

## **ADMINISTRATIVE PANEL DECISION**

BPCE v. Kim hyunwoo

Case No. D2023-4844

### **1. The Parties**

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

The Respondent is Kim hyunwoo, Republic of Korea.

### **2. The Domain Name and Registrar**

The disputed domain name <bpcepayment.com> is registered with Whois Corp. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 21, 2023. On November 22, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 23, 2023, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

On November 30, 2023, the Center informed the Parties in Korean and English, that the language of the Registration Agreement for the disputed domain name is Korean. On November 30, 2023, the Complainant confirmed its request that English be the language of the proceeding. The Respondent did not submit any comment on the Complainant’s submission.

The Center verified that the 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 in Korean and English of the Complaint, and the proceedings commenced on December 15, 2023. In accordance with the Rules, paragraph 5, the due date for Response was January 4, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on January 22, 2024.

The Center appointed Kathryn Lee as the sole panelist in this matter on January 30, 2024. 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 joint stock company and central institution for the banking networks Banques Populaires and Caisses d'Épargne. The Complainant has 105,000 employees with 36 million customers in more than 40 countries through its subsidiaries. The Complainant is the owner of a number of trademark registrations for the BPCE mark, including European Union Trademark Registration Number 008375842 registered on January 12, 2010 and French Trademark Registration Number 3658703 registered on November 20, 2009.

The Respondent appears to be an individual with an address in the Republic of Korea.

The disputed domain name <bpcepayment.com> was registered on September 20, 2023, and redirects to a website displaying "GROUPE BPCE" and "NATIXIS", another banking entity from the network of the Complainant, and requiring personal information to log in.

#### **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 disputed domain name.

First, the Complainant contends that the disputed domain name is confusingly similar to the mark in which the Complainant has rights. The Complainant states that the disputed domain name contains the Complainant's exact mark, and the additional word "payment" does not prevent a finding of confusing similarity. On the contrary, "payment" is descriptive and directly refers to the Complainant's finance and investment activities.

The Complainant also contends that the Respondent has no rights or legitimate interests in the disputed domain name and confirms that it has not authorized or licensed rights to the Respondent in any respect.

Finally, the Complainant contends that the disputed domain name was registered and is being used in bad faith. The Complainant contends that given the fame and distinctiveness of the Complainant's mark, it is reasonable to infer that the Respondent registered the disputed domain name with full knowledge of the Complainant's mark, which is a clear indication of bad faith in itself. Further, the Complainant contends that the disputed domain name redirects to a website alleging to be the website of the Complainant and Natixis, a banking entity affiliated with the Complainant, asking for personal information from visitors. The Complainant asserts that such use is likely to cause confusion with the Complainant, and shows that the Respondent intentionally attempted to attract, for commercial gain, Internet users to its website, by creating a likelihood of confusion with the Complainant's trademarks. The Complainant also asserts that the Respondent's use of a privacy service shows intent to hide illicit activity in bad faith.

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

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

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

##### **A. Language of the Proceeding**

Paragraph 11(a) of the Rules provides that the language of the proceeding shall be the language of the registration agreement, unless otherwise agreed to by the parties, subject to the authority of the panel to determine otherwise. In this case, the language of the Registration Agreement is Korean, and both Parties

have had an opportunity to argue their positions on this point. The Center issued a notice in Korean and English stating that it would accept the Complaint filed in English, and that the Response would be accepted in either Korean or English. The Respondent did not submit any comment on the language of the proceeding, and subsequently chose not to file any response.

The Panel finds it proper and fair to render this decision in English. Given the fact that the Complainant is based in France and the Respondent is based in the Republic of Korea, English would appear to be the fairest neutral language for rendering this decision. Further, the disputed domain name is composed of Latin characters and the webpage to which the disputed domain name resolves displays some words in English. Besides, both Parties were given the opportunity to submit arguments in the language of their preference, and the language in which to render the decision is reserved for the Panel. The Panel would have considered a Response in Korean, but no Response was submitted. Accordingly, the Panel determines that rendering the decision in English is fair and procedurally efficient given the circumstances of this case.

## **B. 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 disputed 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 Complainant's mark is recognizable within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of the other term "payment" may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the Complainant's 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.

## **C. 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.

Although 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 difficult 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 (although the burden of proof always remains on the complainant). 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 available record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed 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 disputed domain name such as those enumerated in the Policy or otherwise.

Further, the disputed domain name redirects to a website designed to appear as the website of the Complainant, displaying the Complainant's mark, logo, company name, another company name belonging to the Complainant's group and inviting visitors to the website to register as a member. Panels have held that the use of a domain name for illegal activity, here, impersonation/passing off, can never confer rights or legitimate interests on the Respondent. See [WIPO Overview 3.0](#), section 2.13.1.

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

#### **D. 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 registration of the disputed domain name which is confusingly similar to the Complainant's well-known BPCE mark by the Respondent, who is unaffiliated with the Complainant, creates a presumption of bad faith. Further, based on the reputation of the Complainant, the Complainant's mark, and the use of the Complainant's mark on the website at the disputed domain name, the Respondent was aware of the Complainant and its mark at the time of the registration of the disputed domain name.

In the present case, the Panel notes that the disputed domain name incorporates the term "payment" which is related to the business of the Complainant. Further, the Respondent has linked the disputed domain name to a website prominently displaying the Complainant's trademark, logo, and company name, passing itself off as the Complainant. Next, the website at the disputed domain name has invited Internet users to register as members which highly suggests that the Respondent has attempted to use the disputed domain name to obtain personal information potentially for fraudulent purposes. Considering the circumstances, it is quite clear that the Respondent has intentionally attempted to attract, likely for commercial gain, Internet users by creating a likelihood of confusion with the Complainant's mark.

Panels have held that the use of a domain name for illegal activity, for instance, here, impersonation/passing off, constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

Based on the available record, the Panel finds that the Complainant has established the third 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 <bpcepayout.com> be transferred to the Complainant.

*/Kathryn Lee/*

**Kathryn Lee**

Sole Panelist

Date: February 20, 2024