

## ADMINISTRATIVE PANEL DECISION

### Bread Financial Payments, Inc. v. Name Redacted Case No. D2024-3080

#### 1. The Parties

Complainant is Bread Financial Payments, Inc., United States of America (“United States”), represented by Porter Wright Morris & Arthur, LLP, United States.

Respondent is Name Redacted.<sup>1</sup>

#### 2. The Domain Name and Registrar

The disputed domain name <breadfinanced.com> is registered with NameCheap, Inc. (the “Registrar”).

#### 3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 26, 2024. On July 29, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 29, 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 (Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to Complainant on July 30, 2024 providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant sent an email to the Center on July 30, 2024 indicating that it elects not to amend the Complaint, asserting that “the registrant information is fictitious” in connection to the impersonation of an employee of Complainant for fraudulent purposes.

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”).

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<sup>1</sup>Respondent appears to have used the name of Complainant’s employee when registering the disputed domain name. In light of the potential identity theft, the Panel has redacted Respondent’s name from this decision. However, the Panel has attached as Annex 1 to this decision an instruction to the Registrar regarding transfer of the disputed domain name, which includes the name of Respondent. The Panel has authorized the Center to transmit Annex 1 to the Registrar as part of the order in this proceeding, and has indicated Annex 1 to this decision shall not be published due to the exceptional circumstances of this case. See *Banco Bradesco S.A. v. FAST-12785241 Attn. Bradescourgente.net / Name Redacted*, WIPO Case No. [D2009-1788](#).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified Respondent of the Complaint, and the proceedings commenced on July 31, 2024. In accordance with the Rules, paragraph 5, the due date for Response was August 20, 2024. Respondent did not submit any response. Accordingly, the Center notified Respondent's default on August 21, 2024.

The Center appointed Bradley A. Slutsky as the sole panelist in this matter on August 27, 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 subsidiary of Bread Financial Holdings, Inc. – a publicly traded financial services company founded in 1996. Complainant's goods and services include financing and loan services, banking services, online consumer purchase financing, issuing and administering private label and co-branded credit card accounts, credit card transaction processing, software and SaaS services relating to the foregoing, and loyalty and incentive award programs. Complainant notes that it began using the BREAD FINANCIAL mark in early 2022, and that it has a number of marks that incorporate "BREAD" and/or "FINANCIAL", including the following:

Mark	Services	Jurisdiction	Reg. No.	Reg. Date	Disclaimer
BREAD FINANCIAL	Financing and loan services, etc.	United States of America	7,300,264	February 6, 2024	Disclaims "FINANCIAL"
B BREAD FINANCIAL and design	Financing and loan services, etc.	United States of America	7,288,285	January 23, 2024	Disclaims "FINANCIAL"
BREAD FINANCIAL	SaaS for banking, etc.	United States of America	7,305,646	February 13, 2024	Disclaims "FINANCIAL"
BREAD CASHBACK	Financing and loan services, etc.	United States of America	7,305,903	February 13, 2024	Disclaims "CASHBACK"
BREAD PAY	Financing and loan services, etc.	United States of America	7,237,594	December 5, 2023	Disclaims "PAY"
BREAD SAVINGS	Banking services, etc.	United States of America	7,237,587	December 5, 2023	Disclaims "SAVINGS"

Complainant uses the domain name <breadfinancial.com> for its official website.

The disputed domain name was registered on June 19, 2024 and, according to evidence in the Complaint, led to a default website with pay-per-click links to "Auto Refinance" and "Financial Loans", as well as to "Bakery Cakes". According to evidence in the Complaint, the disputed domain name has also been used to send fraudulent emails impersonating an employee of Complainant.

#### 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 it spent over USD 160 million on marketing in 2023, the majority of which used the BREAD FINANCIAL mark. Complainant also asserts that it offers its services to customers in all 50 states of the United States of America, using its BREAD FINANCIAL mark. Complainant contends that "[a]s a result of Complainant's extensive promotional efforts and commercial success, as well as the amount, volume, and

geographic scope of services provided under the mark BREAD FINANCIAL and its other marks, these marks have achieved widespread recognition and represent enormous goodwill, which is put at risk by Respondent's act of bad faith registration."

Complainant notes that the disputed domain name has active MX records for email, and that "within about one hour after the Disputed Domain Name was registered, the [disputed] domain name was used in an attempt to perpetrate a financial fraud." The Complaint includes evidence of an email string that purportedly originates from an attorney at Complainant (but instead uses an email address at the disputed domain name), requesting payment from a third party and providing ACH information for an account that is not associated with Complainant. Thus, Complainant asserts "[i]t is clear that Respondent's sole purpose in registering the [disputed] domain name breadfinanced.com was to use the Disputed Domain Name in an attempt to commit payment redirection fraud."

In response to the Center's email providing the registrant's information, Complainant stated that it "elects not to amend the Complaint to add the newly identified registrant as a respondent, as the registrant information is fictitious. The registrant's name is that of an employee of Complainant. In fact, this employee's name was used as part of the attempted payment redirection fraud using the Disputed Domain Name [...]. Complainant also believes that the other information regarding the registrant is likewise fictitious (e.g., address, phone number, and email)."

## **B. Respondent**

Respondent did not reply to Complainant's contentions.

## **6. Discussion and Findings**

Pursuant to paragraph 15(a) of the Rules, a panel in UDRP proceedings "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".

Under paragraph 4(a) of the Policy, Complainant must prove the following:

- (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 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 Panel finds the mark is recognizable within the disputed domain name. The disputed domain name consists of Complainant's BREAD FINANCIAL mark, but with the adjective "financial" changed to a past tense verb ("financed"), and the addition of the ".com" generic Top-Level Domain. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7 ("in cases where [...] 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”); *Smarty Had A Party, LLC. v. Private Whois / Sergei Sergeiev*, WIPO Case No. [D2012-2215](#) (“[T]he difference of one letter in this case merely changes the tense from the Complainant’s use of the expression in the past tense to the Respondent’s use of the present tense. Accordingly, the Panel finds that the disputed domain name is confusingly similar to a trade mark in which the Complainant has rights.”); and [WIPO Overview 3.0](#), section 1.11.1 (“[t]he applicable Top Level Domain (‘TLD’) in a domain name (e.g., ‘.com’, ‘.club’, ‘.nyc’) is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test.”).

Accordingly, 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 Respondent may demonstrate rights or legitimate interests in a disputed domain name. “Any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate [Respondent’s] rights or legitimate interests to the domain name for purposes of paragraph 4(a)(ii):

(i) before any notice to [Respondent] of the dispute, [Respondent’s] use of, or demonstrable preparations to use, the [disputed] domain name or a name corresponding to the [disputed] domain name in connection with a bona fide offering of goods or services; or

(ii) [Respondent] (as an individual, business, or other organization) ha[s] been commonly known by the [disputed] domain name, even if [Respondent has] acquired no trademark or service mark rights; or

(iii) [Respondent is] making a 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”. Policy, paragraph 4(c).”

Although the overall burden of proof in UDRP proceedings is on 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 Respondent. As such, where a complainant makes out a prima facie case that Respondent lacks rights or legitimate interests, the burden of production on this element shifts to Respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name (although the burden of proof always remains on Complainant). If Respondent fails to come forward with such relevant evidence, Complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds Complainant has established a prima facie case that Respondent lacks rights or legitimate interests in the disputed domain name. For example, Complainant asserts that it “has never authorized Respondent to use the BREAD FINANCIAL trademark, or any marks confusingly similar thereto, for any purpose, including as a domain name”, and that the disputed domain name is being used to attempt to get third parties to pay to Respondent money that is rightfully owed to Complainant. 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.

Panels have held that the use of a domain name for illegal activity, here claimed to be impersonation and “payment redirection fraud”, can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1 (“Panels have categorically held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent.”).

Accordingly, 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. Specifically, “the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

- (i) circumstances indicating that [Respondent has] registered or [Respondent has] acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to Complainant who is the owner of the trademark or service mark or to a competitor of that Complainant, for valuable consideration in excess of [Respondent’s] documented out-of-pocket costs directly related to the domain name; or
- (ii) [Respondent has] registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that [Respondent has] engaged in a pattern of such conduct; or
- (iii) [Respondent has] registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, [Respondent has] intentionally attempted to attract, for commercial gain, Internet users to [Respondent’s] web site or other online location, by creating a likelihood of confusion with Complainant’s mark as to the source, sponsorship, affiliation, or endorsement of [Respondent’s] website or location or of a product or service on [Respondent’s] website or location.” Policy, paragraph 4(b).

“Given that the scenarios described in UDRP paragraph 4(b) are non-exclusive and merely illustrative, even where a complainant may not be able to demonstrate the literal or verbatim application of one of the above scenarios, evidence demonstrating that a respondent seeks to take unfair advantage of, abuse, or otherwise engage in behavior detrimental to Complainant’s trademark would also satisfy Complainant’s burden.” [WIPO Overview 3.0](#), section 3.1.

In the present case, the Panel notes that the disputed domain name resolves to a pay-per-click website that contains links to services similar to those offered by Complainant. In addition, shortly after registering the disputed domain name, Respondent sent emails from the disputed domain name seeking to convince a third party to pay funds owed to Complainant into a bank account that is not associated with Complainant.

The registration and use of a domain name that is known to be confusingly similar to another party’s trademark for a pay-per-click website is evidence of bad faith under paragraph 4(b)(iv) of the Policy. *Caliber Home Loans, Inc. v. Domains By Proxy, LLC / Patrick Scott*, WIPO Case No. [D2018-0524](#) (“What is clear is that the Respondent (a) was well aware of the Complainant’s mark, which the Respondent emulated in the email as well as in the Domain Name itself, and (b) traded on the Complainant’s reputation to attract Internet users to a portal that offered both competing and related financial services, presumably for commercial gain. This is very like the example cited in the Policy, paragraph 4(b)(iv), and certainly amounts to bad faith for Policy purposes, as does allowing the current use of the Domain Name for a PPC advertising portal.”); [WIPO Overview 3.0](#), section 3.5 (“Particularly with respect to ‘automatically’ generated pay-per-click links, panels have held that a respondent cannot disclaim responsibility for content appearing on the website associated with its domain name”).

Panels also have held that the use of a domain name for illegal activity, here claimed to be impersonation and “payment redirection fraud”, constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds Respondent’s registration and use of the disputed domain name constitutes bad faith under the Policy.

Accordingly, the Panel finds that 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 <breadfinanced.com> be transferred to Complainant.

*/Bradley A. Slutsky/*

**Bradley A. Slutsky**

Sole Panelist

Date: September 10, 2024