

## **ADMINISTRATIVE PANEL DECISION**

Capital One Financial Corporation v. Domain Administrator, WDAPL  
Case No. D2023-5041

### **1. The Parties**

The Complainant is Capital One Financial Corporation, United States of America (“United States”), represented by CSC Digital Brand Services Group AB, Sweden.

The Respondent is Domain Administrator, WDAPL, Netherlands (Kingdom of the).

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

The disputed domain name <capitalonefinancial.com> is registered with Above.com, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 4, 2023. On December 5, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 6, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on December 8, 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 December 12, 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 December 18, 2023. In accordance with the Rules, paragraph 5, the due date for Response was January 7, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on January 8, 2024.

The Center appointed Jeremy Speres as the sole panelist in this matter on January 26, 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 financial corporation established in 1994, headquartered in McLean, Virginia, United States. The Complainant's official website is primarily available at <capitalone.com>, a domain name that was registered on March 13, 1995. The Complainant's CAPITAL ONE mark has been held to be well known by prior UDRP panels, including in *Capital One Financial Corporation v. Registration Private, Domains By Proxy, LLC / Carolina Rodrigues, Fundacion Comercio Electronico*, WIPO Case No. [D2022-2595](#).

The Complainant owns various registrations for its CAPITAL ONE mark around the world, including European Union Trade Mark Registration No. 000024299 CAPITAL ONE, registered on August 7, 2000, in classes 36 and 39.

The disputed domain name was registered on May 24, 2004, and presently resolves to a website stating that the page cannot be displayed. The Complainant's evidence shows that the disputed domain name previously resolved to a website featuring pay-per-click ("PPC") advertisements for, amongst others, the Complainant's services and those of its competitors.

#### **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. The Complainant contends that the disputed domain name was acquired by the Respondent between March 2018 and February 2020, despite the initial registration of the disputed domain name in 2004. Notably, the Complainant contends that the disputed domain name was registered and used in bad faith for the Respondent's commercial gain through deceiving Internet users into assuming some connection with 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 trade mark 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 trade mark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1. The entirety of the mark is reproduced 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.

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.

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.

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.

Use of a domain name to host PPC links does not represent a bona fide offering where such links compete with or capitalise on the reputation of the complainant’s mark, as in this case. [WIPO Overview 3.0](#) at section 2.9.

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.

Although the disputed domain name was registered in 2004, based on historical Whois records as well as changes in usage of the domain name archived in the Internet Archive, the disputed domain name appears to have been acquired by the Respondent in 2017/2018 and used for PPC advertisements as aforesaid soon after that.<sup>1</sup>

The following factors all support a finding of bad faith registration and use:

- UDRP panels have consistently found that the registration of a domain name that is confusingly similar to a well-known trade mark (as in this case) can by itself create a presumption of bad faith. [WIPO Overview 3.0](#) at sections 3.1.4 and 3.2.1.
- The disputed domain name has been used to advertise services competitive with those of the Complainant, which is a clear indicator of targeting for commercial gain under paragraph 4(b)(iv) of the Policy. See *Dr. Martens International Trading GmbH, Dr. Maertens Marketing GmbH v. Private Whois Service*, WIPO Case No. [D2011-1753](#). Although the advertisements may be served programmatically by a third party, the Respondent cannot disclaim responsibility for them. [WIPO Overview 3.0](#) at section 3.5.

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<sup>1</sup> Despite the Complainant’s contentions to the same effect, no evidence was provided in the Complaint to support its allegations concerning the acquisition date by the Respondent. However, noting in particular the general powers of a panel articulated inter alia in paragraphs 10 and 12 of the UDRP Rules, it has been accepted that a panel may undertake limited factual research into matters of public record if it would consider such information useful to assessing the case merits and reaching a decision. [WIPO Overview 3.0](#), section 4.8.

- The Respondent has a history of cybersquatting, as evidenced by at least five prior UDRP cases decided against it as respondent. See for example *ABSA Group Limited v. Domain Administrator, WDAPL*, WIPO Case No. [D2018-2026](#).
- The composition of the disputed domain name includes a term descriptive of the Complainant's business – "financial".
- The Panel draws an adverse inference from the Respondent's failure to take part in the present proceeding where an explanation is certainly called for. [WIPO Overview 3.0](#) at section 4.3.

All of this makes it clear that the Respondent's intention was to benefit commercially from confusion with the Complainant, falling squarely within paragraph 4(b)(iv) of the Policy.

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 <capitalonefinancial.com> be transferred to the Complainant.

*/Jeremy Speres/*

**Jeremy Speres**

Sole Panelist

Date: February 9, 2024