

## **ADMINISTRATIVE PANEL DECISION**

BPCE v. Seymi Lozano

Case No. D2022-4185

### **1. The Parties**

Complainant is BPCE, France, represented by DBK Law Firm, France.

Respondent is Seymi Lozano, Peru.

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

The disputed domain name <bpcevirtual.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 November 4, 2022. On November 7, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 7, 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 (Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to Complainant on November 8, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amendment to the Complaint on November 8, 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 Respondent of the Complaint, and the proceedings commenced on November 17, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 7, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on December 14, 2022.

The Center appointed Gabriel F. Leonardos as the sole panelist in this matter on January 4, 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

Complainant is BPCE, a French joint stock company acting as the central institution responsible for the banking networks Banques Populaires and Caisses d'Épargne, with its head office in Paris.

Complainant's business represents the second largest banking group in France, and runs under the name of BPCE (Banque Populaire and Caisse d'Épargne).

Complainant owns a wide portfolio of trademark registrations internationally containing the word mark BPCE, such as:

Registration No.	Trademark	Jurisdiction	International Class	Date of Registration
8375875	 BPCE	European Union	36	January 12, 2010
3653852	 BPCE	France	9, 16, 35, 36, 38, 41, 45	November 6, 2009
1033662	 BPCE	International Trademark	36	December 15, 2009

The disputed domain name was registered on August 21, 2022, and resolves to a website which is restricted by the browser's security and antivirus system for potentially dangerous content.

#### 5. Parties' Contentions

##### A. Complainant

Complainant pleads that the disputed domain name is confusingly similar to the registered trademark BPCE, since it fully incorporates Complainant's trademark BPCE. Complainant further contends that its business is well known around the world for the trademark BPCE.

Complainant affirms that the disputed domain name uses the trademark BPCE in its entirety with the addition of the term "virtual" – which would not avoid a confusingly similarity between the disputed domain name and Complainant's registered trademark.

Therefore, according to Complainant, the disputed domain name is confusingly similar with Complainant's trademark BPCE, fulfilling paragraph 4(a)(i) of the Policy and paragraphs 3(b)(viii) and 3(b)(ix)(1) of the Rules.

In addition, Complainant states that Respondent does not have any rights or legitimate interests in respect of the disputed domain name, nor is Respondent commonly known by the disputed domain name. Further, Respondent has not been authorized, or licensed to use Complainant's trademark BPCE as a domain name nor is Respondent associated with Complainant.

Complainant observes that the disputed domain name resolves to a website, which is restricted to users by antivirus system for security reasons, which would indicate that the use of the disputed domain name would

not constitute a *bona fide* offering of goods and services, nor represent a legitimate noncommercial or fair use of the disputed domain name.

Accordingly, Complainant states that no legitimate use of the disputed domain name could be reasonably claimed by Respondent, thus paragraph 4(a)(ii) of the Policy and paragraph 3(b)(ix)(2) of the Rules have been fulfilled.

Finally, Complainant states that (i) Respondent was well aware of the existence of the trademark BPCE, and chose the disputed domain name to create a likelihood of confusion; (ii) Respondent would be taking advantage of the reputation and goodwill of Complainant's trademarks to attract users and generate traffic on the website and possibly revenue by eventually obtaining confidential information, as indicated by the safety warning displayed by the browser when opening the website; and (iii) Respondent's willingness to remain anonymous by using privacy services to register the disputed domain name would demonstrate bad faith.

Thus, according to Complainant, the requirements for the identification of bad faith registration and use of the disputed domain name have been fulfilled, pursuant to paragraph 4(a)(iii) of the Policy.

Accordingly, Complainant requests transfer of the disputed domain name to Complainant.

## **B. Respondent**

Respondent did not reply to Complainant's contentions.

## **6. Discussion and Findings**

To succeed in a UDRP complaint, Complainant must demonstrate that all the elements listed in paragraph 4(a) of the Policy have been satisfied, as following:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (ii) 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 burden of proving these elements is upon Complainant.

Respondent had 20 days to submit a response in accordance with paragraph 5(a) of the Rules and failed to do so. Paragraph 5(f) of the Rules establishes that if a respondent does not respond to the complaint, in the absence of exceptional circumstances, the panel's decision shall be based upon the Complaint.

### **A. Identical or Confusingly Similar**

Complainant has duly proven that they own prior trademark rights for BPCE, and that the disputed domain name is constituted by the trademark BPCE in its entirety with the addition of the word "virtual".

The addition of the term "virtual" does not prevent a finding of confusing similarity with Complainant's trademark BPCE – since the trademark BPCE is fully integrated and recognizable in the disputed domain name.

Thus, the Panel finds that the disputed domain name is confusingly similar to Complainant's trademark BPCE, and so the requirement of the first element of paragraph 4(a) of the Policy is satisfied.

## B. Rights or Legitimate Interests

The consensus view of UDRP panels on the burden of proof under paragraph 4(a)(ii) of the Policy is summarized in section 2.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") as follows: "[w]hile 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."

In this case, noting the facts and contentions listed above, the Panel finds that Complainant has made out a *prima facie* case showing that Respondent lacks rights or legitimate interests in the disputed domain name, so the burden of production shifts to Respondent. As Respondent has not replied to Complainant's contentions, the Panel has considered Complainant's un rebutted *prima facie* case to be sufficient to demonstrate that Respondent has no rights or legitimate interests in the disputed domain name.

Furthermore, Respondent has not used the disputed domain name in the context of a *bona fide* offering that could demonstrate rights or legitimate interests, since the evidence shows that the confusingly similar disputed domain name resolves to a website which access is restricted via antivirus for security reasons (as duly demonstrated in Annex 8 to the Complaint), which does not suggest a right or legitimate interest in the disputed domain name.

Therefore, the Panel finds that the requirement of the second element of paragraph 4(a) of the Policy is also satisfied.

## C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy lists a number of circumstances that, without limitation, are deemed evidence of registration and use of a domain name in bad faith.

Respondent has registered the disputed domain name that fully incorporates Complainant's well-known trademark BPCE, plus the addition of the word "virtual". The Panel finds that it was duly demonstrated that Respondent was aware of Complainant's rights to the trademark BPCE at the time of the registration – as Complainant enjoys a worldwide reputation with the use of the referred trademark, as previously recognized by the panels in *BPCE v. WhoisGuard Protected, WhoisGuard, Inc. / Fransis Coarno, Danstic*, WIPO Case No. [D2020-0967](#); and *BPCE v. Pierre Agou Michel*, WIPO Case No. [D2020-2361](#).

Further, evidence shows that the disputed domain name does not resolve to an active website with content, rather it resolves to a website displaying a warning message that the website potentially contains dangerous content for users, such as phishing schemes. Although it would be possible that the illegitimate activity associated with the disputed domain name would be for Respondent's commercial gain, previous UDRP panels have concluded in similar cases that such use would fit into the passive holding doctrine. See *BPCE v. Withheld for Privacy Purposes, Privacy service provided by Withheld for Privacy ehf / pascale kiss, cherhgi*, WIPO Case No. [D2021-1251](#):

"The disputed domain name does not resolve to an active website, however, Internet browsers warn of potential deceptive or phishing use when Internet users attempt to access the disputed domain name. Prior 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. See section 3.3 of the [WIPO Overview 3.0](#)."

The Panel notes that the disputed domain name resolves to a website lacking of any content (except for a security warning message). As discussed in *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#), there are five circumstances that indicate if the passive holding of a domain name could be regarded as bad faith:

“(i) the Complainant’s trademark has a strong reputation and is widely known [...],

(ii) the Respondent has provided no evidence whatsoever of any actual or contemplated good faith use by it of the domain name,

(iii) the Respondent has taken active steps to conceal its identity [...],

(iv) the Respondent has actively provided, and failed to correct, false contact details, in breach of its registration agreement, and

(v) taking into account all of the above, 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 [...].”

Considering all of the items listed above, the Panel finds that at least items (i), (ii), (iii), and (v) are present to this case, since (i) Complainant enjoys a well-known reputation for the trademark BPCE; (ii) Respondent has not responded to Complainant’s contentions, failing to provide evidence of the use in good faith of the disputed domain name; (iii) Respondent has adopted the use of a privacy service, concealing his identity on the act of registering the disputed domain name; and (v) there is no plausible use of the disputed domain name that would not represent bad faith, especially considering that it is composed of Complainant’s trademark BPCE with the addition of the word “virtual”. Thus, the circumstances of the present case strongly indicate that the disputed domain name is being used in bad faith.

Moreover, it should be noted that Respondent’s lack of response further reinforces that the disputed domain name most likely was registered and is being used in bad faith. In this sense, the panel found in *Instagram, LLC v. Registration Private, Domains By Proxy, LLC / Alexis Kane*, WIPO Case No. [D2021-0912](#) that:

“The following factors were also considered by the Panel as indicative of bad faith registration and use of the disputed domain name: (i) the Respondent’s lack of response to the Complaint. See, *Awesome Kids LLC and/or Awesome Kids L.L.C. v. Selavy Communications*, WIPO Case No. [D2001-0210](#); (ii) the Respondent’s lack of response to the cease and desist letter sent by the Complainant. See, e.g. *Intesa Sanpaolo S.p.A. v. Ekkert Ida*, WIPO Case No. [D2018-2207](#); (iii) the Respondent has provided no evidence whatsoever of any actual or contemplated good faith use by it of the disputed domain name as per paragraph 4(b) of the Policy.”

In light of the above, the Panel finds that the disputed domain name has been registered and is being used in bad faith. Therefore, the requirement of the third element of paragraph 4(a) 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, <bpcevirtual.com>, be transferred to Complainant.

/Gabriel F. Leonardos/

**Gabriel F. Leonardos**

Sole Panelist

Date: January 18, 2023