

## **ADMINISTRATIVE PANEL DECISION**

**BNP Paribas S.A. v. Hans Mueller**

**Case No. D2022-4381**

### **1. The Parties**

The Complainant is BNP Paribas S.A., France, represented by Weber & Sauberschwarz, Germany.

The Respondent is Hans Mueller, Germany.

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

The disputed domain name <consorstrade.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 17, 2022. On November 17, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On the same day, 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 the Complainant on November 18, 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 the same day.

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 November 21, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 11, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 12, 2022.

The Center appointed Wilson Pinheiro Jabur as the sole panelist in this matter on December 16, 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 an international banking group based in France whose German branch operates under the domain name <consorsbank.de>, where specific trading tools for the online stock trading are offered.

The Complainant is the owner, amongst others, of the following trademark registrations:

- German Trademark Registration No. 39958842 for CONSORS, filed on September 23, 1999, registered on March 23, 2000, subsequently renewed, in class 35;
- European Union Trade Mark Registration No. 001367770 for CONSORS, filed on January 18, 2000, registered on April 28, 2004, subsequently renewed, in classes 35, 36, 38, 41 and 42.

The disputed domain name <consorstrade.com> was registered on September 27, 2022. No active webpage resolves from the disputed domain name.

#### 5. Parties' Contentions

##### A. Complainant

The Complainant asserts to be an international banking group with over 190,000 employees, counting with a German branch that offers a variety of services, mainly regarding finance, credit services and insurance policies. The Complainant further asserts that its German branch operates under the <consorsbank.de> domain name, at which the online trading in stocks is one of the Complainant's relevant field of business.

In the Complainant's view, the disputed domain name incorporates its CONSORS trademark entirely, the addition of the generic term "trade" not being capable to counteract the similarity thereof. Previous UDRP panels have recognized that when a domain name wholly incorporates a registered mark, that is sufficient to establish identity or confusing similarity under the Policy.

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

- (i) the Complainant has not authorized, licensed, or permitted the Respondent to register or use the disputed domain name or to use the CONSORS trademark;
- (ii) the Complainant has prior rights in the CONSORS trademark which precede the Respondent's registration of the disputed domain name, thus having the Complainant established a *prima facie* case against the Respondent; and
- (iii) the disputed domain name has not been used in a noncommercial or fair use manner, being devoid of content.

The Complainant contends that the disputed domain name was registered in bad faith and is being passively held, being it safe to assume that the Respondent registered the disputed domain name to profit or detract from or exploit the Complainant's trademark.

##### 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 or cancellation 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 aforesaid three elements is present in order to obtain the transfer or cancellation of the disputed domain name.

### A. Identical or Confusingly Similar

The Complainant has established rights in the CONSORS trademark, duly registered.

The Panel finds that the disputed domain name, <consorstrade.com>, reproduces the Complainant's trademark in its entirety, being the addition of the generic term "trade" insufficient to avoid a finding of confusing similarity under the Policy which, as recognized by past UDRP panels involves a "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" (WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, "[WIPO Overview 3.0](#)", section 1.7).

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 has failed to invoke any of the circumstances which could demonstrate, pursuant to paragraph 4(c) of the Policy, any rights to and/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 is still on the Complainant to first make a *prima facie* case against the Respondent.

In that sense, the Complainant indeed states that it has not authorized, licensed, or permitted the Respondent to register or use the disputed domain name or to use the CONSORS trademark.

Also, the absence of any indication that the Respondent has rights in a term corresponding to the disputed domain name, or any possible link between the Respondent and the disputed domain name that could be

inferred from the details known of the Respondent or the webpage relating to the disputed domain name, corroborate with the Panel's finding of the absence of rights or legitimate interests.

Another element to consider is the fact that no active use of the disputed domain name appears to have taken place which makes it even more difficult to conceive which rights or legitimate interests the Respondent would have in a domain name that reproduces in its entirety the Complainant's trademark.

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.

### **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 online 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.

Noting the Complainant's trademark is incorporated in the disputed domain name, in its entirety, and together with the term "trade", which is connected to the Complainant's business, the Panel finds that the Respondent registered the disputed domain name targeting the Complainant and its CONSORS trademark.

In addition, past UDRP panels have already dealt with the question of whether the "passive holding" of a domain name could constitute bad faith. Section 3.3 of the already quoted [WIPO Overview 3.0](#) states 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. 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".

In the present case, the passive holding of the disputed domain name by the Respondent amounts to the Respondent acting in bad faith, given that the Respondent has provided no evidence whatsoever of any actual or contemplated good faith use of the disputed domain name, and also noting the composition of the disputed domain name. In addition to that, and as decided in past cases under the Policy, it is not possible to conceive of any plausible actual or contemplated active use of the disputed domain name by the Respondent that would not be illegitimate.

Two other factors corroborate the finding of the Respondent's bad faith conduct in this case: the Respondent's lack of reply to this procedure and the use of a false address in the Whois data and, consequently, the Center not being able to have the communications fully delivered to it.

For the reasons stated above, the Respondent's conduct amounts, in this Panel's view, to bad faith registration and use of the disputed domain name.

## **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, <consorstrade.com>, be cancelled.

*/Wilson Pinheiro Jabur/*

**Wilson Pinheiro Jabur**

Sole Panelist

Date: December 30, 2022