

ADMINISTRATIVE PANEL DECISION

Banque Palatine v. ENP Multimedia & Art Production, ENP Multimedia & Art Production Ltd

Case No. D2023-2815

1. The Parties

The Complainant is Banque Palatine, France, represented by DBK Law Firm, France.

The Respondent is ENP Multimedia & Art Production, ENP Multimedia & Art Production Ltd, United Kingdom.

2. The Domain Name and Registrar

The disputed domain name <palatine-fr.com> (the “Domain Name”) is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 30, 2023. On July 3, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On July 5, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent (Registration Private, Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 10, 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 July 11, 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 July 13, 2023. In accordance with the Rules, paragraph 5, the due date for Response was August 2, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 8, 2023.

The Center appointed Nicholas Smith as the sole panelist in this matter on August 11, 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 French bank, founded in 1780, that specializes in asset management for small and medium-sized companies headquartered in Paris. It offers its services through a chain of physical banks and also through its website at “www.palatine.fr”.

The Complainant has held trademark registrations for PALATINE (the “PALATINE Mark”) since at least 2004, including French trademark registration number 3314051, registered on September 22, 2004, for services in classes 35 and 36.

The Domain Name was registered on June 23, 2023, and is not in active use (rather it resolves to a parking page maintained by the Registrar).

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.

Notably, the Complainant contends that;

- a) It is the owner of the PALATINE Mark, having registered the PALATINE Mark in France and the European Union. The Domain Name is confusingly similar to the PALATINE Mark as it reproduces the PALATINE Mark in its entirety and adds the geographical abbreviation “fr” and a hyphen.
- b) There are no rights or legitimate interests held by the Respondent in respect of the Domain Name. The Complainant has not granted any license or authorization for the Respondent to use the PALATINE Mark. The Respondent is not commonly known by the PALATINE Mark, nor does it use the Domain Name for a *bona fide* purpose or legitimate noncommercial purpose. Indeed, the Domain Name does not resolve to an active webpage at all, rather it resolves to a parking page.
- c) The Domain Name was registered and is being used in bad faith. There is no plausible circumstance under which the Respondent could legitimately use the Domain Name, which combines the PALATINE Mark and the term “-fr”, other than in bad faith. Given the reputation of the highly distinctive PALATINE Mark, the Respondent must have been aware of the Complainant’s mark at the time of registration. In such circumstances, the Respondent’s passive holding of the Domain Name amounts to use of the Domain Name in bad faith. Furthermore, it is apparent that the MX (Mail Exchange) servers on the Domain Name have been set up, meaning that it could be used to send e-mails impersonating the Complainant.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the Domain Name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1

The Panel finds the entirety of the mark is reproduced within the Domain Name. Accordingly, the Domain Name is identical or confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

While the addition of other terms here, being "-fr", may bear on assessment of the second and third elements, the Panel finds the addition of such terms does not prevent a finding of confusing similarity between the Domain Name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Based on the available record, the Panel finds the first element of the Policy has been established.

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. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the Domain Name. The Respondent has not rebutted the Complainant's *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the Domain Name.

The Panel considers that the record of this case reflects that:

- before any notice to the Respondent of the dispute, the Respondent did not use, nor has it made 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. Paragraph 4(c)(i) of the Policy, and [WIPO Overview 3.0](#), section 2.2.
- the Respondent (as an individual, business, or other organization) has not been commonly known by the Domain Name. Paragraph 4(c)(ii) of the Policy, and [WIPO Overview 3.0](#), section 2.3.
- the Respondent is not 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 or service mark at issue. Paragraph 4(c)(iii) of the Policy, and [WIPO Overview 3.0](#), section 2.4.

- the record contains no other factors demonstrating rights or legitimate interests of the Respondent in the Domain Name.

There is no evidence of any demonstrable preparations to use the Domain Name at all or any other evidence that would give rise to rights or legitimate interests in the Domain Name. The Domain Name resolves to a parking page maintained by the Registrar.

Based on the available record, the Panel finds the second element of the Policy has been established.

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.

The Panel considers that the record of this case reflects that there is no evidence of any use or demonstrable preparations to use the Domain Name.

UDRP panels 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. Having reviewed the record, the Panel finds the non-use of the Domain Name does not prevent a finding of bad faith in the circumstances of this proceeding. While UDRP 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 disputed domain name may be put. [WIPO Overview 3.0](#), section 3.3.

Having reviewed the record, the Panel notes the distinctiveness or reputation of the Complainant’s trademark and the composition of the Domain Name, the failure of the Respondent to submit a response, the Respondent’s concealing its identity, the implausibility of any good faith use to which the inherently misleading Domain Name may be put, and finds that in the circumstances of this case the passive holding of the Domain Name does not prevent a finding of bad faith under the Policy. Moreover, the Panel finds on the balance of probabilities that given the nature of the Domain Name, wholly incorporating the well-known PALATINE Mark, the similarity of the Domain Name to the domain name and website used by the Complainant (<palatine.fr>), the fact that MX servers have been set up for the Domain Name and the absence of any explanation, the Domain Name is most likely being held pending use as website or email address that, without the license of the Complainant, will offer or make reference to the Complainant in an illicit manner for the Respondent’s commercial gain.

Based on the available record, the Panel finds the third element of the Policy has been established.

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, <palatine-fr.com> be transferred to the Complainant.

/Nicholas Smith/

Nicholas Smith

Sole Panelist

Date: August 21, 2023