1. The Parties**

The Complainant is Bank S.A. / Belfius Bank N.V., Belgium, represented by Marieke Roseeuw, Belgium.

The Respondents are Privacy service provided by Withheld for Privacy ehf, Iceland / Debora hilaurai, United States of America; mikas oppo, Netherlands; and, Ads Bro, Belgium.

### **2. The Domain Names and Registrar**

The disputed domain names <belfiusinfoweb.com> (“the first disputed domain name”), <mobilebelfius.xyz> (“the second disputed domain name) and <digitalmainbelfius.com> (“the third disputed domain name) are registered with NameCheap, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 15, 2022. On June 16, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On June 16, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on June 17, 2022, 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 June 22, 2022.

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 June 27, 2022. In accordance with the Rules, paragraph 5,

the due date for Response was July 17, 2022. The Respondents did not submit any response. Accordingly, the Center notified the Respondents' default on July 19, 2022.

The Center appointed Antony Gold as the sole panelist in this matter on July 25, 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 is a company based in Belgium which provides banking and financial services, primarily in Belgium. It has more than 5,000 employees and over 650 agent branches in addition to providing online and mobile 'phone-based services to its customers.

The Complainant trades as BELFIUS and it has secured a number of trade mark registrations to protect this trading style. These include, by way of example only, European Union Trade Mark, registration number 010581205 for BELFIUS, in classes 9, 16, 35, 36, 41, and 45, registered on May 24, 2012. The Complainant also owns and operates a number of domain names which comprise or include its BELFIUS mark, including the domain name <belfius.be> which resolves to a website providing banking and insurance services, as well as <belfius.com>, which redirects to a website providing information about the Complainant.

The first, second, and third disputed domain names were registered on March 8, 2022, March 31, 2022, and January 6, 2022, respectively. The second and third disputed domain names do not resolve to any form of website. The first disputed domain name resolves to a webpage containing a warning notice, in Dutch, indicating that it might be being used by cyber-criminals.

#### **5. Procedural issue – Complaint filed against multiple Respondents**

At the time of filing the Complaint, the underlying registrants of the disputed domain names were concealed from public view by the same privacy protection service. On June 16, 2022, the Registrar provided details of the underlying registrants for each of the disputed domain names, namely the personal-named Respondents to these proceedings.

The Complainant says that a complaint against multiple respondents can be consolidated into a single complaint if the domain names are under common management and control. In support of its contention, the Complainant says that the disputed domain names were registered within three months of each other and have used the same privacy protection service. Save that the first disputed domain name resolves to a single webpage containing a warning in the terms set out above, none of the disputed domain names resolves to an active webpage. The disputed domain names each incorporate the Complainant's BELFIUS mark in its entirety and combine its mark with descriptive terms.

Whilst neither the Policy nor the Rules expressly provides for the consolidation of claims against multiple respondents into a single administrative proceeding, the principles applied by panels considering requests for consolidation are set out at section 4.11.2 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"). This explains that: "Where a complaint is filed against multiple respondents, panels look at whether (i) the domain names or corresponding websites are subject to common control, and (ii) the consolidation would be fair and equitable to all parties. Procedural efficiency would also underpin panel consideration of such a consolidation scenario". See also *Speedo Holdings B.V. v. Programmer, Miss Kathy Beckerson, John Smitt, Matthew Simmons*, WIPO Case No. [D2010-0281](#).

In addition to the factors relied on by the Complainant, all of the disputed domain names were registered with the same Registrar. Further, the Panel takes note that the physical contact information disclosed for two of

the Respondents includes false or incomplete information that has prevented the delivery of the Center's written communications, suggesting that the disclosed information is in fact fraudulent. These factors, in combination, point to the disputed domain names being under common control. The Panel does not consider that the fact that the first disputed domain name resolves to a web page containing a warning to Internet users, whereas the second and third disputed domain names do not, to be a material difference, having regard to the areas of commonality between them. Moreover, the Panel notes that, despite having had an opportunity to do so, none of the Respondents have challenged the Complainant's assertions.

In these circumstances, it is procedurally efficient, as well as fair and equitable to all parties, for the Complainant's case in respect of all the disputed domain names to be dealt by means of a single Complaint. The Panel accordingly grants the Complainant's request for consolidation and the Respondents are referred to in the remainder of this decision as "the Respondent".

## **6. Parties' Contentions**

### **A. Complainant**

The Complainant refers to its marks for BELFIUS, full details of one of these marks having been given above, and says that each of the disputed domain names is identical or confusingly similar to it. The applicable generic Top-Level Domain ("gTLD") in each disputed domain name is viewed as a standard registration requirement and is disregarded for the purpose of the comparison. The incorporation into a domain name of a complainant's mark in its entirety may be sufficient to establish that it is identical or confusingly similar. The addition of the added words in each of the disputed domain names does not lessen the inevitable confusion between them and the Complainant's BELFIUS trade mark.

The Complainant says also that the Respondent has no rights or legitimate interests in respect of the disputed domain names. The Complainant's trade mark registrations for BELFIUS pre-date the Respondent's registration of the disputed domain names. The Respondent is not in any way associated with the Complainant and the Complainant has not licensed, approved or in any way consented to the Respondent's registration and use of its mark in the disputed domain names. The Respondent has no trade mark rights in BELFIUS, nor is it making a legitimate non-commercial or fair use of the disputed domain names. In fact, the Respondent is not making any use of the disputed domain names, nor any demonstrable preparations to use them, which in appropriate circumstances, evidences a lack of rights or legitimate interests in them.

Lastly, the Complainant says that the disputed domain names were registered and are being used in bad faith. The Respondent either knew or should have known of the Complainant's trade mark when it registered the disputed domain names, or else has exercised the kind of wilful blindness that numerous panels have held support a finding of bad faith. It is, in fact, inconceivable that the disputed domain names have been registered by the Respondent without it having in mind the Complainant and its products.

The Respondent does not use, nor have the intention to use, the disputed domain names for any *bona fide* purpose. Moreover, its passive holding of the disputed domain names is in bad faith, in that it is difficult to imagine any plausible future active use of the disputed domain names by the Respondent that would be legitimate and not infringing the Complainant's well-known mark. Moreover, the concealment of the Respondent's identity by its use of a privacy service is, in the circumstances of this Complaint a further indication of bad faith.

### **B. Respondent**

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

## 7. Discussion and Findings

Dealing, first, with the Respondent's failure to file a response to the Complaint, paragraph 14(b) of the Rules provides that if a party, in the absence of exceptional circumstances, does not comply with a provision of, or requirement under these Rules, the Panel shall be entitled to draw such inferences from this omission, as it considers appropriate.

Paragraph 4(a) of the Policy provides that the Complainant is required to prove each of the following three elements in order to succeed in its Complaint:

- (i) the disputed domain names are identical or confusingly similar to a trade mark 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 names; and
- (iii) the disputed domain names have been registered and are being used in bad faith.

### A. Identical or Confusingly Similar

The Complainant has provided evidence of its trade mark registrations for BELFIUS, full details of one of its registrations having been set out above. It has thereby established its rights in this mark.

For the purpose of considering whether the disputed domain names are identical or confusingly similar to the Complainant's mark, the relevant gTLDs, namely ".com" and ".xyz", are typically disregarded as they are a technical requirement of registration. Each of the disputed domain names contains the Complainant's BELFIUS mark, in full and without alteration. In the case of the first disputed domain name, the mark is followed by the term "infoweb". In the second and third disputed domain names, the terms "mobile" and "digitalmain" respectively precede the Complainant's mark. These additional terms do not prevent the disputed domain names from being considered confusingly similar to the Complainant's mark. As explained at 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".

The Complainant's mark is recognisable within each of the disputed domain names and the Panel therefore finds that each of them is confusingly similar to a trade mark in which the Complainant has rights.

### B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy sets out circumstances, without limitation, by which a respondent might demonstrate that it has rights or a legitimate interest in a domain name. These are, summarized briefly: if the respondent has been using the domain name in connection with a *bona fide* offering of goods and services, if the respondent has been commonly known by the domain name, or if the respondent has been making a legitimate noncommercial or fair use of the domain name.

Section 2.1 of the [WIPO Overview 3.0](#) explains that; "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 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". See also *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#).

Non-use of the disputed domain names does not comprise use in connection with a *bona fide* offering of goods and services. The first circumstance outlined above is accordingly not fulfilled. There is no evidence to indicate that the Respondent has been commonly known by any of the disputed domain names and the second circumstance set out at paragraph 4(c) of the Policy is therefore equally inapplicable. Nor is the third circumstance applicable; non-use of the disputed domain names does not equate to a legitimate noncommercial use of them. Furthermore, the characteristics of the disputed domain names are apt to suggest an affiliation or connection with the Complainant, which prevents any use of them by the Respondent from being considered fair. In this respect, see section 2.5.1 of the [WIPO Overview 3.0](#); “[W]here a domain name consists of a trademark plus an additional term (at the second- or Top-Level), UDRP panels have largely held that such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner”.

The Complainant having made out a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain names, the burden of production shifts to the Respondent. In the absence of any response from the Respondent to the Complainant’s contentions, it has failed to satisfy that burden. The Panel therefore finds that the Respondent has no rights or legitimate interests in respect of the disputed domain names.

### **C. Registered and Used in Bad Faith**

As at the date of registration of the disputed domain names in January and March 2022, the Complainant’s BELFIUS marks had been registered for approximately 10 years. The terms which have been added to the Complainant’s mark in each of the disputed domain names have at least some association with the Complainant’s business, particularly in relation to its provision of online and mobile phone-based banking services. The composition of the disputed domain names, coupled with the failure of the Respondent to provide any explanation which might provide a good faith justification for its registration of them, strongly suggest that the Respondent was aware of the Complainant’s BELFIUS mark and business as at the date of its registration of the disputed domain names and that they were registered in order to take unfair advantage of the Complainant’s mark in some manner. As the panel found in *Herbalife International, Inc. v. Surinder S. Farmaha*, WIPO Case No. [D2005-0765](#), “the registration of a domain name with the knowledge of the complainant’s trade mark registration amounts to bad faith”. The Panel therefore finds the Respondent’s registration of the disputed domain names to have been in bad faith.

The inactive status of the disputed domain names does not prevent a finding of bad faith under the doctrine of passive holding. In this respect, see section 3.3 of the [WIPO Overview 3.0](#), which explains that; “[f]rom the inception of the UDRP, panelists have found that the non-use of a domain name (including a blank or ‘coming soon’ page) would not prevent a finding of bad faith under the doctrine of passive holding”. The factors that are typically considered when 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 concealment of its identity or its use of false contact details and (iv) the implausibility of any good faith use to which the domain name may be put. See also *VOLKSWAGEN AG v. Danny de graaf*, WIPO Case No. [D2020-1940](#).

Applying these factors to the current circumstances: (i) the Complainant has established that its BELFIUS trade mark is long-established and the available evidence indicates that it is distinctive in the context of the services for which it is used; (ii) the Respondent has not responded to the Complaint nor provided any evidence of actual or contemplated good faith use of the disputed domain names; (iii) the Respondent has provided false or incomplete contact information for purposes of registering the disputed domain names; and (iv) there is no plausible good faith use to which the disputed domain names could be put by the Respondent. Accordingly, the circumstances of the Respondent’s holding of the disputed domain names support a finding of bad faith under the doctrine of passive holding.

Finally, to the extent that the webpage to which the first disputed domain name resolves contains malware, use of this disputed domain name for the purposes of distributing malware comprises bad faith use under the Policy; see, for example; *Sunrise Senior Living, LLC v. Registration Private, Domains By Proxy, LLC / Carolina Rodrigues, Fundacion Comercio Electronico*, WIPO Case No. [D2020-1620](#).

The Panel therefore finds that the Respondent has registered and is using the disputed domain names in bad faith.

## **8. 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 names <belfiusinfoweb.com>, <mobilebelfius.xyz>, and <digitalmainbelfius.com> be transferred to the Complainant.

*/Antony Gold/*

**Antony Gold**

Sole Panelist

Date: August 8, 2022