

## **ADMINISTRATIVE PANEL DECISION**

Banque et Caisse d'Epargne de l'Etat, Luxembourg v. John Jo  
Case No. D2023-0664

### **1. The Parties**

The Complainant is Banque et Caisse d'Epargne de l'Etat, Luxembourg, Luxembourg, represented by Office Freylinger S.A., Luxembourg.

The Respondent is John Jo, United States of America ("United States")

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

The disputed domain names <spuekees-bcee.click> and <spuekees-bcee.online> are registered with NameCheap, Inc. (the "Registrar").

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on February 14, 2023. On February 14, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On February 14, 2023, 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 February 15, 2023, 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 February 17, 2023.

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 February 21, 2023. In accordance with the Rules, paragraph 5, the due date for Response was March 13, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on March 14, 2023.

The Center appointed Alistair Payne as the sole panelist in this matter on March 20, 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 longstanding bank based in Luxembourg which operates internationally in the financial services sector under the marks SPUERKEESS and BCEE. It owns various registrations for its SPUERKEESS mark including European Union trade mark registration no 009110552 filed on May 17, 2010, and registered on November 2, 2010. It also owns various trade mark registrations for its BCEE mark in European countries including European Union trade mark registration No. 009110537 for BCEE which was filed on May 17, 2010, and registered on November 2, 2010. It owns the domain name <spuerkeess.lu> which resolves to a website from which it offers a range of financial services.

Both disputed domain names were registered on January 19, 2023. Neither disputed domain name resolves to an active website.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant submits that it owns trade mark rights as set out above and that each of the disputed domain names wholly incorporate the Complainant's BCEE trade mark. Each of the disputed domain names also incorporates the mark "spuekees" which according to the Complainant only differs from its SPUERKEESS mark by the absence of the letters "r" and "s" in the middle and at the end of the mark which is unlikely to be seen by Internet users and amounts to a misspelling or an example of typosquatting. The Complainant says that the Top-Level Domain ("TLD") should not be taken into account and accordingly that each of the disputed domain names are almost identical or confusingly similar to the Complainant's registered trade marks.

The Complainant asserts that the Respondent is not affiliated with Complainant in any way nor has he been authorized by Complainant to use and register its trade marks, or to seek registration of any domain name incorporating its trade mark. Furthermore, says the Complainant, the Respondent has no prior rights or legitimate interest in the disputed domain name

Further, says the Complainant, the disputed domain name is almost identical to the Complainant's trade marks such that the Respondent cannot reasonably pretend that it was intending to develop legitimate activity through the disputed domain name. Finally, it notes that its trade mark searches show that the Respondent has no trade mark rights anywhere in the world for the sign "bcee" or "spuekees".

As far as bad faith is concerned the Complainant asserts that it is implausible that the Respondent could have been unaware of its trade marks when it registered the disputed domain name, noting that the trade marks BCEE and SPUERKEESS can easily be found by the performance of a simple Google search demonstrating that all the first results relate to the Complainant's goods and services.

It says that the term "BCEE" is generally known by the public in Luxembourg as being the acronym of the Luxembourgish Savings Bank being "Banque et Caisse d'Epargne de l'Etat, Luxembourg" which is fully owned by the government of Luxembourg and has operated since 1856. The Complainant further says that that the "BCEE" of Luxembourg is well-known by the public worldwide, being ranked among the 10 safest banks in the world in 2019. Considering also that the Complainant is also known by the SPUERKEESS name or mark, the Complainant submits that while the word SPUERKEESS is highly distinctive and does not exist in the English language, it is known by the public in Luxembourg.

The Complainant also asserts that its BCEE and SPUERKEESS marks are publicly known at an international level and the fact that the Respondent registered domain names which are identical or highly similar to the

Complainant's trade mark registrations cannot be pure chance, but constitutes registration in bad faith.

As far as bad faith is concerned the Complainant asserts that paragraph 4(b)(iv) of the Policy applies and the fact that the Respondent is using the identical sign "BCEE" and the term "spukees" which is very similar to the Complainant's SPUERKEES trade mark leads strongly to the conclusion that he will potentially use it for phishing. The Complainant notes that in *Archer-Daniels-Midland Company v. Chamiris Mantrana*, WIPO Case No. [D2013-0257](#), citing the case *Halifax plc v. Sontaja Sunducl*, WIPO Case No. [D2004-0237](#), it was stated that "the potential for 'phishing' and obtaining information by deception, is not just evidence of bad faith, but possibly suggestive of criminal activity".

Furthermore, says the Complainant, it is likely that Respondent registered the disputed domain names to prevent the Complainant from using its trade marks in the disputed domain names or in order to sell them to the highest bidder. This, says the Complainant, also amounts to use in bad faith.

## **B. Respondent**

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

## **6. Discussion and Findings**

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

The Complainant has demonstrated that it owns European Union trade mark registration No. 009110537 for BCEE which was filed on May 17, 2010, and registered on November 2, 2010. Each of the disputed domain names wholly incorporate the Complainant's BCEE trade mark and is therefore confusingly similar to it.

The Complainant has also demonstrated that it owns various registrations for its SPUERKEESS mark including European Union trade mark no 009110552 filed on May 17, 2010, and registered on November 2, 2010. Each of the disputed domain names incorporate the word "spuekees" which only differs from the Complainant's SPUERKEESS mark by the absence of the letters "r" and "s", respectively in the middle and at the end of "spuekees". This amounts to a misspelling or "typosquatting" of the Complainant's SPUERKEESS mark and the Panel finds that each of the disputed domain names is confusingly similar to the Complainant's trade mark registration.

As a result, the Panel finds that each of the disputed domain names is confusingly similar to the Complainant's registered trade mark rights and that the Complaint succeeds under this element of the Policy.

### **B. Rights or Legitimate Interests**

The Complainant has submitted that the Respondent is not affiliated with Complainant in any way, nor has he been authorised by the Complainant to use and register its trade marks, or to seek registration of any domain name incorporating the Complainant's trade marks. The Complainant has also asserted that the Respondent has no prior rights or legitimate interests in either of the disputed domain names on the basis that its trade mark searches show that the Respondent has no trade mark rights anywhere in the world for the sign "BCEE" or for "SPUERKEESS".

The Complainant has further asserted that each of the disputed domain names incorporate identical or near identical versions of the Complainant's trade marks such that the Respondent cannot reasonably pretend that it was intending to develop legitimate activity through each of the disputed domain names.

In these circumstances, the Panel finds that the Complainant has made out a *prima facie* case that the Respondent has no rights or legitimate interests in each of the disputed domain names. The Respondent

has failed to respond to or to rebut the Complainant's case and the Panel therefore finds that the Complaint also succeeds under this element of the Policy.

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

The disputed domain names were both registered in 2023, many years after the registration of the Complainant's trade mark rights. Each of them wholly incorporates the Complainant's BCCE trade mark which is distinctive and enjoys a degree of repute in the banking sector and in Luxembourg generally as a consequence of long use there. The Complainant has operated since 1856 in Luxembourg under the name "Banque et Caisse d'Epargne de l'Etat" and it is apparent that its trade mark BCCE is also an acronym for this name. Each of the disputed domain names also incorporate the word "spuekees" which is confusingly similar to the Complainant's highly distinctive and coined SPUERKEESS mark and which is also promoted on one of the Complainant's websites as a name and mark for its financial services business.

The inclusion of both "BCCE" and a misspelled variant of the Complainant's SPUERKEESS mark in the disputed domain names is unlikely to be a coincidence and the Panel finds it more likely than not that the Respondent registered each of the disputed domain names with knowledge of the Complainant's trade marks and business.

The disputed domain names do not resolve to an active website and there is no evidence that either of them have been used to date. Previous panels have found that factors that have been considered relevant in applying the passive holding doctrine, where there is no apparent use of the disputed domain name, 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.

The Complainant's BCCE mark appears to enjoy a considerable degree of repute in Luxembourg and in banking circles internationally. Its distinctive and coined SPUERKEESS mark appears to have been used and enjoys a reputation, at least in Luxembourg. The Respondent has failed to submit a response and there is no evidence of contemplated good faith use in the record. The Respondent registered each of the disputed domain names through a privacy service thereby attempting to conceal his identity. Finally, it is entirely implausible that the Respondent, based in the United States, would without the authority of the Complainant, seek to use the disputed domain names incorporating the distinctive BCCE mark and misspelled version of the coined and highly distinctive SPUERKEESS marks for *bona fide* purposes. As a consequence, the Panel finds that the criteria noted in section 3.3 of the [WIPO Overview 3.0](#) are fulfilled and that each of the disputed domain names have been passively held in bad faith

Accordingly, the Panel finds that each of the disputed domain names has been registered and used in bad faith and that the Complaint also succeeds under this element 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 disputed domain names, <spuekees-bcee.click> and <spuekees-bcee.online> be transferred to the Complainant.

*/Alistair Payne/*

**Alistair Payne**

Sole Panelist

Date: April 3, 2023