

## **ADMINISTRATIVE PANEL DECISION**

Rockland Trust Company v. Mae Hopper  
Case No. D2024-1406

### **1. The Parties**

The Complainant is Rockland Trust Company, United States of America, represented by Nelson Mullins Riley & Scarborough, L.L.P., United States of America (“United States”).

The Respondent is Mae Hopper, United States.

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

The disputed domain name <bankofcapecod.com> is registered with Network Solutions, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 3, 2024. On April 3, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 3, 2024, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that the 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 April 5, 2024. In accordance with the Rules, paragraph 5, the due date for Response was April 25, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Parties of the Respondent’s default on May 2, 2024.

The Center appointed Ingrīda Kariņa-Bērziņa as the sole panelist in this matter on May 6, 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 commercial bank based in Massachusetts, United States. In 2016, it acquired Bank of Cape Cod, a commercial and business lender founded in 2005, which at the time operated its business website at the disputed domain name, which was originally registered on July 6, 2005. Subsequent to the merger, this website was disabled and subsequently the registration of the disputed domain name lapsed.

The Bank of Cape Cod had previously registered its BANK OF CAPE COD marks as United States Trademark Registration Nos. 4398457 and 3287240, but these registrations are no longer in force.

The evidence indicates that the disputed domain name was acquired by the Respondent in 2021. The disputed domain name resolves to the website of the “Bank of Cape Cod” mimicking historic content of this entity’s previous website.

#### **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 it has common-law and residual rights in the BANK OF CAPE COD mark based on the previous use from 2006 to 2016, and that consumers continue to associate this mark, which had acquired considerable goodwill, with the Complainant. The disputed domain name was acquired by the Complainant in the course of its acquisition of the Bank of Cape Cod and inadvertently permitted to lapse. It is identical to the Complainant’s BANK OF CAPE COD mark. The Respondent has no rights in the Complainant’s mark and is attempting to pass itself off as the Complainant by hosting a website that mimics the website previously operated by the Bank of Cape Cod. Finally, the Respondent has provided false contact information.

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

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

#### **6. Discussion and Findings**

Paragraph 4(a) of the UDRP requires the Complainant to make out all three of the following:

- (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 Respondent has registered and is using the disputed domain name in bad faith.

Under paragraph 15(a) of the Rules, “[a] Panel shall 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”.

##### **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 Panel notes that the Complainant's predecessor in interest had used the BANK OF CAPE COD mark in commerce for a decade, and that the website to which the disputed domain name resolves reflects this mark and contains content similar to the Complainant's previous website – including the relevant mark and logo.

In view of the above, also noting the claim to residual rights, the Panel finds that the Complainant has established rights in the BANK OF CAPE COD mark for purposes of the Policy.

The entirety of the BANK OF CAPE COD mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is identical 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.

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 evidence does not indicate that the Respondent is commonly known by the disputed domain name or that the Respondent is making legitimate noncommercial or fair use of it. Rather, the evidence indicates that the Respondent is using the disputed domain name to mislead Internet users by purporting to offer banking services as an entity holding itself out as the “Bank of Cape Cod” and mentioning the Complainant as its parent company.

Panels have held that the use of a domain name for illegal activity (here, fraud, impersonation) 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 the Respondent intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's mark. The disputed domain name was acquired by the Respondent after the Complainant inadvertently failed to maintain its registration. The disputed domain name is identical to the Complainant's mark and therefore

implies a connection to the Complainant. Under these circumstances, the Panel finds that the disputed domain name was registered in bad faith. [WIPO Overview 3.0](#), section 3.1.

The evidence indicates that the website to which the disputed domain name resolves bears a strong similarity to the website previously operated by the Complainant's predecessor in interest. The Panel notes the mention of the Complainant as a parent company and the alleged offering of financial services that misleads Internet users. Panels have held that the use of a domain name for illegal activity (here, impersonation/passing off, or other types of fraud) 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 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 <bankofcapecod.com> be transferred to the Complainant.

*/Ingrīda Kariņa-Bērziņa/*

**Ingrīda Kariņa-Bērziņa**

Sole Panelist

Date: May 20, 2024