

ADMINISTRATIVE PANEL DECISION

Banque et Caisse d'Epargne de l'Etat, Luxembourg v. Sebastian Daugherty,
DaughertyCloud

Case No. D2024-0454

1. The Parties

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

The Respondent is Sebastian Daugherty, DaughertyCloud, United States of America.

2. The Domain Name and Registrar

The disputed domain name <spuerkeess-securite.com> is registered with Nicenic International Group Co., Limited (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on January 31, 2024. On January 31, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 1, 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 February 1, 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 February 8, 2024.

The Center verified that 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 February 9, 2024. In accordance with the Rules, paragraph 5, the due date for Response was February 29, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on March 4, 2024.

The Center appointed Federica Togo as the sole panelist in this matter on March 11, 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

It results from the Complainant's undisputed and documented allegations that the Complainant is internationally active in the banking sector and has been exploiting its trademark SPUERKEESS for banking, insurance and financial services. Its history as the SPUERKEESS bank of the State of Luxembourg dates back to 1856.

The Complainant is – amongst others – the owner of several registered trademarks consisting of or containing the verbal element SPUERKEESS and particularly based its Complaint on the European Union trademark SPUERKEESS, No. 009110552, registered on November 2, 2010, for goods and services in classes 9, 16, 25, 35, 36, 38, 39, 41, 42, 43 and 45.

The Respondent registered the disputed domain name on December 14, 2023.

It finally results from the Complainant's undisputed and documented allegations that disputed domain name resolves to an inactive website showing a warning that the website is blocked by Firefox upon report by Google Safe Browsing as being “unsafe” and “deceptive” as a disguised phishing site.

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,

(i) the disputed domain name is confusingly similar to the Complainant's registered trademark. The additional element “securite” is a non-distinctive element and will lead the public to think that the disputed domain name is related to the Complainant's rights or company as a safe platform to complete payments or sign confidential documents or other administrative processes related to bank;

(ii) The Respondent has undoubtedly no rights or legitimate interests in respect of the disputed domain name. It has neither been authorized by the Complainant to use and register its trademarks, or to seek registration of any domain name incorporating said trademark. Nor has the Respondent any right worldwide on the sign “spuerkeess”;

(iii) The Respondent registered and used the disputed domain name in bad faith. In fact, according to the Complainant, when registering the disputed domain name, the Respondent knew or should have known of the Complainant's trademark rights considering the fact that the SPUERKEESS trademarks are well-known in the Benelux and the European Union. Furthermore, the potential phishing activities confirm that the disputed domain name was registered and is used in 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”.

Furthermore, 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:

- (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.

Based on the available record, the Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy, i.e. European Union trademark SPUERKEESS, No. 009110552, registered on November 2, 2010, [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the mark is reproduced within the disputed domain name. Although the addition of other terms (here “-securite”), may bear on assessment of the second and third elements, the Panel finds the addition of such term and hyphen 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.

Consequently, 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.

It results from the Complainant's undisputed and documented allegations the disputed domain name resolves to an inactive website showing a warning that the website is blocked by Firefox upon report by Google Safe Browsing as being "unsafe" and "deceptive" as a disguised phishing site. This Panel considers this warning by Firefox/Google Safe Browsing as sufficient prima facie evidence of illegal activity, all the more, since the Respondent did neither submit any explanations nor comments on this warning. Panels have held that the use of a domain name for illegal activity here deceptive phishing activity can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

Finally, the Panel does not dispose of any elements that could lead the Panel to the conclusion that the Respondent is commonly known by the disputed domain name or that it has acquired trademark rights pursuant to 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.

In the present case and as described above, the Panel notes that the disputed domain name resolves to an inactive website showing a warning that the website is blocked by Firefox upon report by Google Safe Browsing as being "unsafe" and "deceptive" as a disguised phishing site. This Panel considers this warning by Firefox/Google Safe Browsing as sufficient prima facie evidence of illegal activity, all the more, since the Respondent did neither submit any explanations nor comments on this warning. Panels have held that the use of a domain name for illegal activity here, claimed phishing activities 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.

These findings are confirmed by the following circumstances surrounding the registration:

- (i) the trademark SPUERKEESS has been used for roughly 160 years;
- (ii) the Respondent's failure to submit a response or 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 service's inability to deliver the Center's written communications.

In the light of the above, 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 <spuerkeess-securite.com> be transferred to the Complainant.

/Federica Togo/

Federica Togo

Sole Panelist

Date: March 25, 2024