

## ADMINISTRATIVE PANEL DECISION

### Banque et Caisse d'Epargne de l'Etat, Luxembourg v. Russel Turner Case No. D2023-1578

#### 1. The Parties

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

The Respondent is Russel Turner, United Kingdom.

#### 2. The Domain Name and Registrar

The disputed domain name <spuerkeesslu.net> (the "Domain Name") is registered with NameCheap, Inc. (the "Registrar").

#### 3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on April 11, 2023. On April 12, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On April 12, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information behind the privacy service as it 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 April 13, 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 April 14, 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 April 18, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 8, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on May 10, 2023.

The Center appointed Mathias Lilleengen as the sole panelist in this matter on May 15, 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 to ensure compliance with the Rules, paragraph 7.

#### **4. Factual Background**

The Complainant is a Luxembourgish company operating in banking, insurance, and financial services. The Complainant has registered several trademarks with the term SPUERKEESS, such as European Union trademark no. 009110552 registered on November 2, 2010.

According to the Complainant, the Respondent registered the Domain Name on February 3, 2023. At the time of the Complaint and at the time of drafting the Decision, the Domain Name resolved to an inactive page.

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

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

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the Domain Name. The Complainant provides evidence of trademark registrations and argues that its trademark is well-known in the bank sector. The trademark is "particularly distinctive". The Complainant further argues that the Domain Name reproduces its trademark, with the addition of "lu" which is the country code extension for Luxembourgish domain names. The addition will only increase the risk of confusion.

The Complainant argues that the Respondent has no rights or legitimate interests in respect of the Domain Name. The Respondent reproduces the Complainant's trademark in the Domain Name without any authorization from the Complainant. The Domain Name is almost identical to the Complainant's trademark. The Respondent is not making any noncommercial or fair use of the Domain Name.

The Complainant believes that the Respondent must have been aware of the Complainant and its trademark when the Respondent registered the Domain Name. Based on the fame of the Complainant's trademark and the fact that the term SPUERKEESS does not exist in the English language, the Complainant argues that the Respondent knew or should have known of the Complainant's trademark. Moreover, the Respondent is using a domain name almost identical to the Complainant's trademark. It indicates that the Respondent may want to use it for phishing.

##### **B. Respondent**

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

#### **6. Discussion and Findings**

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

The first element functions primarily as a standing requirement. The test for confusing similarity involves a reasoned but relatively straightforward comparison between the complainant's trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, (["WIPO Overview 3.0"](#)), section 1.7.

The Complainant has established that it has rights in the trademark SPUERKEESS. The Domain Name is almost identical to the Complainant's trademark, save the added "lu". The addition does not prevent a finding of confusing similarity between the Domain Name and the trademark. For the purpose of assessing under paragraph 4(a)(i) of the Policy, the Panel may ignore the generic Top-Level Domain ("gTLD"); see [WIPO Overview 3.0](#), section 1.11.

The Panel finds that the Domain Name is confusingly similar to a trademark in which the Complainant has rights in accordance with paragraph 4(a)(i) of the Policy.

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

Paragraph 4(c) of the Policy provides a list of circumstances in which the respondent may demonstrate rights or legitimate interests in a disputed domain name.

While 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.

Based on the evidence, the Respondent is not affiliated or related to the Complainant in any way. There is no evidence that the Respondent has registered the Domain Name as a trademark or acquired trademark rights. There is no evidence of the Respondent’s use of, or demonstrable 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. The composition of the Domain Name points to an intention to confuse Internet users seeking the Complainant.

The Panel finds that the Complainant has made out an un rebutted *prima facie* case. Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in respect of the Domain Name in accordance with paragraph 4(a)(ii) of the Policy.

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

The Panel notes that for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular but without limitation, that if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

It is probable that the Respondent was aware the Complainant and its prior rights, based on the composition of the Domain Name and the fame of the Complainant’s trademark in the banking sector. The non-use of the Domain Name does not prevent a finding of bad faith, see [WIPO Overview 3.0](#), section 3.3. As mentioned, the Complainant’s trademark is distinctive, and it enjoys fame in the banking sector. The Respondent has failed to provide any evidence of actual or contemplated good faith use. The Panel cannot see any good faith use to which the Domain Name may be put by the Respondent.

For the reasons set out above, the Panel concludes that the Domain Name was registered and is being used in bad faith, within the meaning of 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 Name <spuerkeesslu.net> be transferred to the Complainant.

*/Mathias Lilleengen/*

**Mathias Lilleengen**

Sole Panelist

Date: May 29, 2023