

## ADMINISTRATIVE PANEL DECISION

Monabanq v. Milen Radumilo

Case No. D2023-3709

### 1. The Parties

The Complainant is Monabanq, France, represented by MEYER & Partenaires, France.

The Respondent is Milen Radumilo, Romania.

### 2. The Domain Name and Registrar

The disputed domain name <monarqbanq.com> is registered with DomainSails.net LLC (the “Registrar”).

### 3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 4, 2023. On September 4, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 8, 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 (PERFECT PRIVACY, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on September 11, 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 September 18, 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 September 20, 2023. In accordance with the Rules, paragraph 5, the due date for Response was October 10, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 13, 2023.

The Center appointed Tobias Malte Müller as the sole panelist in this matter on October 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

It results from the Complainant's undisputed allegations that it is a French banking company, subsidiary of banking group CRÉDIT MUTUEL CIC. It was created in 2006 and is operating its business exclusively online through its website and a mobile application.

The Complaint is based amongst others on European Union trademark (semifigurative) **monabanq**, no 18064036 registered on November 6, 2019, for goods and services in classes 9, 16, 35, 36, 38.

The Respondent registered the disputed domain name on January 5, 2023.

It results from the undisputed evidence provided by the Complainant (*i.e.* a Whois extract and a further screenshot from <afternic.com>) that the disputed domain name is offered for sale for USD 799. Furthermore, the disputed domain name resolves to a website showing randomly either (1) pay-per-click ("PPC") links related in part to banking services, (2) adult content and (3) computer security scam flagged as security risks.

Finally, it is undisputed amongst the parties that the Respondent, Milen Radumilo, has been involved as a respondent in more than 300 UDRP cases since 2015.

#### 5. Parties' Contentions

##### A. Complainant

Firstly, the Complainant asserts that the disputed domain name is confusingly similar to its trademark. Both, the trademark and the disputed domain name start with the element "mona", a fantasy word without particular meaning, and ends with the element "banq". The only difference between both is the addition of two letters "r" and "q" in the disputed domain name, which are little distinctive.

Secondly, the Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name. In particular, the Respondent is not commonly known by the disputed domain name. Furthermore, no license or authorization has been granted to the Respondent or to anyone or any company to make any use or apply for registration of the disputed domain name. The use made of the disputed domain name is not a *bona fide* offering of goods and services.

Thirdly, the Respondent's registration and use of the disputed domain name constitutes – in the Complainant's view – bad faith under several aspects: (1) the Respondent should have been aware of the Complainant and its online business; (2) the disputed domain name reminds immediately the Complainant's trademark MONABANQ, even with the adjunction of the supplemental letters "r" and "q" in the middle; (3) the disputed domain name is used to redirect to different content, which all constitutes bad faith use; (4) the disputed domain name is offered for sale for USD 799, exceeding largely the price of a lambda domain name; (5) email exchange servers ("MX") has been configured on the disputed domain name.

##### B. Respondent

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

## 6. Discussion and Findings

Paragraph 15(a) of the Rules instructs this Panel to “decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable”.

Paragraph 4(a) of the Policy requires the Complainant to prove each of the following three elements in order to obtain an order that the disputed domain name should be transferred or cancelled:

- (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 is satisfied that the registrant of record for the disputed domain name is the Respondent and will, therefore, proceed to analyze whether the three elements of paragraph 4(a) of the Policy are satisfied.

### A. Identical or Confusingly Similar

Pursuant to paragraph 4(a)(i) of the Policy, the Complainant must first of all establish rights in a trademark or service mark and secondly establish that the disputed domain name is identical or confusingly similar to a trademark in which the Complainant has rights.

According to the Complainant’s contentions supported by undisputed evidence, it is the owner of – amongst others – European Union trademark no. 18064036 **monabanq** registered on November 6, 2019, for goods and services in classes 9, 16, 35, 36, 38.

Firstly, the Panel notes that said trademark is semifigurative, consisting of the verbal element MONABANQ, graphically split into the terms “mona” and “banq” by using two different colours (*i.e.* green and white) and placed against the background of a black coloured square shaped element, as displayed above. In accordance with section 1.10 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”) the Panel disregards these graphical elements for purposes of assessing identity or confusing similarity under the first element to the extent that design (or figurative/stylized) elements are incapable of representation in domain names. The analysis will therefore proceed on the basis of the verbal element MONABANQ.

Furthermore, it is well accepted amongst previous UDRP panels 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 disputed domain name. While each case is judged on its own merits, in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing. (*cf.* section 1.7 [WIPO Overview 3.0](#)). The Panel notes that the verbal element MONABANQ is entirely included in the disputed domain name. It is, however, distorted by inserting two letters “r” and “q” between the two elements “mona” and “banq” in the second level domain. The Panel, however, considers this to be an obvious and intentional misspelling of the Complainant’s trademark which does as such not avoid the finding of confusing similarity for purposes of the first element, since – in the Panel’s view – the disputed domain name still contains sufficiently recognizable aspects of the relevant mark (see section 1.9 [WIPO Overview 3.0](#)).

Finally, the generic Top-Level Domain (“gTLD”) “.com” may be disregarded under the first element confusing similarity test (see section 1.11.1 of the [WIPO Overview 3.0](#)).

In the light of the above, the Panel finds that the disputed domain name is identical or confusingly similar to a trademark in which the Complainant has rights.

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

Pursuant to paragraph 4(a)(ii) of the Policy, the Complainant must secondly establish that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

Paragraph 4(c) of the Policy contains a non-exhaustive list of circumstances which, if found by the Panel to be proved, shall demonstrate the Respondent's rights or legitimate interests to a disputed domain name. In the Panel's view, based on the undisputed allegations and evidence stated above, the Complainant has made a *prima facie* case that none of these circumstances are found in the case at hand and, therefore, that the Respondent lacks rights or legitimate interests in the disputed domain name:

It results from the records that the disputed domain name is offered for sale for USD 799 and resolves to a website showing randomly either (1) PPC links related in part to banking services, (2) adult content and (3) computer security scam flagged as security risks. Such use cannot be qualified as *bona fide* offering of goods or services in accordance with paragraph 4(c)(i) of the Policy. In fact, this Panel shares the view of previous UDRP panels holding that the use of a domain name to host a parking page comprising PPC links does not represent a *bona fide* offering where such links compete with or capitalize on the reputation and goodwill of the Complainant's mark or otherwise mislead Internet users (see section 2.9 of the [WIPO Overview 3.0](#)). In addition, the Respondent did not submit any evidence of *bona fide* pre-Complaint preparations to use the disputed domain name. In particular, the Complainant's uncontested allegations demonstrate that it has not authorized the Respondent's use of its trademarks for registering the disputed domain name, which is confusingly similar.

Furthermore, the Panel notes that there is no evidence showing that the Respondent might be commonly known by the disputed domain name in the sense of paragraph 4(c)(ii) of the Policy.

Finally, there is no evidence in the records showing that the Respondent might be making a noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue pursuant to paragraph 4(c)(iii) of the Policy. In fact, as underlined here above, the disputed domain name is used for (1) PPC links related in part to banking services, (2) adult content and (3) computer security scam flagged as security risks. The Panel holds that such commercial use cannot – from the outset – be considered a legitimate, noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark.

It is acknowledged that once the Panel finds a *prima facie* case has been established, the burden of production under the second element shifts to the Respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain name. Since the Respondent in the case at hand failed to come forward with any allegations or evidence, this Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.

The Complainant is therefore deemed to have satisfied paragraph 4(a)(ii) of the Policy.

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

According to paragraph 4(a)(iii) of the Policy, the Complainant must thirdly establish that the disputed domain name has been registered and is being used in bad faith. The Policy indicates that certain circumstances specified in paragraph 4(b) of the Policy may, in particular, but without limitation, be evidence of the disputed domain name's registration and use in bad faith.

One of those circumstances are those specified in paragraph 4(b)(iv) of the Policy, *i.e.*, where the domain name is used to intentionally attempt to attract, for commercial gain, Internet users to your 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 your website or location or of a product or service on your website or location.

In the Panel's view, the Respondent has intentionally registered the disputed domain name which contains the Complainant's distinctive trademark distorted by the addition of two further letters inserted therein. By the time the disputed domain name was registered, it is therefore unlikely that the Respondent did not have knowledge of the Complainant and its mark MONABANQ and its business activity.

The Complainant also provided evidence that the Respondent used the disputed domain name to lead to a website showing randomly either (1) PPC links related in part to banking services, (2) adult content and (3) computer security scam flagged as security risks. This is indicative of bad faith, even if the webpage is configured automatically by the registrar or any other party. Indeed, particularly with respect to "automatically" generated PPC links, previous UDRP panels have held that a respondent cannot disclaim responsibility for content appearing on the website associated with its domain name (nor would such links ipso facto vest the respondent with rights or legitimate interests). Neither the fact that such links are generated by a third party such as a registrar or auction platform (or their affiliate), nor the fact that the respondent itself may not have directly profited, would by itself prevent a finding of bad faith (see section 3.5 of [WIPO Overview 3.0](#)).

These facts confirm that the disputed domain name is used to intentionally attempt to attract, for commercial gain, Internet users to the Respondent's website, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website.

Finally, the further circumstances surrounding the disputed domain name's registration and use confirm the findings that the Respondent has registered and is using the disputed domain name in bad faith:

- (i) the distinctiveness of the trademark MONABANQ;
- (ii) the Respondent has not provided any formal response to the Complainant's contentions with conceivable explanation of its behavior so that no legitimate use of the disputed domain name by the Respondent is actually conceivable for the Panel;
- (iii) the fact that the details disclosed for the Respondent by the Registrar are false or incomplete, noting the mail courier's inability to deliver the Center's Written Notice;
- (iv) the disputed domain name being offered for sale at a price of USD 799 which clearly exceeds the out-of-pocket costs directly related to such a gTLD ".com" domain name;
- (v) the disputed domain name has been connected to active MX records so that it can be actively used for emailing purposes;
- (vi) the Respondent using a proxy or privacy service to hide its identity; and
- (vii) the Respondent being engaged in a pattern of conduct by holding registrations for other domain names including third party trademarks since he has undisputedly been involved as a respondent in more than 300 UDRP cases since 2015.

In the light of the above, the Panel finds that the disputed domain name has been registered and is being used in bad faith pursuant to 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 disputed domain name, <monarqbanq.com>, be transferred to the Complainant.

*/Tobias Malte Müller/*

**Tobias Malte Müller**

Sole Panelist

Date: November 3, 2023