

PANEL DECISION

BPCE v. Touam Sebastien
Case No. DEU2023-0044

1. The Parties

The Complainant is BPCE, France, represented by DBK Law Firm, France.

The Respondent is Touam Sebastien, France.

2. The Domain Name, Registry and Registrar

The Registry of the disputed domain name <caisse-epargne.eu> is the European Registry for Internet Domains (“EURid” or the “Registry”). The Registrar of the disputed domain name is Tucows.com Co.

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 23, 2023. On November 24, 2023, the Center transmitted by email to the Registry a request for registrar verification in connection with the disputed domain name. On November 27, 2023, the Registry 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on the same day, providing the registrant and contact information disclosed by the Registry, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on November 27, 2023.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the .eu Alternative Dispute Resolution Rules (the “ADR Rules”) and the World Intellectual Property Organization Supplemental Rules for .eu Alternative Dispute Resolution Rules (the “Supplemental Rules”).

In accordance with the ADR Rules, Paragraph B(2), the Center formally notified the Respondent of the Complaint, and the proceedings commenced on November 28, 2023. In accordance with the ADR Rules, Paragraph B(3), the due date for Response was December 18, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 19, 2023.

The Center appointed Louis-Bernard Buchman as the sole panelist in this matter on December 20, 2023. 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 ADR Rules, Paragraph B(5).

4. Factual Background

The Complainant is the holding company of one of the largest banking groups in France, with two major retail banking networks, “Banque Populaire” and “Caisse d’Epargne”, and is operating a full range of banking, financing and insurance activities. It has 105,000 employees, serving 36 million customers, nine million of whom have chosen to become cooperative shareholders. Through its subsidiaries, the Complainant is also active outside France, in over 40 countries worldwide.

The Complainant owns rights in several CAISSE D’EPARGNE trademarks, including *inter alia* the French trademark registration No. 1658134, registered on September 27, 1991, the European Union Trademark registration No. 000637504, registered on April 8, 1999 and the French trademark registration for LA CAISSE D’EPARGNE No. 3155888, registered on August 30, 2002 (together hereinafter referred to as: “the Mark”).

In addition, the Complainant owns and operates the <caisse-epargne.com> domain name, registered in 1998 and the <caisse-epargne.fr> domain name, registered in 2009, which enable customers to access their bank accounts and conduct online transactions.

The disputed domain name <caisse-epargne.eu> was registered on October 2, 2023, and does not resolve to an active website, but rather gives warning of an unsafe and potentially dangerous website ahead.

5. Parties’ Contentions

A. Complainant

- (i) The Complainant submits that the disputed domain name reproduces the Mark, in which the Complainant has rights, and is nearly identical and confusingly similar to the Mark.
- (ii) The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name. Furthermore, the Complainant contends that it never authorized the Respondent to use the Mark in any manner and that the Respondent has never had any affiliation with the Complainant.
- (iii) The Complainant submits that the Respondent has registered the disputed domain name in bad faith and, by its passive holding, is also using it in bad faith.
- (iv) The Complainant requests that the disputed domain name be transferred to the Complainant.

B. Respondent

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

6. Discussion and Findings

6.1. Procedural Aspects: Admissibility of a request to transfer and failure to comply

The Panel finds that the Complainant satisfies the general eligibility criteria for registration set out in Article 3 of Regulation (EU) No 2019/517, and thus that, pursuant to sub-paragraph B(11)(b) of the ADR Rules, the transfer of the disputed domain name is a remedy available to the Complainant.

Pursuant to sub-paragraph B(11)(a) of the ADR Rules, the Panel is empowered to decide a Complaint on the basis of the statements and documents submitted.

Under paragraph B(11)(d) of the ADR Rules, it is the Complainant's burden to establish that all of the required criteria for granting the remedy sought have been met.

Under the ADR Rules, sub-paragraph B(10)(a), a failure by the Respondent to comply with any time period is a ground to accept the claims of the Complainant. As noted above, the Respondent has failed to respond within the time period provided.

Under sub-paragraph B(10)(b) of the ADR Rules, the Panel is empowered to draw from the Respondent's failure to comply such inferences as it considers appropriate, and under sub-paragraph B(7)(d) of the ADR Rules, the Panel is empowered to determine in its sole discretion the admissibility, relevance, materiality and weight of the evidence.

In this case, the Panel finds that the Respondent has failed to rebut any of the reasonable factual assertions that are made and supported by evidence submitted by the Complainant.

In particular, by failing to respond, the Respondent has failed to offer the Panel any of the types of evidence set forth in sub-paragraph B(11)(e) of the ADR Rules or otherwise, from which the Panel might conclude that the Respondent has any rights or legitimate interests in the disputed domain name, such as making legitimate noncommercial or fair use of the disputed domain name.

Moreover, as discussed below, the Respondent has failed to provide any exculpatory information or reasoning that might have led the Panel to question the Complainant's arguments that the Respondent has acted in bad faith.

6.2. Substantive Aspects

A. Identical or Confusingly Similar to a name in respect of which a right is recognized or established by national law of a Member State and/or European Union law

In comparing the Mark with the disputed domain name, it is evident that the latter consists of the Mark, save for the letter "d" followed by an apostrophe, and the country-code Top-Level Domain ("ccTLD") ".eu".

It is well established that a ccTLD does not generally affect the assessment of a domain name for the purpose of determining identity or confusingly similarity.

The Panel finds that the disputed domain name <caisse-epargne.eu> is confusingly similar to the Mark, which is incorporated in its entirety, because the Mark is recognizable within the disputed domain name. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.7.¹

Thus, the Complainant has satisfied the requirement of sub-paragraph B(11)(d)(1)(i) of the ADR Rules.

B. Rights or Legitimate Interests

Although a complainant bears the ultimate burden of establishing all required elements of sub-paragraph B(11)(d)(1) of the ADR Rules, with regard to sub-paragraph B(11)(d)(1)(ii) of the ADR Rules, this could result in the often impossible task of proving a negative proposition, requiring information that is primarily, if not exclusively, within the knowledge of a respondent.

¹Noting the similarities between the Uniform Domain Name Dispute Resolution Policy (the "UDRP") and the ADR Rules, the Panel has referred to prior UDRP cases and the [WIPO Overview 3.0](#), where appropriate.

Thus, the Panel's view is that sub-paragraph B(11)(d)(1)(ii) of the ADR Rules shifts the burden of production of evidence to the respondent to come forward with evidence of rights or legitimate interests in a domain name, once the complainant has made a *prima facie* showing, as the Panel finds the Complainant has made in this case, based on the facts and arguments set out above. See [WIPO Overview 3.0](#), section 2.1.

As previously noted, the Respondent offered no reason for registering the disputed domain name. There is no evidence that the Respondent is known by the disputed domain name or uses (or has made *bona fide* preparations to use) the disputed domain name in a business or otherwise.

The nature of the disputed domain name is such that it carries a risk of implied affiliation with the Complainant, seeing how the disputed domain name is nearly identical to the Mark, and to the Complainant's wisely-used domain names.

No information is provided on what rights or legitimate interests the Respondent may have in the disputed domain name.

To counter any notion that the Respondent has such rights or legitimate interests, the Complainant has argued that the Respondent (i) has no affiliation with the Complainant and (ii) received no authorization from the Complainant to register or use the disputed domain name. In addition, the disputed domain name resolves to an unsafe and potentially dangerous website. This further shows that the Respondent does not carry any legitimate interests or rights in the disputed domain name.

In the circumstances, the Panel concludes that the Complainant has established the requirement of sub-paragraph B(11)(d)(1)(ii) of the ADR Rules with respect to the disputed domain name.

C. Registered or Used in Bad Faith

As noted above, the Respondent has failed to provide any exculpatory information or persuasive reasoning that might have led the Panel to question the Complainant's arguments that the Respondent acted in bad faith by creating confusion to the detriment of the Complainant in registering a domain name nearly identical to the Mark.

In this case, the Panel finds it implausible that the Respondent, who is apparently located in France, chose to register the disputed domain name randomly with no knowledge of the Mark, considering that several prior UDRP decisions (see for instance *BPCE v. Withheld for Privacy Purposes*, *Privacy service provided by Withheld for Privacy ehf / pascale kiss, cherhgi*, WIPO Case [D2021-1251](#), and *BPCE v. maryline PENCIOLELLI*, WIPO Case [D2023-1107](#)) have recognized that the Mark is well known in France.

Regarding the use, it is established in prior UDRP decisions that the passive holding of a domain name does not prevent a finding of bad faith, especially when its good faith use is in no way plausible, considering the specificity of the activity (see [WIPO Overview 3.0](#), section 3.3).

The Panel finds it is not possible to imagine any plausible future active use of the disputed domain name that would not be illegitimate, considering the specificity of the Complainant's banking activity and the composition of the disputed domain name.

Moreover, it is well established that the mere passive holding of a domain name may in appropriate circumstances be evidence not only of bad faith registration, but also of bad faith use. See *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#).

The Panel notes that the disputed domain name is nearly identical to the Mark, which, in the absence of any explanation of the reasons for the registration by the Respondent, leads the Panel to infer that the disputed domain name was, more likely than not, registered either for phishing purposes or to take unfair advantage of the Complainant's goodwill in the Mark.

The Panel concludes, notably in the light of the Respondent's electing not to provide any substantive defense of its position, that the Respondent's registration and use of the disputed domain name constitute bad faith, and that the requirement of sub-paragraph B(11)(d)(1)(iii) of the ADR Rules is also satisfied in this case.

7. Decision

For the foregoing reasons, in accordance with Paragraph B (11) of the ADR Rules, the Panel orders that the disputed domain name, <caisse-epargne.eu>, be transferred to the Complainant².

/Louis-Bernard Buchman/

Louis-Bernard Buchman

Sole Panelist

Date: December 22, 2023

² The decision shall be implemented by the Registry within thirty (30) days after the notification of the decision to the Parties, unless the Respondent initiates court proceedings in a Mutual Jurisdiction, as defined in paragraph A(1) of the ADR Rules.

(ii) The remedy sought is transfer of the disputed domain name to Complainant. As Complainant is established in the European Union, it satisfies the general eligibility criteria for registration of the disputed domain name set out in Article 3 of Regulation (EU) 2019/517.