

ADMINISTRATIVE PANEL DECISION

Belfius Bank SA / Belfius Bank NV v. johan vlierden
Case No. D2023-3805

1. The Parties

The Complainant is Belfius Bank SA / Belfius Bank NV, Belgium, internally represented.

The Respondent is johan vlierden, Netherlands (Kingdom of the).

2. The Domain Name and Registrar

The disputed domain name <belfiu-directnetbe.com> (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 September 13, 2023. On September 13, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On September 13, 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 (Redacted for Privacy, Privacy Service Provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on September 21, 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 22, 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 27, 2023. In accordance with the Rules, paragraph 5, the due date for Response was October 17, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 19, 2023.

The Center appointed Olga Zalomiy as the sole panelist in this matter on November 1, 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 Belgian bank and financial services provider. The Complainant owns several trademark registrations for the BELFIUS trademarks. Among these trademark registrations, the following trademarks designate the Netherlands (Kingdom of the), where the Respondent is located:

- European Union Trade Mark registration No. 010581205 for BELFIUS, registered on May 24, 2012 and renewed;
- Benelux trademark registration no. 0914650, registered on May 5, 2012 and renewed;
- Benelux trademark registration no. 0915963 registered on June 11, 2012 and renewed; and
- Benelux trademark registration no. 0915962 registered on June 11, 2012 and renewed.

The Complainant is the registrant to the domain name <belfius.be> that resolves to its official website where it offers banking and insurance services.

The Respondent registered the Domain Name on August 15, 2023, and does not resolve to an active webpage.

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 argues that the Domain Name exhibits a confusing similarity to the Complainant's BELFIUS trademark. This is because the essential "belfius" element remains clearly identifiable within the Domain Name, and the presence of "directnet," the two-letter country code "be," or the hyphen does not serve to mitigate this confusing similarity. It's important to note that the generic top-level domain ("gTLD") ".com" is not considered when evaluating the presence of confusing similarity.

The Respondent lacks both rights and legitimate interests in the Domain Name for the following reasons:

First, the Complainant's trademark registration predates the Respondent's registration of the Domain Name. Second, the Respondent has no affiliations or connections with the Complainant, nor has the Respondent obtained any authorization, license, or consent to utilize the Complainant's trademarks in the Domain Name or any other manner. Third, the Respondent is not engaged in noncommercial or fair use of the Domain Name as it remains inactive. The passive holding or non-use of the Domain Name serves as evidence that the Respondent does not possess rights or legitimate interests in the Domain Name.

The Complainant asserts that the Respondent's registration of the Domain Name should be deemed as an act of bad faith. This assertion is based on the premise that the Respondent, due to the Complainant's extensive online presence, the composition of the Domain Name, and the fact that it was registered a significant eleven years after the Complainant's own trademark registration, either had knowledge of the Complainant's trademark or should have reasonably been aware of its existence. The Complainant further contends that the Respondent's failure to use the Domain Name does not preclude a finding of confusing similarity, particularly in light of the Respondent's lack of response in this case, provision of incomplete contact information, and neglect to address the Complainant's cease and desist letters.

B. Respondent

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

6. Discussion and Findings

Pursuant to paragraph 4(a) of the Policy, to succeed in this proceeding, the Complainant must prove each of the following elements with respect to the Domain Name:

- (i) the 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 Domain Name; and
- (iii) the Domain Name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

Pursuant to paragraph 4(a)(i) of the UDRP, the Complainant must prove that the Domain Name is identical or confusingly similar to the trademark or service mark in which the Complainant has rights.

The submitted evidence shows that the Complainant owns multiple trademark registrations for the ONLYFANS trademark. Pursuant to section 1.2.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), this satisfies the threshold requirement of having trademark rights for purposes of standing to file a UDRP case.

"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." [WIPO Overview 3.0](#), section 1.8. It is well-established that the applicable generic Top-Level Domain ("gTLD") should be disregarded under the confusing similarity test as a standard registration requirement. [WIPO Overview 3.0](#), section 1.11.1.

The Domain Name incorporates the misspelled BELFIUS trademark of the Complainant, along with the term "directnetbe," which alludes to the Complainant's direct network, commonly known as "directnet." Additionally, it includes the two-letter country code "be" for Belgium, where the Complainant is incorporated, and a hyphen, followed by the gTLD ".com." Since the Complainant's BELFIUS trademark is still recognizable within the Domain Name, the inclusion of "directnet," the two-letter country code "be," or the hyphen does not prevent a finding of confusing similarity. The gTLD ".com" is not considered when assessing confusing similarity. Consequently, the Domain Name is confusingly similar to the Complainant's BELFIUS trademark.

The Complainant has satisfied the first element of the UDRP.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy outlines specific circumstances in which the Respondent is required to establish their rights or legitimate interests in a disputed domain name, which include:

- (i) before any notice of the dispute, 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; or
- (ii) the respondent (as an individual, business, or other organization) has been commonly known by the

domain name, even if the respondent has acquired no trademark or service mark rights; or

(iii) the respondent is 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.

While the primary burden of proof in UDRP proceedings lies with a complainant, it is acknowledged that asserting that a respondent lacks rights or legitimate interests in a domain name can be challenging, as it often necessitates the provision of negative evidence, which is usually within the respondent's knowledge or control. Consequently, when a complainant establishes a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of producing relevant evidence shifts to the respondent, requiring them to demonstrate their rights or legitimate interests in the domain name. In cases where the respondent fails to produce such evidence, the complainant is considered to have satisfied the second element of the UDRP. [WIPO Overview 3.0](#), section 2.1.

In this case, there is no evidence to support that the Respondent has been commonly known by the Domain Name. The Domain Name is registered under the name of Johan Vlierden. It is undisputed that the Respondent lacks any trademark registrations for the Domain Name. The Complainant asserts, and the Respondent does not contest, that the Complainant has not granted the Respondent any license or permission to use the BELFIUS trademark in domain names or for any other purpose.

There is no evidence to suggest that the Respondent is utilizing the Domain Name for a legitimate offering of goods or services or making a noncommercial or fair use of it. Notably, the Domain Name does not direct to any active website.

Consequently, the Panel determines that the Complainant has successfully established a *prima facie* case, and the burden of presenting evidence demonstrating rights or legitimate interests in the Domain Name has shifted to the Respondent. As the Respondent has failed to provide any rebuttal evidence, the Complainant is deemed to have met the second element of the UDRP.

C. Registered and Used in Bad Faith

Pursuant to paragraph 4(a)(iii) of the Policy, the Complainant must prove that the Domain Name was registered and is being used in bad faith.

The Respondent's registration of the Domain Name can be attributed to bad faith for the following reasons. The Respondent registered the Domain Name eleven years after the Complainant had registered its trademarks. Given the Complainant's substantial online presence across more than 200 gTLDs and country code top-level domains globally, including the domain name <belfius.be>, it is clear that the Complainant has established a significant footprint on the Internet. Thus, a simple Internet search would reveal the Complainant's existence to the Respondent. Furthermore, the composition of the Domain Name strongly implies that the Respondent possessed knowledge of the Complainant's trademark. Consequently, it is reasonable to infer that the Respondent either had actual knowledge of the Complainant's trademark or, at the very least, demonstrated a willful disregard for the existence of the trademark, a behavior that many UDRP panels have previously considered as supporting a finding of bad faith.

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 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 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. [WIPO Overview 3.0](#), section 3.3. Having reviewed the record, the Panel notes the distinctiveness of the Complainant's trademark, the failure to submit a response,

the Respondent's incomplete or false contact details, the composition of the Domain Name, it finds that in the circumstances of this case the passive holding of the Domain Name does not prevent finding of bad faith under the Policy.

The Complainant has satisfied the third element of the UDRP.

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 <belfiu-directnetbe.com> be transferred to the Complainant.

/Olga Zalomiy/

Olga Zalomiy

Sole Panelist

Date: November 15, 2023