

## **ADMINISTRATIVE PANEL DECISION**

BPCE v. Dixx Store

Case No. D2024-0466

### **1. The Parties**

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

The Respondent is Dixx Store, Benin.

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

The disputed domain name <caissecredpargne.com> is registered with Hostinger Operations, UAB (the "Registrar").

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on January 31, 2024. On February 1, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 2, 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 (Privacy Protect, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on the same date 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 February 5, 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 the Respondent of the Complaint, and the proceedings commenced on February 6, 2024. In accordance with the Rules, paragraph 5, the due date for Response was February 26, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on February 27, 2024.

The Center appointed Eva Fiammenghi as the sole panelist in this matter on March 4, 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, BPCE, is a French joint stock company acting as the central institution responsible for the two banking networks Banques Populaires and Caisses d'Epargne.

The Complainant is the second largest banking group in France.

The Complainant owns CAISSE D'EPARGNE trademark registrations in many jurisdictions, including, , but not limited to, the following:

- French trademark CAISSE D'EPARGNE and device Reg. No. 1658134 registered on April 26, 1991, in classes 9, 16, 28, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, and; 45;

- European Union trademark CAISSE D'EPARGNE and device Reg. No. 000637504 registered on April 8, 1999, in classes 9, 16, 35, 36, 38, 41 and 42;

- French trademark LA CAISSE D'EPARGNE Reg. No. 3155888 registered on March 27, 2002, in classes 36 and 41

The Complainant is also the owner of the domain names <caisse-epargne.com> registered since 1998 and <caisse-epargne.fr>, registered since 2009.

The disputed domain name was registered on November 27, 2023, and on December, 2023, it led to a website in French language supposedly offering loan services reproducing the trademark CAISSE D'EPARGNE. At the moment of the filing of the Complaint, it led to a parked page indicating that the disputed domain name was in maintenance.

#### **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.

The Complainant contends that the disputed domain name is confusingly similar to the trademarks CAISSE D'EPARGNE (which are entirely reproduced) with the simple addition of the letters "cr" between the words "Caisse" and "d'Epargne".

The Respondent is not affiliated with the Complainant and there is no evidence to suggest that the Respondent has registered the disputed domain name with legitimate interests. The Complainant has never licensed or otherwise permitted the Respondent to use its trademark or to register any domain name including its trademark.

Lastly, the Complainant claims that the Respondent has registered and use the disputed domain name in bad faith.

The Complainant requests that the disputed domain name be transferred to it.

##### **B. Respondent**

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

## 6. Discussion and Findings

Under paragraph 4(a) of the Policy, to succeed the Complainant must prove that:

- (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 was registered and is being used in bad faith.

These elements are discussed in turn below. In considering these elements, paragraph 15(a) of the Rules provides that the Panel shall decide the Complaint on the basis of statements and documents submitted and in accordance with the Policy, the Rules and any other rules or principles of law that the Panel deems applicable.

### 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.

Based on the available record, the Panel finds 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 the mark is recognizable 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 the letters, "cr" may bear on assessment of the second and third elements, the Panel finds the addition of such letters 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. Based on the available record, the Panel finds the first element of the Policy has been established.

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### 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 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.

There is no evidence that the Respondent has used or made demonstrable preparations to use the disputed domain name in connection with a legitimate noncommercial or fair use or a bona fide offering of goods or services. The Respondent has used the disputed domain name, which is confusingly similar to the Complainant's well-known mark in the field of financial services, to resolve to a website that purports to offer competing services. Such conduct does not, on its face, amount to the use of the disputed domain name for a bona fide offering of goods or services. Nor does the use of the disputed domain name for a website that is under construction amount to a bona fide offering of goods or services under the current circumstances.

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.

In the present case, the Panel notes that the registration of the Complainant's trademark in the financial segment long predate the registration of the disputed domain name by the Respondent and concludes that, the Respondent, most likely, was aware of the Complainant and its well-known trademark when registering the disputed domain name, and thus, has registered such in bad faith.

In addition, the use of the disputed domain name to resolve to a website purportedly offering similar services to the Complainant's, is evidence that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website, by creating a likelihood of confusion with the Complainant's trademarks as to the source, sponsorship affiliation or endorsement. The evidence that the Respondent registered the disputed domain name with a Mail Exchanger record ("MX record"), supports the Panel's findings on bad faith.

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. 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 well-known status of the Complainant's trademark 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.

Based on the available record, 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 <caissecrdepargne.com> be transferred to the Complainant.

*/Eva Fiammenghi/*

**Eva Fiammenghi**

Sole Panelist

Date: March 18, 2024