

ADMINISTRATIVE PANEL DECISION

BPCE v. Temi Temi
Case No. D2023-4864

1. The Parties

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

The Respondent is Temi Temi, Benin.

2. The Domain Name and Registrar

The disputed domain name <bpcebnk.com> is registered with Hostinger Operations, UAB (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 22, 2023. On November 23, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 24, 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 (Domain Admin, Privacy Protect, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 28, 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 November 30, 2023. The Respondent sent an email communication to the Center on November 30, 2023, without a material content.

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 December 6, 2023. In accordance with the Rules, paragraph 5, the due date for Response was December 26, 2023. The Respondent did not submit a formal response. Accordingly, the Center notified the Commencement of Panel Appointment Process on January 8, 2024.

The Center appointed Anne-Virginie La Spada as the sole panelist in this matter on January 15, 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 banking group responsible for the two banking networks Banques Populaires and Caisses d'Épargne. The Complainant pursues a full range of banking, financing and insurance activities.

Among other registrations, the Complainant owns the following trademark registrations:

- European Union trademark registration BPCE No. 008375842, registered on January 12, 2010, in class 36; and
- International trademark registration BPCE & design No. 1033662, registered on December 15, 2009, in class 36.

The Complainant has also registered the domain name <bcpe.fr> in 2008.

The disputed domain name was registered on October 30, 2023.

At the time of filing of the Complaint, the disputed domain name resolved to a website available in French and English languages, offering competing banking and financial service under the name BCPE BANK.

The mail exchanges ("MX records") (i.e., the mail exchanger records specifying the mail server responsible for accepting email messages) for the disputed domain name suggest that it is or was possibly used for email communication.

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.

Notably, the Complainant contends that the disputed domain name is confusingly similar to its trademark, as it identically reproduces its trademark with the mere addition of the abbreviation or the misspelling "bnk" for the word "bank".

The Complainant further contends that the Respondent has no rights or legitimate interests in the disputed domain name, as the Respondent is not authorized by the Complainant to use its trademarks within the disputed domain name. According to the Complainant, the disputed domain name is clearly calculated to confuse or deceive, as it falsely suggests that the services provided by the Respondent are linked to the Complainant. Under the circumstances, the Respondent has not used the disputed domain name in connection with any *bona fide* offering of goods or services, nor is the Respondent making any legitimate noncommercial use of the disputed domain name.

Finally, the Complainant contends that the Respondent has used and registered the disputed domain name in bad faith. According to the Complainant, the Respondent knowingly proceeded to register the disputed domain name with a view of intentionally attracting, for commercial gain, Internet users to its website, by creating a likelihood of confusion with the Complainant's trademark. Furthermore, the use of the MX records and the will of the Respondent to hide its identity further corroborate the use and registration in bad faith.

B. Respondent

The Respondent did not reply to the Complainant's contentions. The Respondent sent an email communication to the Center on November 30, 2023, seemingly affirming that the Registrar's verification response disclosing registrant and contact information for the disputed domain name is correct.

6. Discussion and Findings

According to paragraph 4(a) of the Policy, a complainant must assert and prove each of the following:

- (i) the domain name registered by the respondent 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 registered by the respondent has been registered and is being used in bad faith.

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 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 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 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 other terms (here "bnk") 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 mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

The Complainant has thus satisfied the condition set forth in 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.

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.

Furthermore, the Respondent does not appear to have operated any *bona fide* or legitimate business under the disputed domain name and is not making a noncommercial or fair use of the disputed domain name. Instead, the disputed domain name resolved to a website impersonating the Complainant, which in the Panel's view demonstrates an obvious attempt on the part of the Respondent to mislead Internet users seeking the Complainant's services and website.

Furthermore, the Panel notes the composition of the disputed domain name, wholly incorporating the Complainant's BPCE trademark with a term related to the Complainant's business (the additional term "bnk" is likely shortened for "bank"), carries a risk of implied affiliation. [WIPO Overview 3.0](#), section 2.5.1).

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name, and that the Complainant has satisfied the condition set out in 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.

UDRP panels have recognized in past decisions the widespread use and renowned character of the Complainant's trademarks (see *BPCE v. WhoisGuard Protected, WhoisGuard, Inc./Fransis Coarno, Danstic*, WIPO Case No. [D2020-0967](#), *BPCE v. Pierre Agou Michel*, WIPO Case No. [D2020-2361](#), *BPCE v. Seymi Lozano*, WIPO case No. [D2022-4185](#), and *BPCE v. Emmanuel Asamoach*, WIPO Case No. [D2022-3866](#)). The Panel accepts that the Complainant's trademark is well known and that the Respondent did not choose to include the letters "bpce" in the disputed domain name by coincidence but most probably knew of the Complainant's trademark at the time of registration of the disputed domain name. Thus, the Panel finds that the disputed domain name was registered in bad faith.

The use of the disputed domain name by the Respondent was apt to mislead Internet users into believing that the website at issue was the official website of the Complainant, and that they could contact the Complainant by means of the contact details indicated on the website.

Under these circumstances, the Panel considers it likely that the Respondent intended to use the disputed domain name as a support for a potential fraudulent scheme, namely, to impersonate the Complainant and extract personal or financial data from Internet users visiting their website. Previous UDRP panels have found that such behavior amounts to use of a domain name in bad faith (see *Marriott International, Inc., Marriott Worldwide Corporation and The Ritz-Carlton Hotel Company, LLC v. Van C Bethancourt Jr., Andre Williams*, WIPO Case No. [D2018-2428](#), and *Accor v. SANGHO HEO, Contact Privacy Inc.*, WIPO Case No. [D2014-1471](#)).

By using the disputed domain name in such manner, the Respondent intentionally attempted to attract, for the purposes of commercial gain, Internet users to their website by creating a likelihood of confusion with the Complainant's mark as to the source and affiliation of this website. Such behavior constitutes use in bad faith under paragraph 4(b)(iv) of the Policy.

Finally, the MX records relating to the disputed domain name suggest that it is or has been used for email communication, possibly for phishing purposes. UDRP panels have inferred a bad faith behavior from the activation of MX servers, which can be used to create email addresses for phishing purposes (see *Kingfisher Investissements v. Brico Depot, Brico Depot*, WIPO Case No. [D2020-2702](#) and *Robertet SA v. Marie Claude Holler*, WIPO Case No. [D2018-1878](#)).

For the reasons set out above, the Panel finds that the Respondent has registered and is using the disputed domain name in bad faith, and that the Complainant has satisfied the condition set forth in 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 <bpcebnk.com> be transferred to the Complainant.

/Anne-Virginie La Spada/

Anne-Virginie La Spada

Sole Panelist

Date: January 30, 2024