

ADMINISTRATIVE PANEL DECISION

Capital One Financial Corporation v. Registration Private, Domains By Proxy, LLC / Carolina Rodrigues, Fundacion Comercio Electronico
Case No. D2022-2595

1. The Parties

The Complainant is Capital One Financial Corporation, United States of America (“United States”), represented by CSC Digital Brand Services Group AB, Sweden.

The Respondent is Registration Private, Domains By Proxy, LLC, United States / Carolina Rodrigues, Fundacion Comercio Electronico, Panama.

2. The Domain Name and Registrar

The disputed domain name <capitalonebanh.com> is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 15, 2022. On July 18, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 2, 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 August 4, 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 August 9, 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 August 10, 2022. In accordance with the Rules, paragraph 5, the due date for Response was August 30, 2022. The Respondent did not submit any response. On August 12, 2022 a third party contacted the Center regarding the claimed unauthorized use of its contact details in relation to the disputed domain name. Accordingly, the Center notified the commencement of Panel Appointment process on September 12, 2022.

The Center appointed Wilson Pinheiro Jabur as the sole panelist in this matter on September 15, 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 financial corporation established in 1994, headquartered in McLean, Virginia, United States. The Complainant's official website is primarily available at www.capitalone.com, a domain name that was registered on March 13, 1995 and which has been ranked 218th most popular globally and 62nd in the United States (Annex 7 to the amended Complaint). The Complainant is the owner of the following, amongst others, trademark registrations (Annex 1 to the amended Complaint):

- Canada Trademark registration No. TMA469123 for CAPITAL ONE, registered on January 21, 1997, successively renewed, in International Class 36;
- European Union Trade mark registration No. 000024299 for CAPITAL ONE, registered on August 7, 2000, successively renewed, in International Classes 36 and 39;
- United States Trademark registration No. 2,065,992 for CAPITAL ONE, registered on May 27, 1997, successively renewed, in International class 36;
- United States Trademark registration No. 3,419,972 for CAPITAL ONE BANK, registered on April 29, 2008, in International Class 36; and
- United States Trademark registration No. 3,993,433 for CAPITAL ONE BANK and device, registered on July 12, 2011, in International Class 36.

The disputed domain name <capitalonebanh.com> was registered on February 1, 2021 and is presently being used to redirect Internet users to a portal for software downloading in connection with what appears to be fraudulent scams. In the past, the disputed domain name resolved to a parked webpage containing pay-per-click ("PPC") links to the Complainant's competitors.

5. Parties' Contentions

A. Complainant

The Complainant asserts to be a leading financial services institution, having achieved in the fiscal year of 2021 loan growth revenue up to USD 30.4 billion and a net income of USD 12.4 million, being its CAPITAL ONE and CAPITAL ONE BANK trademarks known internationally. The Complainant's fame is further corroborated by having the Complainant been recognized as one of Fortune's Most Admired Companies.

In the Complainant's view, the disputed domain consists of a misspelling of the Complainant's CAPITAL ONE BANK trademark, having the Respondent replaced the letter "k" in bank for the visually similar letter "h" and thus being confusingly similar thereof.

Moreover, the Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name given that:

- (i) the Respondent is not sponsored by or affiliated with the Complainant in any way;
- (ii) the Complainant has not given the Respondent permission to use the Complainant's trademarks in any manner, including in domain names, not having the Complainant licensed, authorized, or permitted the

Respondent to register domain names incorporating the Complainant's trademark;

(iii) the Respondent is not been commonly known by the disputed domain name, which evidences a lack of legitimate interest;

(iv) the presence of MX records relating to the disputed domain name strongly implies that the disputed domain name could be used as part of an email phishing scheme; and

(v) the use made of the disputed domain name in connection with a parked webpage containing PPC links to the Complainant's competitors does not characterize a *bona fide* use of the disputed domain name.

As to the registration of the disputed domain name in bad faith the Complainant argues that its trademarks are known internationally, having the Respondent specifically targeted the Complainant when registering the disputed domain name which is so closely linked and associated with the Complainant's CAPITAL ONE BANK trademark what suggests opportunistic bad faith, seeking to create a false association, sponsorship or endorsement with the Complainant. Given the mail exchanger ("MX") records that are set up for the disputed domain name (Annex 2 to the amended Complaint), the Complainant contends that there is a risk that the Respondent is using the disputed domain name in email communication in an attempt to pass off as the Complainant for fraudulent purposes. Lastly, according to the Complainant, three other factors corroborate the Respondent's bad faith: the use of the disputed domain name in connection with PPC links, the choice to retain a privacy protection service so as to conceal the Respondent's true identity and the various domain names held by the Respondent corresponding to similar typosquatting cases (such as <aacorhotels.com>; <allyhomeloan.com>; <clarviate.com>; <kingslootwallet.com> and <norvartispharma.com> - Annex 10 to the Amended Complaint).

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy sets forth the following three requirements, which have to be met for this Panel to order the transfer of the disputed domain name to the Complainant:

(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.

The Complainant must prove in this administrative proceeding that each of the aforementioned three elements is present in order to obtain the transfer of the disputed domain name.

In accordance with paragraph 14(a) of the Rules, if the Respondent does not submit a Response, in the absence of exceptional circumstances, the Panel shall decide the dispute based upon the Complaint.

A. Identical or Confusingly Similar

The Complainant has established its rights in the registered CAPITAL ONE and CAPITAL ONE BANK trademarks.

The Panel finds that the disputed domain reproduces the Complainant's CAPITAL ONE trademark in its entirety and is therefore confusingly similar to it. It is well accepted that the first element functions primarily

as a standing requirement and that the threshold test for confusing similarity involves a “reasoned but relatively straightforward comparison between the complainant’s trademark and the disputed domain name”. (WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, (“[WIPO Overview 3.0](#)”), sections 1.7 and 1.10).

The first element of the Policy has therefore been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a non-exclusive list of circumstances that indicate a respondent’s rights to or legitimate interests in a disputed domain name. These circumstances are:

- (i) before any notice of the dispute, the respondent’s use of, or demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services; or
- (ii) the respondent (as an individual, business, or other organization) has been commonly known by the disputed domain name, in spite of not having acquired trademark or service mark rights; or
- (iii) the respondent is making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Respondent, in not formally responding to the Complaint, has failed to invoke any of the circumstances, which could demonstrate, pursuant to paragraph 4(c) of the Policy, any rights to or legitimate interests in the disputed domain name. This entitles the Panel to draw any such inferences from such default as it considers appropriate pursuant to paragraph 14(b) of the Rules. Nevertheless, the burden of proof is still on the Complainant to make a *prima facie* case against the Respondent.

In that sense, the lack of evidence as to whether the Respondent is commonly known by the disputed domain name or the absence of any trademarks registered by the Respondent corresponding to the disputed domain name, indicates that the Respondent, named Carolina Rodrigues does not hold rights or legitimate interests in the disputed domain name.

Also, both the past use of the disputed domain name in connection with the PPC links relating to third parties offering competing services to the Complainant’s ones, and the present use in connection with what appear to be fraudulent scams, cannot characterize a *bona fide* use of the disputed domain name.

Under these circumstances and absent evidence to the contrary, the Panel finds that the Respondent does not have rights or legitimate interests with respect to the disputed domain name.

The second element of the Policy has therefore been established.

C. Registered and Used in Bad Faith

The Policy indicates in paragraph 4(b) that bad faith registration and use can be found in view of:

- (i) circumstances indicating that the Respondent has registered or acquired the disputed domain name primarily for the purpose of selling, renting, or otherwise transferring it to the Complainant who is the owner of a trademark relating to the disputed domain name or to a competitor of the Complainant, for valuable consideration in excess of the Respondent’s documented out-of-pocket costs directly related to the disputed domain name; or
- (ii) the Respondent has registered the disputed 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 the

Respondent has engaged in a pattern of such conduct; or

(iii) the Respondent has registered the disputed domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) 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 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.

The registration and use of the disputed domain name in bad faith can be found in the present case in view of the following circumstances:

(i) the Respondent has provided no evidence whatsoever of any actual or contemplated good faith use of the disputed domain name;

(ii) the Respondent's past use of the disputed domain name in connection with PPC links;

(iii) the Respondent's potential use of the disputed domain name in connection with email addresses, particularly noting the typosquatting nature of the disputed domain name (Annex 2 to the Complaint);

(iv) the well-known status of the Complainant's trademark and the nature of the disputed domain name (reproducing the entirety of the Complainant's trademark) suggests rather a clear indication of the Respondent's registration and holding of the disputed domain name in bad faith, with the implausibility of any good faith use to which the disputed domain name may be put; and

(v) the use of a false address in the Whois data and, consequently, the Center not being able to have communications fully delivered to it.

For the reasons as those stated above, the Panel finds that the disputed domain name was registered and is being used in bad faith pursuant to paragraph 4(a)(iii) of the Policy.

The third element of the Policy has therefore been established.

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 <capitalonebanh.com> be transferred to the Complainant.

/Wilson Pinheiro Jabur/

Wilson Pinheiro Jabur

Sole Panelist

Date: September 29, 2022