

ADMINISTRATIVE PANEL DECISION

Bforbank v. khalifah al amri
Case No. D2023-2567

1. The Parties

The Complainant is Bforbank, France, represented by Nameshield, France.

The Respondent is khalifah al amri, United States of America.

2. The Domain Names and Registrar

The disputed domain names <bforbanke.com>, <bforbankfr.com>, <bforbank3d.com>, <bforbnak.com>, <bforebank-fr.com>, <bforebankfr.com>, <bfrebank.com>, <bfrobank.com>, <e-beforbank.com>, and <fr-bforebank.com> are registered with Google LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 14, 2023. On June 15, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On the same day, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names, which differed from the named Respondent (Contact Privacy Inc. Customer 7151571251) and contact information in the Complaint. The Center sent an email communication to the Complainant on June 16, 2023, 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 June 19, 2023.

On June 16, 2023, the Center sent an email communication regarding the language of the proceeding in English and French, since the Complaint was filed in French and the registration agreement was disclosed to be in English. The Complainant submitted an amended Complaint translated into English on June 19, 2023. The Respondent did not submit any response to the Center’s communication.

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 June 23, 2023. In accordance with the Rules, paragraph 5, the due date for Response was July 13, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on July 14, 2023.

The Center appointed Andrea Jaeger-Lenz as the sole panelist in this matter on July 19, 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 Rules, paragraph 7.

4. Factual Background

The Complainant is an online bank based in France.

The Complainant is the owner of trademark registrations consisting of or including the sign BFORBANK, such as:

- European Union ("EU") trademark no 8335598 BFORBANK (word), filed on June 2, 2009, registered on December 8, 2009, for goods and services in Classes 9, 35, 36, and 38.

In addition, the Complainant owns domain names including the sign BFORBANK, such as the domain name <bforbank.com>, which it registered on January 16, 2009, and uses as its official website.

The disputed domain names were registered between May 29, 2023, and June 1, 2023, and are all inactive.

5. Parties' Contentions

A. Complainant

The Complainant contends that each of the three elements specified in paragraph 4(a) of the Policy is established in the present case:

The Complainant argues that the disputed domain names are all confusingly similar to a trademark, which it owns rights.

Concerning the disputed domain names <bforbank3d.com>, <bforbanke.com>, and <bforbankfr.com> the Complainant argues that the addition of the letters "3d", "e", and "fr", respectively, is not sufficient to escape the conclusion that these are confusingly similar to the Complainant's BFORBANK trademark. Concerning the disputed domain names <bforbnak.com>, <bforebank-fr.com>, <bforebankfr.com>, <bfrobank.com>, <bfrebank.com>, <e-beforbank.com>, and <fr-bforebank.com>, the Complainant contends that the additions, inversions or deletion of letters within the BFORBANK element, nor the additions of the letters "fr" and "e" are sufficient to dispel the confusing similarity between these disputed domain names and the Complainant's trademark. Finally, the addition of the generic Top-Level-Domain ("gTLD") ".com" does not change the impression of the designations being connected to the Complainant's trademark.

The Complainant claims that the Respondent has no rights or legitimate interests in respect of the disputed domain names.

The Complainant asserts that the Respondent is not known as the disputed domain names. It is not identified in the Whois database as the disputed domain names. Past panels have held that a respondent was not commonly known by a disputed domain name if the Whois information was not similar to the disputed domain name. Also, the Respondent is not known to the Complainant. It is neither affiliated with or authorized by it in any way. In addition, the Respondent has no rights or legitimate interests in respect of the

disputed domain names. The Respondent does not carry out any business activity for the Complainant, not have any license or authorization been granted by the Complainant. Finally, the disputed domain names are inactive, so the Respondent did not use them, nor are there any demonstrable plans to use them.

Finally, the Complainant contends that the disputed domain names were registered and are being used in bad faith.

According to the Complainant, the disputed domain names were registered in bad faith in the first place. They are all confusingly similar to the Complainant's trademark and were registered several years after the Complainant had registered its BFORBANK trademark. The Complainant claims to have built up a solid reputation using its trademark in France and the EU, offering daily banking, savings, investment, and credit services to 240,000 customers. In particular for the disputed domain names <bforbnak.com>, <bforebank-fr.com>, <bforebankfr.com>, <bfrobank.com>, <bfrebank.com>, <e-beforbank.com>, and <fr-bforebank.com> the spelling errors were intentionally designed to create confusion with the Complainant's trademark. Given the distinctiveness of the Complainant's trademark and reputation, it, according to the Complainant, is inconceivable that the Respondent could have registered the disputed domain names without actual knowledge of the Complainant's rights in the trademark.

On the use in bad faith, the Complainant points to the disputed domain names being inactive. On this, the Complainant argues that the Respondent has not shown any activity in respect of the disputed domain names, and it is inconceivable that any legitimate use could be made of the disputed domain names. Consequently, considering the view of prior UDRP panels that the incorporation of a famous trademark coupled with an inactive website may be evidence of use in bad faith, the Complainant concluded that the same is true in the present case.

B. Respondent

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

6. Discussion and Findings

Pursuant to paragraph 4 (a) of the Policy, a complainant must prove that each of the following three elements is present:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and
- (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.

In the following, the Panel will discuss in consecutive order whether each of these requirements is met.

A. Identical or Confusingly Similar

On the first element, a complainant has to establish that there is a trademark or service mark, in which it has rights.

The Complainant has demonstrated registered trademark rights in and use of trademarks consisting of or comprising the sign BFORBANK.

Further, the test for identity or confusing similarity under the Policy, paragraph 4(a)(i) is limited in scope to a direct comparison between the Complainant's trademarks and the textual string which comprises the disputed domain name.

As for the disputed domain names <bforbank3d.com>, <bforbanke.com>, and <bforbankfr.com>, the Panel agrees that these disputed domain name include the trademark BFORBANK in its entirety, merely adding the numbers/letters “3d”, “e” and “fr”, respectively, and adding the gTLD “.com”. Pursuant to WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.7, in cases where a domain name incorporates the entirety of a trademark, said domain name will be found to be identical or confusingly similar for purposes of the UDRP.

As for the disputed domain names <bforbnak.com>, <bforebank-fr.com>, <bforebankfr.com>, <bfrobank.com>, <bfrebank.com>, <e-beforbank.com>, and <fr-bforebank.com>, the Panel agrees with the Complainant that these represent common, obvious or intentional misspellings of the Complainant’s trademark, partially with additions as “fr” for France or “e” for electronic. Pursuant to section 1.9 of the [WIPO Overview 3.0](#), a domain name which consists of common, obvious or intentional misspellings of a trademark is considered by panels to be confusingly similar for the purposes of the first element. Here, the disputed domain names all contain sufficiently recognizable aspects of the Complainant’s trademark (see *Artemis Marketing Corp. v. Admin Contact, c/o PrivateName Services Inc. / Amir Cohen and Registration Private, Domains by Proxy, LLC / VMI INC*, WIPO Case No [D2021-3480](#)).

For the purposes of assessing identity or confusing similarity under paragraph 4(a)(i) of the Policy the Panel typically ignore the gTLD (section 1.11 of [WIPO Overview 3.0](#)).

Therefore, all of disputed domain names are confusingly similar to the Complainant’s trademark.

In view of the above, the Panel finds that the Complainant has satisfied the requirement of paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

On the second element, under paragraph 4(a)(ii) of the Policy, the Complainant bears the burden of establishing that the Respondent has no rights or legitimate interests in respect of the disputed domain names.

It is consistent case law of UDRP panels that it is sufficient for the Complainant to make a *prima facie* showing that the Respondent has no rights or legitimate interests in the disputed domain names in order to place the burden of production on the Respondent (see section 2.1 of the [WIPO Overview 3.0](#)).

The Panel notes that, with respect to paragraph 4(c)(i) of the Policy, there is no evidence in the record that the Respondent, before any notice of the dispute, used or prepared to use the disputed domain names or a name corresponding to the disputed domain names in connection with a *bona fide* offering of goods or services.

The Panel further notes that, with respect to paragraph 4(c)(ii) of the Policy, there is no evidence that indicates that the Respondent has ever been commonly known by the disputed domain.

Additionally, with respect to paragraph 4(c)(iii) of the Policy, there is no evidence that the Respondent has made, and is making, a legitimate noncommercial or fair use of the disputed domain names. On the contrary, given that all of the disputed domain names are inactive, the Respondent is not making any use whatsoever of the disputed domain names. In light of this, and considering in particular the multitude of disputed domain names containing the entirety of the Complainant’s trademark or common, obvious and intentional misspellings of the Complainant’s trademark, the Panel finds that it is clear that the Respondent intentionally sought to mislead unsuspecting Internet users expecting to find the Complainant through the confusingly similar disputed domain names.

Moreover, the Respondent is not known to the Complainant, nor has the Complainant authorized, licensed or permitted in any other way the Respondent to register or use the disputed domain names or its trademark.

Therefore, the Panel finds that the Complainant has provided sufficient evidence to hold that the Respondent has no rights or legitimate interests in the disputed domain names. The Complainant has satisfied the requirement of paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

On the third element, under paragraph 4(a)(iii) of the Policy, the Complainant has to establish that the Respondent registered and is using the disputed domain names in bad faith.

As to registration in bad faith, the Panel notes that the disputed domain names were registered many years after the registration of the Complainant's BFORBANK trademark, and accepts that the disputed domain names were chosen by reference to this trademark. The Panel holds the Complainant's trademark to be sufficiently distinctive to assume that it is inconceivable that the disputed domain names with their specific additions and misspellings could have been chosen and registered without actual knowledge and even targeting of the Complainant's trademark. Consequently, the Panel finds that the Respondent registered the disputed domain names in bad faith.

As to use in bad faith, according to paragraph 4(b) of the Policy, the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use in bad faith: (i) circumstances indicating registration or acquisition of the domain name primarily for the purpose of selling, renting or otherwise transferring to the complainant who is the owner of the trademark for valuable consideration or to one of its competitors, or (ii) registration of the domain name in order to prevent the owner of the trademark from reflecting the mark in a corresponding domain name, or (iii) registration of the domain name primarily for the purpose of disrupting the business of a competitor, or (iv) by using the domain name, intentionally attempting to attract, for commercial gain, Internet users to the respondent's website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of his website or location or of a product or service on his web site or location.

Here, the disputed domain names are inactive. With comparative reference to the circumstances set out in paragraph 4(b) of the Policy, it is consensus view of UDRP panels that, nevertheless, the apparent lack of so-called active use of a disputed domain name does not prevent such finding of bad faith. Rather, a panel must examine all the circumstances of the case to determine whether the respondent is acting in bad faith, such as the complainant having a well-known trademark, no response of the respondent, or the registrant's concealment of its identity (see section 3.3 of the [WIPO Overview 3.0](#)).

In the present case, whether or not the materials referred to by the Complainant in Annex 3 to the Complaint allow the conclusion that its trademark is well known in the strict sense of the trademark law, does not need to be answered. A quick Internet search conducted by the Panel shows that the top search results returned for the search phrase "bforbank" lead to the Complainant's website or third party websites providing information relating to the Complainant's banking business. Taking this into consideration, together with the multitude of the disputed domain names registered by the Respondent, all either containing the distinctive trademark of the Complainant in its entirety or displaying common, obvious or intentional misspellings of its trademark, make it inconceivable to assume that the disputed domain names could be but to any use that would not amount to use in bad faith (see *Artemis Marketing Corp. v. Admin Contact, c/o PrivateName Services Inc. / Amir Cohen and Registration Private, Domains by Proxy, LLC / VMI INC, supra*). In addition, the Respondent did not respond to the Complainant's contentions. Further, the Panel finds that the Respondent's efforts to conceal its identity through the use of a Whols proxy service, and using an apparently incorrect address which is evidenced by the fact, that the courier could not physically deliver a copy of the present Complaint to the Respondent details disclosed by the Registrar, as well as, finally the fact that the Respondent has not participated in these proceedings can be construed as further evidence that the disputed domain names were registered and are being used in bad faith (see also *TTT Moneycorp Limited. v. Diverse Communications*, WIPO Case No. [D2001-0725](#)).

In the circumstances, the Panel finds that the disputed domain names have been registered and are being used in bad faith and that the requirement of paragraph 4(a)(iii) of the Policy has been satisfied.

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 names, <bforbanke.com>, <bforbankfr.com>, <bforbank3d.com>, <bforbnak.com>, <bforebank-fr.com>, <bforebankfr.com>, <bfrebank.com>, <bfrobank.com>, <e-beforbank.com>, and <fr-bforebank.com>, be transferred to the Complainant.

/Andrea Jaeger-Lenz/

Andrea Jaeger-Lenz

Sole Panelist

Date: August 3, 2023