

ADMINISTRATIVE PANEL DECISION

Banque et Caisse d'Epargne de l'Etat, Luxembourg v. darbiniekstarbs
Case No. D2024-1766

1. The Parties

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

Respondent is darbiniekstarbs, Finland.

2. The Domain Name and Registrar

The disputed domain name <s-net-info-lu.net> (the "Disputed Domain Name") is registered with PDR Ltd. d/b/a PublicDomainRegistry.com (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on April 29, 2024. On April 29, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On April 30, 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 (GDPR Masked) and contact information in the Complaint. The Center sent an email communication to Complainant on May 2, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on May 6, 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 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. Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on May 27, 2024.

The Center appointed Nathalie Dreyfus as the sole panelist in this matter on May 31, 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

Complainant is a Luxembourgish company incorporated in 1989 and internationally active in the banking services. Complainant is well known in the bank sector, and is widely exploiting the trademark S-NET for banking, insurance and financial services.

Complainant owns several trademark registrations around the world, namely:

- Benelux trademark S-NET No. 936196, dated April 12., 1999 and registered on August 1, 1999, covering services in class 36, duly renewed;
- European Union trademark S-NET No. 009110644, dated May 17, 2010 and registered on July 1, 2012, covering services in classes 35, 36, 38, and 41, duly renewed;
- United Kingdom trademark S-NET No. UK00909110644, dated May 17, 2010 and registered on July 1, 2012, covering services in classes 35, 36, 38, and 41, duly renewed.

The Disputed Domain Name was registered on February 24, 2024, and resolves to an inactive page.

5. Parties' Contentions

A. Complainant

Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the Disputed Domain Name.

Complainant asserts that the Disputed Domain Name is confusingly similar to the Complainant's trademark S-NET as the Disputed Domain Name incorporates Complainant's trademark in its entirety. Complainant also asserts that the terms "info" and "lu" will be understood by the public as "information" and "Luxembourg" as they are commonly used abbreviations. Complainant also insists that the Top-Level Domain ("gTLD") ".net" is not to be taken into consideration.

Complainant asserts that Respondent has no rights or legitimate interests in respect of the disputed domain name. In fact, Complainant has prior use of its trademark S-NET. Respondent is not affiliated or related to Complainant in any way, or licensed, or otherwise authorized to use the S-NET trademark in connection with a website, a domain name, or for any other purpose. Complainant also contends that no actual or contemplated bona fide or legitimate use of the Disputed Domain Name could reasonably be claimed.

Finally, Complainant asserts that the Disputed Domain Name has been registered and used in bad faith. The S-NET trademark is well-known and has acquired a standing reputation in the international financial markets. Complainant argues that Respondent knew or should have known of the Complainant's trademark before registering the Disputed Domain Name.

Complainant asserts that the Disputed Domain Name is being used in bad faith since sign "s-net-info-lu.net" which is highly similar to the Complainant's trademark registrations "S-NET" and explains that it is more than likely that Respondent's primary motive in registering and using the Disputed Domain Name was to fraudulently create revenue by phishing.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

Paragraph 15(a) of the Rules directs the Panel as to the principles that the Panel is to use in determining the dispute: “A Panel shall decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules, and any rules and principles of law that it deems applicable”.

The Policy provides, at paragraph 4(a), that each of three elements must be made in order for a complaint to prevail:

- i. the Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- ii. 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.

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.

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 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 other terms, “info” and “lu” 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.

Indeed, the addition of the terms “info” or “lu” does not prevent a finding of confusing similarity between Complainant’s trademark and the Disputed Domain Name (*Compagnie Générale des Etablissements Michelin and Michelin Recherche et Technique S.A. v. Ejijobara Obara*, WIPO Case No. [D2012-0047](#)).

Finally, the generic Top-Level Domain (“gTLD”) extension “.net” has no particular distinctive meaning of its own, is usually not taken into account for the purposes of determining confusing similarity under the Policy confusion (*The Royal Bank of Scotland Group plc v. Najeed Alim*, WIPO Case No. [D2012-1707](#) and *Nedbank Limited v. Online Promotions LTP, Anthony Brown*, WIPO Case No. [D2012-1465](#)). [WIPO Overview 3.0](#), section 1.11.1.

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 that Complainant has made out a prima facie case that Respondent has no rights or legitimate interests in the Disputed Domain Name. Respondent has not rebutted 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.

Respondent does not own any rights to the S-NET trademarks, and Complainant has never authorized or permitted Respondent to use the S-NET trademark or use it to register any domain name consisting of the S-NET trademark (*J Barbour & Sons LTD v. Whois Privacy Pty Ltd./Quantec, LLC. Novo Point, LLC*, WIPO Case No. [D2013-0283](#)).

The Disputed Domain Name is not used, as it simply leads to an inactive page that lacks content. Therefore, there is no evidence of any use of, or preparations to use, the Disputed Domain Name in connection with a bona fide offering of goods or services, nor of any legitimate noncommercial or fair use of the Disputed Domain Name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

Respondent also had the opportunity to provide its arguments in support of its rights or legitimate interests in the Disputed Domain Name. However, by failing to file a formal response, Respondent has missed this opportunity and the Panel is entitled to draw such inferences from Respondent's failure as it considers appropriate in accordance with paragraph 14 of the Rules.

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 paragraphs 4(a)(iii) and 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 Respondent registered and is using the Disputed Domain Name in bad faith.

Complainant has established that the registered S-NET trademarks long predated the registration of the Disputed Domain Name. Respondent reproduced in its entirety the Complainant's trademark S-NET in the Disputed Domain Name. The confusing similarity in this choice, as well as the addition of the term "lu" in reference to Luxembourg (where Complainant is headquartered) demonstrates that Respondent was fully aware of the fact that the Disputed Domain Name incorporated a well-recognized trademark. The Panel is of the opinion that Respondent registered the Disputed 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.

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. Although panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, and (iii) the respondent's concealing its identity or use of

false contact details (noted to be in breach of its registration agreement). [WIPO Overview 3.0](#), section 3.3. Having reviewed the available record, the Panel notes reputation of Complainant's trademark, the composition of the Disputed Domain Name, the failure of the Respondent to submit a response or to provide any evidence of actual or contemplated good-faith use and the implausibility of any good faith use to which the Disputed Domain Name may be put 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.

Indeed, the Disputed Domain Name resolves to an inactive page that lacks content; one that could cause confusion among Internet users as to the source and purpose of the Disputed Domain Name. From the inception of the UDRP, panelists have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding (*Bouygues v. Eric Bouret*, WIPO Case No. [D2020-3393](#) and *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#)).

Finally, failure to reply to the cease-and-desist correspondence sent by Complainant's counsel or to respond to the Complaint in this proceeding. The failure of Respondent to reply or respond to the same in this proceeding supports an inference of bad faith (*ACCOR, SoLuxury v. WhoisGuard Protected, WhoisGuard, Inc., Van Dung*, WIPO Case No. [D2018-1237](#)).

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 <s-net-info-lu.net> be transferred to Complainant.

/Nathalie Dreyfus/

Nathalie Dreyfus

Sole Panelist

Date: June 12, 2024