

## **ADMINISTRATIVE PANEL DECISION**

Bank Cler AG v. David Vaughn, rggwgrwg wrgwrgw, Ivan Popov, Private Person, and Host Master, 1337 Services LLC  
Case No. D2022-4616

### **1. The Parties**

The Complainant is Bank Cler AG, Switzerland, represented by Rentsch Partner AG, Switzerland.

The Respondents are David Vaughn, United States of America (“United States”), rggwgrwg wrgwrgw, United States, Ivan Popov, Private Person, Russian Federation, and Host Master, 1337 Services LLC, Saint Kitts and Nevis.

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

The disputed domain names <ch-cler.com>, <cler-login.com>, and <login-cler.com> are registered with Eranet International Limited (the “Registrar 1”).

The disputed domain name <cler-ch.com> is registered with Web Commerce Communications Limited dba WebNic.cc (the “Registrar 2”).

The disputed domain name <cler-login-ch.com> is registered with Registrar of Domain Names REG.RU LLC (the “Registrar 3”).

The disputed domain names <https-cler.com>, <logins-cler.com>, and <www-cler.com> are registered with Tucows Inc. (the “Registrar 4”).

The disputed domain names listed above are hereinafter collectively referred to as the “Domain Names”. The Registrar 1, 2, 3 and 4 are hereinafter collectively referred to as the “Registrars”.

### **3. Procedural History**

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on December 2, 2022. On December 2, 2022, the Center transmitted by email to the Registrars a request for registrar verification in connection with the Domain Names.

On December 2, 2022, the Registrar 4 transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Names <https-cler.com>, <logins-cler.com>, and

<www-cler.com> which differed from the named Respondent and contact information in the Complaint. On December 3, 2022, the Registrar 2 transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name <cler-ch.com> which differed from the named Respondent (Domain Admin, Whoisprotection.cc) and contact information in the Complaint. On December 5, 2022, the Registrar 3 transmitted by email to the Center its verification response confirming that the Respondent Ivan Popov, Private Person is listed as the registrant for the Domain Name <cler-login-ch.com> and providing the contact details. On December 6, 2022, the Registrar 1 transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Names <ch-cler.com>, <cler-login.com>, and <login-cler.com> which differed from the named Respondent and contact information in the Complaint.

The Center sent an email communication to the Complainant on December 6, 2022, providing the registrants and contact information disclosed by the Registrars, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on December 9, 2022.

On December 6, 2022, the Center sent an email communication to the Parties in both English and Russian regarding the language of the proceeding. The Complainant requested that English be the language of the proceeding on December 9, 2022. The Respondents did not comment on the language of the proceeding.

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 Respondents in both English and Russian of the Complaint, and the proceedings commenced on December 20, 2022. In accordance with the Rules, paragraph 5, the due date for Response was January 9, 2023. The Respondents did not submit any response. Accordingly, the Center notified the Respondents' default on January 10, 2023. Due to an apparent issue with the notification, the Center resent the Complaint on January 27, 2023, and indicated that any Response received by the Center would be brought to the Panel's attention upon appointment. No communication was received from the Respondents.

The Center appointed Piotr Nowaczyk as the sole panelist in this matter on February 13, 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**

The Complainant is a company operating a bank in Switzerland. It was founded in 1927.

The Complainant is the owner of several CLER trademark registrations, including:

- the International Trademark Registration CLER No. 1356689 registered on December 7, 2016; and
- the Swiss Trademark Registration CLER No. 689605 registered on June 27, 2016.

The Complainant's official domain name incorporating its CLER trademark is <cler.ch>.

The Domain Name <cler-ch.com> was registered on June 17, 2022. The Domain Names <https-cler.com> and <www-cler.com> were both registered on June 19, 2022. The Domain Name <cler-login-ch.com> was registered on June 20, 2022. The Domain Name <logins-cler.com> was registered on June 22, 2022. The Domain Name <cler-login.com> was registered on July 27, 2022. The Domain Names <ch-cler.com> and <login-cler.com> were both registered on August 1, 2022.

As of the date of this Decision, as well as at the time of submitting the Complainant, the Domain Names have resolved to inactive websites. According to the Complainant, it has received messages from its customers informing that some of the Domain Names were previously used to display fake login pages.

## **5. Parties' Contentions**

### **A. Complainant**

The Complainant requests that the Domain Names be transferred to the Complainant. According to the Complainant, each of the three elements specified in paragraph 4(a) of the Policy are satisfied in the present case.

First, the Complainant submits that the Domain Names are confusingly similar to the CLER trademark registrations in which the Complainant has rights.

Second, the Complainant argues that the Respondents have neither rights nor legitimate interests in the Domain Names.

Third, the Complainant submits that the Domain Names were registered and are being used in bad faith.

### **B. Respondents**

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

## **6. Discussion and Findings**

Paragraph 4(a) of the Policy places a burden on the Complainant to prove the presence of three separate elements, which can be summarized as follows:

- (i) the Domain Names are identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) the Respondents have no rights or legitimate interests in the Domain Names; and
- (iii) the Domain Names have been registered and are being used in bad faith.

The requested remedy may only be granted if the above criteria are met.

At the outset, the Panel notes that the applicable standard of proof in UDRP cases is the "balance of probabilities" or "preponderance of the evidence". See section 4.2 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

### **A. Consolidation of Respondents**

The Complainant has submitted the Complaint against multiple Respondents.

Paragraph 3(c) of the Rules provides that the complaint may relate to more than one domain name, provided that the domain names are registered by the same domain name holder. Moreover, pursuant to section 4.11.2 of the [WIPO Overview 3.0](#), 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.

In the present case, the Panel finds that various commonalities between the Domain Names provide sufficient evidence that they are most likely subject to the common control.

Firstly, the Panel notes the proximity in the dates of registration of the Domain Names which fall between June 17 and August 1, 2022.

Secondly, the Panel observes the similarity of the composition of the Domain Names. Each of the Domain Names includes the Complainant's CLER trademark in its entirety. Moreover, most of the Domain Names contain also the terms "login(s)" and/or "ch".

Thirdly, the Panel notes that:

- a) the postal address of the Respondent David Vaughn appears to be false, and the email address associated with this Respondent, according to the Complainant's evidence, has been used in a large scale of phishing operations, many of which are related to banks and payment providers;
- b) the Respondent rggwgrwg wrgwrgw is presumably fake, and is associated with an email address using YOPmail which provides disposable email addresses;
- c) the Respondent Host Master, 1337 Services LLC provides proxy services;
- d) the Respondent Ivan Popov appears to be an alias name because according to the Complainant's evidence, the email address of this Respondent is also associated with at least another individual.

Fourthly, all of the Domain Names are inactive. The Complainant asserts that it has received messages from its customers informing that some of the Domain Names were previously used to display fake login pages, which has not been rebutted by the Respondents.

Accordingly, the Panel finds that the Domain Names are most likely subject to common control for the purposes of these proceedings. The Respondents have not denied these assertions nor have the Respondent objected to the Complainant's consolidation request. Thus the Panel permits the consolidation of the proceedings and refers to all the registrants of the Domain Names as the "Respondents".

## **B. Language of the Proceeding**

The language of the Registration Agreement for the disputed domain name <cler-login-ch.com> is Russian. Paragraph 11(a) of the Rules provides that "unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding". The Panel may also order that any documents submitted in a language other than that of the proceeding be translated.

As noted by previous UDRP panels, paragraph 11 of the Rules must be applied in accordance with the overriding requirements of paragraphs 10(b) and 10(c) of the Rules that the parties are treated equally, that each party is given a fair opportunity to present its case, and that the proceeding takes place with due expedition (see, e.g., *General Electric Company v. Edison Electric Corp. a/k/a Edison Electric Corp. General Energy, Edison GE, Edison-GE and EEEGE.COM*, WIPO Case No. [D2006-0334](#)).

The Complainant has submitted a request that the language of the proceeding be English.

The Complainant contends, *inter alia*, that the disputed domain name <cler-login-ch.com> is composed of Latin characters. Moreover, the term "login" is an English word. Finally, the Complainant notes that in at least another case under the UDRP in which the same Respondent (Ivan Popov) was identified, the language of the proceeding was English. See *Boursorama S.A. v. Ivan Popov*, WIPO Case No. [D2022-1166](#).

The Panel considers that substantial additional expense and delay would likely be incurred if the Complaint had to be translated into Russian. Moreover, the Panel notes that the Respondents did not comment on the language of the proceeding, even though they were notified in English and Russian regarding the language of the proceeding.

Thus, taking these circumstances into account, the Panel finds that it is appropriate to exercise its discretion and allow the proceeding to be conducted in English.

### **C. Identical or Confusingly Similar**

The first element that the Complainant must establish is that the Domain Names are identical or confusingly similar to the trademark in which the Complainant has rights.

The Complainant has rights in valid CLER trademark registrations, which precede the registration of the Domain Names.

The Domain Names incorporate the CLER trademark in its entirety. As numerous UDRP panels have held, incorporating a trademark in its entirety is sufficient to establish that a domain name is identical or confusingly similar to a registered trademark (see *PepsiCo, Inc. v. PEPSI, SRL (a/k/a P.E.P.S.I.) and EMS Computer Industry (a/k/a EMS)*, WIPO Case No. [D2003-0696](#)).

The addition of other terms, *i.e.*, “ch-”, “-login”, “login-”, “-ch”, “-login-ch”, “https-”, “logins-” and “www-” in the Domain Names, does not prevent a finding of confusing similarity between the Domain Names and the CLER trademark in which the Complainant has rights. Prior UDRP panels have consistently held that 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. See section 1.8, [WIPO Overview 3.0](#).

The Top-Level Domain (“TLD”) “.com” in the Domain Names is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test. See section 1.11.1, [WIPO Overview 3.0](#).

Given the above, the Panel finds that the Domain Names are confusingly similar to the CLER trademark in which the Complainant has rights. Thus, the Complainant has proved the requirements under paragraph 4(a)(i) of the Policy.

### **D. Rights or Legitimate Interests**

The second requirement the Complainant must prove is that the Respondents have no rights or legitimate interests in the Domain Names.

The respondent may establish a right or legitimate interest in the domain name by demonstrating in accordance with paragraph 4(c) of the Policy any of the following:

- (i) that it has used or made preparations to use the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services prior to the dispute; or
- (ii) that it is commonly known by the domain name, even if it has not acquired any trademark rights; or
- (iii) that it is making a legitimate, noncommercial or fair use of the domain name without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark.

Although given the opportunity, the Respondents have not submitted any evidence indicating that any of the circumstances foreseen in paragraph 4(c) of the Policy are present in this case.

On the contrary, it results from the evidence on record that the CLER trademark registrations, in which the Complainant has rights, predate the Respondents' registrations of the Domain Names. There is no evidence in the case file that the Complainant has licensed or otherwise permitted the Respondents to use this trademark or to register the Domain Names incorporating this trademark. There is also no evidence to suggest that the Respondents have been commonly known by the Domain Names.

Moreover, it results from the evidence on record that the Respondents do not make use of the Domain Names in connection with a *bona fide* offering of goods or services, nor do they make a legitimate, noncommercial or fair use of the Domain Names without intent for commercial gain.

On the contrary, at the time of submitting the Complainant and as of the date of this Decision, the Domain Names have resolved to inactive websites. According to the Complainant, it has received messages from its customers informing that some of the Domain Names were previously used to display fake login pages. The Complainant contends that the Domain Names were used as part of a phishing scheme. The Respondents did not rebut these allegations. In any case, such use of the Domain Names would not confer rights or legitimate interests on the Respondents.

Given the above, the Respondents have failed to invoke any circumstances, which could demonstrate, pursuant to paragraph 4(c) of the Policy, any rights or legitimate interests in respect of the Domain Names. Thus, there is no evidence in the case file that refutes the Complainant's *prima facie* case. The Panel concludes that the Complainant has also proved the requirement under paragraph 4(a)(ii) of the Policy.

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

The third requirement the Complainant must prove is that the Domain Names were registered and are being used in bad faith.

Bad faith under the UDRP is broadly understood to occur where a respondent takes unfair advantage of or otherwise abuses a complainant's mark. See section 3.1, [WIPO Overview 3.0](#).

Under paragraph 4(b) of the Policy, evidence of bad faith registration and use includes without limitation:

- (i) circumstances indicating the domain name was registered or acquired primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the owner of a trademark or to a competitor of the trademark owner, for valuable consideration in excess of the documented out-of-pocket costs directly related to the domain name; or
- (ii) circumstances indicating that the domain name was registered in order to prevent the owner of a trademark from reflecting the mark in a corresponding domain name, provided it is a pattern of such conduct; or
- (iii) circumstances indicating that the domain name was registered primarily for the purpose of disrupting the business of a competitor; or
- (iv) circumstances indicating that the domain name has intentionally been used in an attempt to attract, for commercial gain, Internet users to a website or other online location, by creating a likelihood of confusion with a trademark as to the source, sponsorship, affiliation, or endorsement of the website or location or of a product or service on a website or location.

As indicated above, the Complainant's rights in the CLER trademark predate the registration of the Domain Names. This Panel finds that the Respondents were or should have been aware of the Complainant's trademark at the time of registration of the Domain Names. This finding is supported by the composition of the Domain Names which all contain the Complainant's CLER trademark along such terms as "www", "https", "login" or "ch". The term "ch" most likely refers to Switzerland where the Complainant was founded and runs its operations.

Moreover, it has been proven to the Panel's satisfaction that the CLER trademark is widely known and unique to the Complainant. Thus, the Respondents could not possibly ignore the reputation of the Complainant's trademark. In sum, the Respondents registered the Domain Names with the expectation of taking advantage of the reputation of the CLER trademark in which the Complainant has rights.

Moreover, as of the date of this Decision, as well as at the time of submitting the Complainant, the Domain Names have resolved to inactive websites. Considering the overall circumstances of this case, the Panel finds that the Respondents' passive holding of the Domain Names does not prevent a finding of bad faith. As numerous UDRP panels have held, passive holding, under the totality of circumstances of the case, would not prevent a finding of bad faith under the Policy. See section 3.3, [WIPO Overview 3.0](#). Here, given the Respondents' failure to participate in this proceeding, and the implausible good faith use to which the Domain Names may be put, the Panel agrees with the above.

Furthermore, the Complainant notes that one of the Respondents identified as "Ivan Popov" has been a party in other UDRP proceedings in which the panels found the Respondent's bad faith and transferred the disputed domain names to the complainants. See, e.g., *Banque Palatine v. Ivan Popov*, WIPO Case No. [D2021-2635](#); and *Boursorama S.A. v. Ivan Popov*, WIPO Case No. [D2022-1166](#).

Finally, the Respondents' use of privacy services that concealed registrant information is a further evidence of bad faith.

For the reasons discussed above, the Panel finds that the Complainant has proved the requirements under paragraph 4(a)(iii) of the Policy.

## 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 Domain Names <ch-cler.com>, <cler-ch.com>, <cler-login-ch.com>, <cler-login.com>, <https-cler.com>, <login-cler.com>, <logins-cler.com>, and <www-cler.com> be transferred to the Complainant.

*/Piotr Nowaczyk/*

**Piotr Nowaczyk**

Sole Panelist

Date: February 27, 2023