

ADMINISTRATIVE PANEL DECISION

Banque et Caisse d'Epargne de l'Etat, Luxembourg v. David Ernesto
Guardiola

Case No. D2024-1679

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 David Ernesto Guardiola, Mexico.

2. The Domain Name and Registrar

The disputed domain name <bcee-s.com> is registered with Tucows Inc. (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on April 22, 2024. On April 22, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On the same day, 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 April 26, 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 April 29, 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 May 6, 2024. In accordance with the Rules, paragraph 5, the due date for Response was May 26, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on May 31, 2024.

The Center appointed David Taylor as the sole panelist in this matter on June 10, 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

Founded in 1856, and incorporated in 1989, the Complainant is a Luxembourgish company active both domestically and internationally in banking services.

The Complainant is the owner of a number of trademark registrations for BCEE, including:

- European Union Trade Mark No. 009110537, BCEE, registered on November 2, 2010;
- Swiss Trademark No. 615156, BCEE, registered on May 10, 2011;
- United Kingdom Trademark No. UK00909110537, BCEE, registered on November 2, 2010; and
- United Kingdom Trademark No. UK00003345047, BCEE, registered on December 28, 2018.

The disputed domain name was registered on February 3, 2024. The disputed domain name resolves to an inactive web page.

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 asserts rights in the trademark BCEE and submits that the disputed domain name is confusingly similar to its trademark.

The Complainant submits that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant asserts that the Respondent is not affiliated with the Complainant, that the Respondent is not using the disputed domain name in connection with any legitimate activity, and that the Respondent has no rights in any "BCEE" trademark.

The Complainant submits that the disputed domain name was registered and is being used in bad faith. The Complainant contends that the Respondent knew or should have known of the Complainant's BCEE trademark when registering the disputed domain name. The Complainant argues that the disputed domain name risks being used for phishing, asserting that Internet users could easily be misled by the disputed domain name, which could in turn lead them into disclosing personal banking data. The Complainant further submits that it is likely that the Respondent registered the disputed domain name to prevent the Complainant from using its trademark, or to try to sell the disputed domain name.

The Complainant requests transfer of the disputed domain name.

B. Respondent

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

6. Discussion and Findings

In order to prevail, the Complainant must demonstrate that it has satisfied the requirements of paragraph 4(a) of the Policy:

- (i) The disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) The Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) The disputed domain name was registered and is being used in bad faith.

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. [WIPO Overview 3.0](#), section 1.2.1.

The disputed domain name comprises the Complainant's BCEE trademark as its leading element, followed by a hyphen and the letter "s", under the generic Top-Level Domain ("gTLD") ".com". The Panel finds that the addition of such elements does not prevent a finding of confusing similarity between the disputed domain name and the Complainant's BCEE trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

The Panel finds the disputed domain name to be confusingly similar to the Complainant's BCEE trademark. 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.

There appears to be no prior relationship between the Parties, nor has the Complainant granted any authorization for the Respondent to make use of the Complainant's BCEE trademark, in a domain name or otherwise. As noted above, the disputed domain name resolves to an inactive web page. There is no evidence of the Respondent having made demonstrable preparations to use the disputed domain name in connection with a bona fide offering of goods or services. The Respondent has been identified as "David Ernesto Guardiola", whose name bears no resemblance to the disputed domain name. Nor is the Respondent making any legitimate noncommercial or fair use of the disputed domain name. None of the circumstances contemplated by paragraph 4(c) of the Policy applies in the present case.

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 Panel finds the second element of the Policy has been established.

C. Registered and Used 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.

Panels have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the available record, the Panel finds the non-use of the disputed domain name does not prevent a finding of bad faith in the circumstances of this proceeding. [WIPO Overview 3.0](#), section 3.3. Here, without the benefit of any explanation from the Respondent, it seems unlikely to be a coincidence that the composition of the disputed domain name fully incorporates the Complainant's mark.

Having reviewed the available record, the Panel notes the Complainant's longstanding use of its BCEE trademark in connection with its banking services, and further notes that having been duly notified of the present proceeding, the Respondent has not come forward to submit a Response to the Complaint or to provide any evidence of actual or planned bona fide use of the disputed domain name, the apparent use of false contact details by the Respondent (noting that the written notice was not deliverable), and finds that in the circumstances of this case the passive holding of the disputed domain name does not prevent a finding of 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 <bcee-s.com> be transferred to the Complainant.

/David Taylor/

David Taylor

Sole Panelist

Date: July 3, 2024