

ADMINISTRATIVE PANEL DECISION

BPCE v. Whois Privacy Protection Foundation, Hosting Concepts BV d/b/a Registrar.eu

Case No. D2023-1086

1. The Parties

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

The Respondent is Whois Privacy Protection Foundation, Hosting Concepts BV d/b/a Registrar.eu, Netherlands.

2. The Domain Name and Registrar

The disputed domain name <bpcefinancegroup.com> (the “Disputed Domain Name”) is registered with OwnRegistrar, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 10, 2023. On March 10, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On March 14, 2023, 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 (WhoisSecure) and contact information in the Complaint. The Center sent an email communication to the Complainant on March 14, 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 March 15, 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 March 23, 2023. In accordance with the Rules, paragraph 5, the due date for Response was April 12, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 13, 2023.

The Center appointed Flip Jan Claude Petillion as the sole panelist in this matter on April 24, 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, BPCE, is a French joint stock company acting as the central institution responsible for the two banking networks Banque Populaire and Caisse d'Épargne. The Complainant pursues a full range of banking, financing and insurance activities. Its 100,000 employees serve a total of 35 million customers. The Complainant is present in more than 40 countries via its various subsidiaries.

The Complainant holds various registered trademarks for BPCE, including the following:

- BPCE, European Union word mark registered under No. 008375842 on January 12, 2010, for services in class 36.

The Disputed Domain Name was registered on December 21, 2022. According to the Complainant's evidence, the Disputed Domain Name appeared to refer to a website offering services similar to the Complainant's services. The Disputed Domain Name currently resolves to a blocked web page.

5. Parties' Contentions

A. Complainant

In summary, the Complainant considers the Disputed Domain Name to be confusingly similar to trademarks in which it claims to have rights.

The Complainant further claims that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name. According to the Complainant:

- the Respondent has no trademarks or trade names corresponding to the Disputed Domain Name and the Complainant has never authorized the Respondent to register and/or use any domain name incorporating its marks;
- the Respondent uses the Complainant's marks without authorization or license;
- the Disputed Domain Name is leading to a website in English offering competing banking and financial services as the Complainant, which does not qualify as a *bona fide* offering of goods or services.

Finally, the Complainant claims that the Disputed Domain Name was registered and is being used in bad faith. The Complainant contends that:

- given the well-known character of the Complainant's marks, the Disputed Domain Name was intentionally selected and registered in order to target and mislead innocent Internet users and to take predatory advantage of the goodwill and reputation of the Complainant and its marks for the purposes of diverting Internet traffic to the Respondent's website;
- by using the Disputed Domain Name, the Respondent has therefore intentionally attempted to attract, for commercial gain, Internet users to its website, by creating a likelihood of confusion with the Complainant's marks as to the source, sponsorship, affiliation, or endorsement of the Respondent's website;

- the Respondent's attempt to conceal its identity is clear evidence that the registration of the Disputed Domain Name has been done in bad faith.

B. Respondent

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

6. Discussion and Findings

Paragraph 15(a) of the Rules provides that the Panel is to decide the Complaint on the basis of the statements and documents submitted in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

The onus is on the Complainant to make out its case and it is apparent, both from the terms of the Policy and the decisions of past UDRP panels, that the Complainant must show that all three elements set out in paragraph 4(a) of the Policy have been established before any order can be made to transfer the Disputed Domain Name. As the UDRP proceedings are administrative, the standard of proof is the balance of probabilities.

Thus, for the Complainant to succeed it must prove, within the meaning of paragraph 4(a) of the Policy, that:

- (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 Panel will therefore deal with each of these requirements.

A. Identical or Confusingly Similar

To prove this element, the Complainant must first establish that there is a trademark or service mark in which it has rights. The Complainant has clearly established that there is a trademark in which it has rights. The Complainant's BPCE trademark has been registered since more than a decade and used in connection with the Complainant's banking, financing and insurance services.

The Panel observes that the Disputed Domain Name incorporates the Complainant's BPCE mark in its entirety, adding the words "finance" and "group". 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 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

Additionally, it is well established that generic Top-Level Domains ("gTLDs"), here ".com", may be disregarded when considering whether a disputed domain name is confusingly similar to a trademark in which a complainant has rights.

In light of the above, the Panel considers the Disputed Domain Name to be confusingly similar to the Complainant's BPCE trademark.

B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name.

As established by previous UDRP panels, it is sufficient for the Complainant to make out a *prima facie* showing that the Respondent has no rights or legitimate interests in the Disputed Domain Name in order to place the burden of production on the Respondent (see section 2.1 of the [WIPO Overview 3.0](#)).

The Panel notes that the Respondent has not apparently been commonly known by the Disputed Domain Name and that the Respondent does not seem to have acquired trademark or service mark rights. According to the information provided by the Registrar, the Respondent is “Whois Privacy Protection Foundation” from the organization “Hosting Concepts BV d/b/a Registrar.eu”. The Respondent’s use and registration of the Disputed Domain Name was not authorized by the Complainant. There are no indications that a connection between the Complainant and the Respondent exists or existed.

Where a domain name consists of a trademark plus an additional term, UDRP panels have largely held that such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner (see section 2.5.1 of the [WIPO Overview 3.0](#)). The Disputed Domain Name incorporates the Complainant’s BPCE mark in its entirety and simply adds the descriptive words “finance” and “group”. The Panel finds that this combination can easily be considered as referring to the Complainant’s group of companies which are active in the finance sector. Therefore, the Panel finds that the Disputed Domain Name carries a risk of implied affiliation with the Complainant.

Beyond looking at the domain name and the nature of any additional terms appended to it, UDRP panels assess whether the overall facts and circumstances of the case, such as the content of the website linked to the disputed domain name and the absence of a response, support a fair use or not (see sections 2.5.2 and 2.5.3 of the [WIPO Overview 3.0](#)).

Based on the evidence provided by the Complainant, the Panel observes that the Disputed Domain Name referred to a website offering services similar to the Complainant’s financial services. This website mentioned various names and logos such as “BCPE Financial Group”, “BPCEFINGROUP” or “BPCE Finance Group”. In the Panel’s view, this does not amount to a legitimate noncommercial or fair use of the Disputed Domain Name.

The Respondent had the opportunity to demonstrate its rights or legitimate interests but did not do so. In the absence of a Response from the Respondent, the *prima facie* case established by the Complainant has not been rebutted.

Therefore, the Panel finds that the Complainant has established that the Respondent has no rights or legitimate interests in the Disputed Domain Name. In light of the above, the Complainant succeeds on the second element of the Policy.

C. Registered and Used in Bad Faith

The Complainant must prove on the balance of probabilities both that the Disputed Domain Name was registered in bad faith and that it is being used in bad faith (see section 4.2 of the [WIPO Overview 3.0](#) and, for example, *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#), and *Control Techniques Limited v. Lektronix Ltd*, WIPO Case No. [D2006-1052](#)).

Paragraph 4(b) of the Policy provides a non-exclusive list of factors, any one of which may demonstrate bad faith. Among these factors demonstrating bad faith registration and use is the use of a domain name to intentionally attempt to attract, for commercial gain, Internet users to a 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 website or location or of a product or service on the website or location.

In the present case, the Panel finds that the Respondent must have been aware of the Complainant and its trademark rights when it registered the Disputed Domain Name:

- the Complainant's mark predates the registration of the Disputed Domain Name by more than a decade, including in the Netherlands where the Respondent appears to be located;
- the Disputed Domain Name incorporates the Complainant's trademark in its entirety with the addition of descriptive words which are easily linked to the Complainant and its activities;
- the website linked to the Disputed Domain Name appeared to offer services similar to the Complainant's financial services; and
- previous UDRP panels confirmed the reputation of the Complainant's mark (see *BPCE v. WhoisGuard Protected, WhoisGuard, Inc. / Fransis Coarno, Danstic*, WIPO Case No. [D2020-0967](#); *BPCE v. Pierre Agou Michel*, WIPO Case No. [D2020-2361](#); *BPCE v. Seymi Lozano*, WIPO Case No. [D2022-4185](#); and *BPCE v. Emmanuel Asamoah*, WIPO Case No. [D2022-3866](#)).

In the Panel's view, the Respondent's awareness of the Complainant's trademark rights at the time of registration suggests bad faith (see *Red Bull GmbH v. Credit du Léman SA, Jean-Denis Deletraz*, WIPO Case No. [D2011-2209](#); and *BellSouth Intellectual Property Corporation v. Serena, Axel*, WIPO Case No. [D2006-0007](#), where it was held that the respondent acted in bad faith when registering the disputed domain name, because widespread and long-standing advertising and marketing of goods and services under the trademarks in question, the inclusion of the entire trademark in the domain name, and the similarity of products implied by addition of a telecommunications services suffix ("voip") suggested knowledge of the complainant's rights in the trademarks).

The Respondent used the Disputed Domain Name to resolve to a website which appeared to offer services similar to the Complainant's services under names incorporating the Complainant's distinctive mark or slight variations of it, such as "BCPE" instead of "BPCE". In the Panel's view, this indicates that the Respondent has intentionally attempted to attract Internet users to its website for commercial gain by creating a likelihood of confusion with the Complainant's trademark.

Given the totality of the circumstances discussed above, the current state of the Disputed Domain Name referring to a blocked web page does not prevent a finding of bad faith under the doctrine of passive holding (see section 3.3 of the [WIPO Overview 3.0](#)). Given the nature of the Disputed Domain Name, the Panel finds it difficult to conceive of any future good faith use to which the Disputed Domain Name may be put.

Finally, it appears that the Respondent used a privacy service when registering the Disputed Domain Name. Even when the privacy shield was lifted at the start of the present proceedings, the name of the Respondent as disclosed by the Registrar is "Whois Privacy Protection Foundation". In the Panel's view, this indicates that the Respondent took active steps to conceal his/her identity. In combination with the above, this supports the finding of bad faith registration and use of the Disputed Domain Name (see section 3.6 of the [WIPO Overview 3.0](#)).

By failing to respond to the Complaint, the Respondent did not take any initiative to contest the foregoing. Pursuant to paragraph 14 of the Rules, the Panel may draw the conclusions it considers appropriate.

Therefore, the Panel finds that, on the balance of probabilities, it is established that the Disputed Domain Name was registered and is being used in bad faith. In light of the above, the Complainant also succeeds on the third and last 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 Name <bpcefinancegroup.com> be transferred to the Complainant.

/Flip Jan Claude Petillion/

Flip Jan Claude Petillion

Sole Panelist

Date: May 8, 2023