

## **ADMINISTRATIVE PANEL DECISION**

Bread Financial Payments, Inc. v. Timo Schirmer  
Case No. D2024-4317

### **1. The Parties**

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

The Respondent is Timo Schirmer, Germany.

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

The disputed domain name <breadnancial.org> is registered with Cronon GmbH (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 19, 2024. On October 21, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 24, 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 (unknown) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 24, 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 amendment to the Complaint on October 29, 2024.

On October 24, 2024, the Center informed the parties in German and English, that the language of the registration agreement for the disputed domain name is German. On October 26, 2024, the Complainant confirmed its request that English be the language of the proceeding. The Respondent did not submit any comment on the Complainant’s submission.

The Center verified that the Complaint together with the amendment to 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 in both German and English, and the proceedings commenced on October 30, 2024. In accordance with the Rules, paragraph 5, the due date for Response was November 19, 2024. The

Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on November 21, 2024.

The Center appointed Andrea Mondini as the sole panelist in this matter on November 26, 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 wholly owned subsidiary of Bread Financial Holdings, Inc., a publicly traded financial company founded in 1996. The Complainant was previously known as ADS Alliance Data Systems, Inc., and was rebranded in March 2022 into Bread Financial Payments, Inc.

The Complainant holds the domain name <breadfinancial.com> which hosts its main website.

The Complainant owns several trademark registrations, including:

TRADEMARK	JURISDICTION	REGISTRATION NUMBER	REGISTRATION DATE	INTERNATIONAL CLASS
BREAD FINANCIAL	United States	7300264	February 6, 2024	36
BREAD FINANCIAL	United States	7305646	February 13, 2024	42

Because the Respondent did not file a Response, not much is known about the Respondent.

The disputed domain name was registered on September 22, 2024, and does not resolve to an active 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 as follows:

The disputed domain name is confusingly similar to the BREAD FINANCIAL trademark in which the Complainant has rights, because it incorporates this trademark in its entirety, and merely omitting the letters "fi" is not sufficient to avoid confusing similarity but rather constitutes typosquatting.

The Respondent has no rights or legitimate interests in respect of the disputed domain name. The trademark BREAD FINANCIAL has been extensively used to identify the Complainant and its services. The Respondent has not been authorized by the Complainant to use this trademark, is not commonly known by the disputed domain name, and there is no evidence of the Respondent's use, or demonstrable preparation to use, the disputed domain name in connection with a bona fide offering of goods and services. The fact that Mail Exchange (MX) records have been configured for the disputed domain name creates the risk that it may be used to send fraudulent emails for phishing purposes.

The disputed domain name was registered in bad faith because it is obvious that the Respondent had knowledge of both the Complainant and its well known trademark BREAD FINANCIAL at the time it

registered the disputed domain name. In this case, the typosquatting indicates that the Respondent was not only aware of the Complainant's mark but also intended to confuse Internet users and/or email recipients to the detriment of the Complainant.

The Respondent is using the disputed domain name in bad faith, by passively holding the domain name.

## **B. Respondent**

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

## **6. Discussion and Findings**

### **6.1 Language of the Proceedings**

While the Registration Agreement for the disputed domain name is in German, the Complainant has pointed out in the Complaint, that the English language is the language used at its principal office in Columbus, Ohio, that its representatives are unable to communicate in German and that the use of German in this case would cause significant delays and costs to the Complainant. Therefore, the Complainant has requested English to be the language of the proceedings. The Complainant's BREAD FINANCIAL trademark and the disputed domain name comprise English words.

Paragraph 11(a) of the Rules stipulates that, "unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding".

Taking into account the circumstances of this case, the Panel does not consider it prejudicial to the Respondent if English were adopted as the language of the proceedings. The Panel notes that the relevant case related communications were sent in both English and German and that the Respondent did not reply to any of those communications or comment on the language of the proceedings. The Panel also finds that substantial additional expense and delay would likely be incurred if the Complaint had to be translated into German. In view of the Policy aim of facilitating a time- and cost-efficient procedure for the resolution of domain name disputes, the Panel finds it appropriate to exercise its discretion according to paragraph 11(a) of the Rules and allow the proceedings to be conducted in English.

### **6.2 Substantive issues**

According to paragraph 4(a) of the Policy, in order to succeed, a complainant must establish each of the following elements:

- (i) the disputed domain name is identical or confusingly similar to the 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 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.

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 Panel finds that the Complainant's mark is clearly recognizable within the disputed domain name, and that the omission of the letters "fi" in the disputed domain name is an intentional misspelling of the Complainant's mark and does not prevent a finding of confusing similarity under the Policy. [WIPO Overview 3.0](#), section 1.9

The addition of the generic Top-Level Domain ("gTLD") ".org" in the disputed domain name is a standard registration requirement and as such may be disregarded under the confusing similarity test under the Policy, paragraph 4(a)(i). See [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 for a complainant to prove that 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.

Based on the undisputed submission and evidence provided by the Complainant, the disputed domain name does not resolve to an active website. The Panel does not consider such use a bona fide offering of goods or services, nor a legitimate noncommercial or fair use of the disputed domain name. The Respondent is also not commonly known by the disputed domain name nor has it acquired any trademark or service mark rights. In addition, based on the undisputed submission provided by the Complainant, it is clear that the Respondent may likely use the disputed domain name for fraudulent purposes as MX records mentioned above have been set up. In these circumstances, it is clear to the Panel that the Respondent may engage in some form of deceptive and fraudulent activity with a view to commercial gain and that the disputed domain name was registered with that in mind. Such activity cannot confer any rights or legitimate interests upon the Respondent.

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.

Based on the available record, 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 view of the Panel, noting that that the Complainant's trademark predates the registration of the disputed domain name and considering that the Complainant's trademark is well-known and that the disputed domain name constitutes a misspelling of the Complainant's trademark, it is hardly conceivable that the Respondent could have registered the disputed domain name without knowledge of the Complainant's well known trademark. In the circumstances of this case, this is evidence of registration in bad faith.

The disputed domain name currently does not resolve to an active website. Panels have found that the non-use of a domain name (including a blank or "coming soon" page) 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 the distinctiveness and reputation of the Complainant's trademark, the failure of the Respondent to submit a response or to provide any evidence of actual or contemplated good-faith use and the Respondent's use of false contact details as evidenced by the inability of the Center to send emails to the email addresses disclosed by the Registrar for the Respondent.

Therefore, the Panel finds that in the circumstances of this case the passive holding of these disputed domain name does not prevent a finding of bad faith under the Policy.

Based on the available record, the Panel finds that the Complainant has established the third element of the Policy with regard to the disputed domain name.

## **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 <breadnancial.org> be transferred to the Complainant.

*/Andrea Mondini/*

**Andrea Mondini**

Sole Panelist

Date: December 4, 2024