

ADMINISTRATIVE PANEL DECISION

Banque et Caisse d'Epargne de l'Etat, Luxembourg v. Kim Ku, Kimku Host
Case No. D2023-5273

1. The Parties

The Complainant is Banque et Caisse d'Epargne de l'Etat, Luxembourg, Luxembourg, represented by Office Freylinger S.A., Luxembourg.

The Respondent is Kim Ku, Kimku Host, Georgia.

2. The Domain Name and Registrar

The disputed domain name <spuerkeess-lux.com> is registered with OwnRegistrar, Inc. (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on December 19, 2023. On December 19, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 19, 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 (Redacted for Privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on December 20, 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 21, 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 27, 2023. In accordance with the Rules, paragraph 5, the due date for Response was January 16, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on January 17, 2024.

The Center appointed James Bridgeman SC as the sole panelist in this matter on January 19, 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 the Luxembourgish savings bank being an autonomous public establishment created according to the Luxembourgish law of March 24, 1989, and is the owner of the SPUERKEESS trademark and service mark for which it holds an international portfolio of registrations, a representative sample of which include:

- Swiss registered trademark and service mark SPUERKEESS, registration number 615157, registered on December 30, 2010, for goods and services in classes 9, 16, 25, 35, 36, 38, 39, 41, 42, 43, 45;
- European Union TM SPUERKEESS, registration number 009110552, registered on November 2, 2010, for goods and services in classes 9, 16, 25, 35, 36, 38, 39, 41, 42, 43, 45; and
- United Kingdom registered trademark SPUERKEESS, registration number UK00909110552, registered on November 2, 2010, for goods and services in classes 9, 16, 25, 35, 36, 38, 39, 41, 42 and 45.

The Complainant has an established Internet presence and owns and operates the Internet domain name <spuerkeess.lu> which resolves to its primary website.

The disputed domain name was created on November 6, 2023. The website to which it resolves has been reported as a deceptive site and has been blocked by the Complainant's Firefox' Phishing and Malware Protection software, generating a warning notice on the Complainant's browser.

There is no information available about the Respondent except for that provided in the Complaint, as amended, the Registrar's Whois, and the information provided to the Center by the Registrar in response to the request for details of the registration of the disputed domain name in the course of this proceeding.

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 submits that the disputed domain name is confusingly similar to the SPUERKEESS mark in which the Complainant has rights, established by its ownership of the above-described portfolio of trademark and service mark registrations.

It is argued that the disputed domain name reproduces the SPUERKEESS mark in its entirety, and the additional element "lux" will be understood by the public as referring to "Luxembourg", where the Complainant is established, as it is a commonly used abbreviation of the country name, also being the international standard code for Luxembourg according to ISO Standard 3166.

The Complainant adds that the generic Top-Level Domain ("gTLD").com" need not be taken into consideration when examining the identity or similarity between the Complainant's trademarks and the disputed domain name citing *Accor v. Noldc Inc.* WIPO Case No. [D2005-0016](#) the mere adjunction of a gTLD is irrelevant because it is well established that the gTLD extension is insufficient to avoid a finding of confusing similarity, citing *L'Oreal v Tina Smith* WIPO Case No. [D2013-0820](#).

It is next argued that the Respondent has no rights or legitimate interests in the disputed domain name because the Respondent is not affiliated with the Complainant in any way, nor has it been authorized by the Complainant to use and register its trademarks, or to seek registration of any domain name incorporating said trademark. In previous decisions, panels found that in the absence of any license or permission from a complainant to use such trademarks, no actual or contemplated *bona fide* or legitimate use of a domain name could reasonably be claimed, citing *Groupe Auchan v. Gan Yu*, WIPO Case No. [D2013-0188](#).

Furthermore, it is submitted that the Respondent has no prior rights or legitimate interests in the disputed domain name, which is identical, or at least so almost identical to the Complainant's trademark registrations, so that the Respondent cannot reasonably pretend it was intending to develop legitimate activity through the disputed domain name.

The Complainant next alleges that the disputed domain name was registered and is being used in bad faith, arguing that the word "spuerkeess" does not exist in the English language other than as the Complainant's trademark, which has an established reputation and goodwill relating to the Complainant's banking business which was deemed to rank among the 10 safest banks in the world in 2019. It is therefore implausible that the Respondent was unaware of the Complainant's trademark rights when the Respondent registered the disputed domain name.

The Complainant refers to a screen capture which is exhibited in an annex to the Complaint. The screen capture shows that an attempt by the Complainant to access the Respondent's website produces a notice on screen, generated by the Firefox browser, which states that the website has been reported as deceptive and accessing it is likely to result in a phishing attempt. The Complainant submits that it follows, on the balance of probabilities, that the Respondent's primary motive in registering and using the disputed domain name was to capitalize on the Complainant's mark within the disputed domain name and to engage in phishing.

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 of the test that the Complainant must meet under the Policy 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 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.

Although the addition of the other terms being a hyphen and the letters "lux" may bear on assessment of the second and third elements, the Panel finds the addition of such terms 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 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.

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.

The composition of the disputed domain name carries a risk of implied affiliation, being identical to the Complainant’s mark, only added by a hyphen and the letters “lux”, which can be considered as an abbreviation of “Luxembourg”. UDRP panels have largely held that such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner. [WIPO Overview 3.0](#), section 2.5.1.

Furthermore, and considering the notice generated when accessing the disputed domain name, the Panel considers that such is potentially being used for phishing or other illegal activities. In this regard, panels have held that the use of a domain name for illegal activity, such as phishing and distributing malware, can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

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.

In the present case, the Panel notes that on the uncontested evidence adduced, the Respondent is using the disputed domain name as the address of a website which not only has been flagged by the Firefox browser as being a deceptive website, but the warning notice generated by the browser states that there is a risk that the website “*may trick (the Internet visitor) into doing something dangerous like installing software or revealing personal information like passwords or credit cards*”. The Panel further notes that there is nothing on the record to suggest that the Respondent has taken any steps to have this warning notice removed nor has he submitted any Response in the proceeding, making any denial or giving any explanation.

Panels have held that the use of a domain name for illegal activity such as phishing and distributing malware, 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.

The Panel finds the third element of the Policy has been established.

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 <spuerkeess-lux.com> be transferred to the Complainant.

/James Bridgeman SC/

James Bridgeman SC

Sole Panelist

Date: January 29, 2024