

ADMINISTRATIVE PANEL DECISION

Varengold Bank AG v. Privacy service provided by Withheld for Privacy ehf /
Sergey Frolov
Case No. D2022-0723

1. The Parties

The Complainant is Varengold Bank AG, Germany, represented by FPS Partnerschaftsgesellschaft von Rechtsanwälten mbB, Germany.

The Respondent is Privacy service provided by Withheld for Privacy ehf, Iceland / Sergey Frolov, Germany.

2. The Domain Name and Registrar

The disputed domain name <varengoldcrypto.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 March 2, 2022. On March 2, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 2, 2022, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on March 3, 2022, 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 March 3, 2022.

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 March 10, 2022. In accordance with the Rules, paragraph 5, the due date for Response was March 30, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 31, 2022.

The Center appointed Brigitte Joppich as the sole panelist in this matter on April 7, 2022. 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 German bank offering financial services. It promotes its services online at <varengold.de>.

The Complainant is the registered owner of International trademark registration no. 983216 for VARENGOLD figurative mark, which was registered on September 29, 2008 and enjoys protection for various services in classes 35, 36, 38, and 42 (the "VARENGOLD Mark").

The disputed domain name was registered on January 25, 2022, and is used in connection with an almost exact copy of the Complainant's website.

5. Parties' Contentions

A. Complainant

With regard to the three elements specified in the Policy, paragraph 4(a), the Complainant contends that each of the three conditions is given in the present case.

(i) The disputed domain name is confusingly similar to the highly distinctive VARENGOLD Mark, as it is fully included in the disputed domain name and forms the beginning of the disputed domain name. The additional word "crypto" is a common abbreviation for "cryptocurrency" and merely descriptive.

(ii) The Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name. It states that the present case is a case of identity fraud and that the Respondent does not have any rights in "Varengold", cannot claim prior usage of "Varengold", and is not commonly known by this name.

(iii) The Complainant claims that the disputed domain name was registered and is being used in bad faith. The Complainant argues that the Respondent intentionally attempted to attract, for commercial gain, Internet users to the Respondent's website by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website. The Complainant argues that the Respondent's bad faith is obvious from the contents of the website, which is an almost exact copy of the Complainant's website. It further contends that the Respondent pretends to be the Complainant and provides a different email address and phone number on its website. It purposefully misleads customers to contact the Respondent instead of the Complainant for their banking needs.

B. Respondent

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

6. Discussion and Findings

Under the Policy, paragraph 4(a), the Complainant must prove that each of the following three elements is present:

- (i) the disputed domain name is identical or confusingly similar to the Complainant's trademark; 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.

A. Identical or Confusingly Similar

The disputed domain name is confusingly similar to the VARENGOLD Mark as it contains the word element of the VARENGOLD Mark in its entirety, only adding the term “crypto”. It is well established that the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) does not prevent a finding of confusing similarity under the first element. In the present case, the VARENGOLD Mark is obviously recognizable within the disputed domain name. See section 1.7 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”).

The Panel finds that the Complainant satisfied the requirements of the Policy, paragraph 4(a)(i).

B. Rights or Legitimate Interests

Even though the Policy requires the complainant to prove that the respondent has no rights or legitimate interests in the disputed domain name, it is the consensus view among UDRP panels that a complainant has to make only a *prima facie* case to fulfill the requirements of the Policy, paragraph 4(a)(ii). As a result, once a *prima facie* case is made out, the burden of production on this element shifts to the respondent to come forward with evidence demonstrating the respondent’s rights or legitimate interests in the disputed domain name.

The Complainant has substantiated that the Respondent has no rights or legitimate interests in the disputed domain name. The Panel finds that the Complainant has made a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name and that the burden of production has been shifted to the Respondent.

The Respondent did not deny these assertions in any way and therefore failed to come forward with any allegations or evidence demonstrating any rights or legitimate interests in the disputed domain name.

Based on the evidence before the Panel, the Panel cannot find any rights or legitimate interests of the Respondent either. The Respondent’s use of the disputed domain name in connection with a copy of the Complainant’s website to mislead the Complainant’s customers is no *bona fide* use under the Policy.

Accordingly, the Panel finds that the Complainant has proven that the Respondent has no rights or legitimate interests in respect of the disputed domain name under the Policy, paragraphs 4(a)(ii) and 4(c).

C. Registered and Used in Bad Faith

The Panel is satisfied that the Respondent registered and used the disputed domain name in bad faith.

Given that the Respondent is using the disputed domain name in connection with a copy of the Complainant’s website, the Respondent deliberately targets the Complainant and the VARENGOLD Mark and therefore obviously registered the disputed domain name in bad faith.

In addition, the mentioned use of the disputed domain name clearly constitutes bad faith under the Policy, paragraph 4(b)(iv), as the Respondent intentionally attempted to attract, for commercial gain, Internet users to the Respondent’s website, by creating a likelihood of confusion with the Complainant’s mark as to the source, sponsorship, affiliation, or endorsement of the Respondent’s website.

Consequently, the Panel finds that the Respondent registered and used the disputed domain name in bad faith and that the Complainant satisfied the requirements of the Policy, paragraph 4(a)(iii).

7. Decision

For the foregoing reasons, in accordance with the Policy, paragraphs 4(i) and the Rules, paragraph 15, the Panel orders that the disputed domain name <varengoldcrypto.com> be transferred to the Complainant.

/Brigitte Joppich/

Brigitte Joppich

Sole Panelist

Date: April 19, 2022