

## **ADMINISTRATIVE PANEL DECISION**

BPCE v. Robert Roma

Case No. D2024-0145

### **1. The Parties**

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

The Respondent is Robert Roma, United States of America.

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

The disputed domain name <gestionbpce.net> is registered with Squarespace Domains LLC (the "Registrar").

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on January 15, 2024. On January 15, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 16, 2024, 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 January 17, 2024, 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 January 18, 2024.

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 January 25, 2024. In accordance with the Rules, paragraph 5, the due date for Response was February 14, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on February 16, 2024.

The Center appointed Tobias Malte Müller as the sole panelist in this matter on March 4, 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**

According to the Complainant's undisputed allegations, the Complainant is the second largest banking group in France with 105,000 employees serving 36 million customers in more than 40 countries.

The Complaint is based amongst others on verbal European Union Trademark, No. 008375842 for BPCE filed on June 19, 2009, and registered on January 12, 2010, for services in class 36.

The disputed domain name was registered on December 16, 2023.

It resolves to a default page (French: "*impossible de se connecter à l'adresse gestionbpce.net*", English translation: "*impossible to connect to the address gestionbpce.net*"). Besides, the Respondent had originally also activated MX servers and used the disputed domain name to create a fraudulent email sent from an email address "[...]@gestionbpce.net" by impersonating the identity of an existing employee of the Complainant for phishing purposes. In fact, the Complainant provided evidence that this email address has been used to send investment offerings to at least one potential BPCE client, allegedly in the name of said employee acting on behalf of "Groupe BPCE". The disputed domain name is included in the footer of this email as part of the false email address.

Finally, the Complainant sent a cease-and-desist letter on December 27, 2023 via the Registrar which remained, however, unanswered. At the time the Complaint was filed, the MX servers are disabled.

#### **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, the Complainant's registered trademark. In the Complainant's view, it contains the well-known trademark in its entirety with the addition of the prefix "gestion" and the generic Top-Level Domain ("gTLD") ".net".

The Complainant, secondly, submits that the Respondent has no rights or legitimate interests in the disputed domain name. In particular, the Complainant asserts that the disputed domain name has been used for phishing purposes with a view to send a fraudulent email.

Thirdly, the Complainant contends that the Respondent registered and uses the disputed domain name in bad faith. In the Complainant's view, its trademarks are well known, so it shall be deemed that the registration of the disputed domain name has been done per se in bad faith. Furthermore, the Respondent's use of the MX registration leads to conclude to the fraudulent intent of the Respondent which constitutes bad faith.

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

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

## 6. Discussion and Findings

Paragraph 15(a) of the Rules instructs this Panel to “decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable”.

Paragraph 4(a) of the Policy requires the Complainant to prove each of the following three elements in order to obtain an order that the disputed domain name should be transferred or cancelled:

- (i) the disputed 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 disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

The Panel is satisfied that the registrant of record for the disputed domain name is the Respondent and will therefore proceed to analyze whether the three elements of paragraph 4(a) of the Policy are satisfied.

### 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, i.e., verbal European Union Trademark, No. 008375842 for BPCE registered on January 12, 2010, [WIPO Overview 3.0](#), section 1.2.1.

While each case is judged on its own merits, in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing. In the case at hand, the entirety of the mark BPCE 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 other terms, here “gestion”, 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 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.

In the present case, the Panel notes that the disputed domain name resolves to a default page (French: *"impossible de se connecter à l'adresse gestionbpce.net"*, English translation: *"impossible to connect to the address gestionbpce.net"*). Besides, the Respondent had originally also activated MX servers and used the disputed domain name to create a fraudulent email sent from the email address "[...].@gestionbpce.net" by impersonating the identity of an existing employee of the Complainant for phishing purposes. In fact, the Complainant provided evidence that this email address has been used to send investment offerings to at least one potential BPCE client, allegedly in the name of said employee acting on behalf of "Groupe BPCE". The disputed domain name is included in the footer of this email as part of the false email address. The Panel considers this email activity falsely purporting to be the Complainant who makes financial investment offers to consumers to be illegal.

Panels have categorically held that the use of a domain name for such illegal activity, as described in the paragraph above, can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1. In any case, the Panel holds that such use cannot be qualified as a bona fide offering of goods or services in accordance with paragraph 4(c)(i) of the Policy, since such use capitalizes on the reputation and goodwill of the Complainant's trademarks and is likely to mislead Internet users (see, e.g., *TELUS Corporation v. Fortefusion Fortefusion, Wordcounts*, WIPO Case No. [D2021-0787](#)).

In addition, the Respondent did not submit any evidence of bona fide pre-Complaint preparations to use the disputed domain name. As outlined above, the Complainant's uncontested allegations demonstrate that it has not authorized the Respondent's use of the BCPE trademark for registering the confusingly similar disputed domain name.

Furthermore, the Panel notes that there is no evidence in the record showing that the Respondent might be commonly known by the disputed domain name in the sense of paragraph 4(c)(ii) of the Policy.

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.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

As explained above, it results from the Complainant's documented allegations that the disputed domain name is used in for sending fraudulent email correspondence to potential customers of the Complainant, purporting, falsely, to be an employee of the Complainant and sending official emails on behalf of "Groupe BPCE", proposing financial investments. The Panel considers this email activity falsely purporting to be the Complainant who makes financial investment offers to consumers to be illegal.

Panels have categorically held that the use of a domain name for such illegal activity, 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 finding of bad faith registration and use is supported by the following further circumstances resulting from the case file:

(i) the Respondent's failure to submit a response and to reply to the cease and desist letter sent by the Complainant before starting the present UDRP proceedings;

(ii) the Respondent's failure to provide any evidence of actual or contemplated good-faith use;

(iii) the fact that the details disclosed for the Respondent by the Registrar were inaccurate / incomplete, noting the mail courier's inability to deliver the Center's written communications; and

(iv) the implausibility of any good faith use to which the disputed domain name may be put.

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 <gestionbpce.net> be transferred to the Complainant.

*/Tobias Malte Müller/*

**Tobias Malte Müller**

Sole Panelist

Date: March 14, 2024