

ADMINISTRATIVE PANEL DECISION

BPCE v. Vitaly Potapov
Case No. D2022-1239

1. The Parties

The Complainant is BPCE, France, represented by DBK Société d'Avocats, France.

The Respondent is Vitaly Potapov, Russian Federation.

2. The Domain Names and Registrar

The disputed domain names <bpcecapital.info> and <bpcecapital.site> (the "Domain Names") are registered with Registrar of Domain Names REG.RU LLC.

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the "Center") on April 7, 2022. On April 8, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Names. On April 8, 2022, the Registrar transmitted by email to the Center its verification response registrant and contact information for the Domain Names which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on April 13, 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 April 19, 2022.

The Registrar confirmed that the language of the Registration Agreement for the Domain Name is Russian. On April 13, 2022, the Center sent an email communication to the Parties in both English and Russian regarding the language of the proceeding. On April 15, 2022, the Complainant submitted the Complaint translated into Russian. On April 27, 2022, the Complainant submitted the request that English be the language of the proceeding. The Respondent did not comment on the language of the proceeding.

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 in both English and Russian, and the proceedings commenced on April 28, 2022. In accordance with the Rules, paragraph 5, the due date for Response was May 18, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on May 19, 2022.

The Center appointed Piotr Nowaczyk as the sole panelist in this matter on May 31, 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

BPCE, the Complainant in the present proceeding, is the second largest banking group in France. It conducts banking, financial and insurance activities. The Complainant employees currently 105,000 persons and serves 36 million customers. It is also present in more than 40 countries.

The Complainant is the owner of several BPCE trademark registrations, including:

- the French Registration BPCE No. 3653852 registered on May 29, 2009;
- the International Registration BPCE No. 1033662 registered on December 15, 2009;
- the European Union Registration BPCE No. 008375842 registered on January 12, 2010.

The Complainant is also the owner of numerous domain names incorporating its BPCE trademark, including <bpce.fr>, <groupebpce.com> and <groupebpce.fr>.

The Respondent registered the Domain Names on December 21, 2021.

As of the time of filing the Complaint and as of the date of this Decision, the Domain Name <bpcecapital.info> resolved to a parking page informing that the Russian version of the website has been moved to the Domain Name <bpcecapital.site>. The latter resolves to the website promoting various financial services (the "Website").

5. Parties' Contentions

A. Complainant

The Complainant requests that the Domain Names be transferred to the Complainant. According to the Complainant, each of the three elements specified in paragraph 4(a) of the Policy are satisfied in the present case.

First, the Complainant submits that the Domain Names are confusingly similar to the BPCE trademark registrations of the Complainant.

Second, the Complainant argues that the Respondent has neither rights nor legitimate interests in the Domain Names.

Third, the Complainant submits that the Domain Names were registered and are being used in bad faith.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy places a burden on the Complainant to prove the presence of three separate elements, which can be summarized as follows:

(i) the Domain Names are 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 the Domain Names; and

(iii) the Domain Names have been registered and are being used in bad faith.

The requested remedy may only be granted if the above criteria are met.

At the outset, the Panel notes that the applicable standard of proof in UDRP cases is the “balance of probabilities” or “preponderance of the evidence”. See section 4.2 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”).

A. Language of the Proceeding

The language of the Registration Agreement for the Domain Names is Russian. Paragraph 11(a) of the Rules provides 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”. The Panel may also order that any documents submitted in a language other than that of the proceeding be translated.

As noted by previous UDRP panels, paragraph 11 of the Rules must be applied in accordance with the overriding requirements of paragraphs 10(b) and 10(c) of the Rules that the parties are treated equally, that each party is given a fair opportunity to present its case, and that the proceeding takes place with due expedition (see, e.g., *General Electric Company v. Edison Electric Corp. a/k/a Edison Electric Corp. General Energy, Edison GE, Edison-GE and EEEGE.COM*, WIPO Case No. [D2006-0334](#)).

The Complainant has submitted a request that the language of the proceeding be English.

The Panel notes that the Domain Names consist of the Complainant’s BPCE trademark together with the English term “capital”. Moreover, English is the language used commonly in business transactions worldwide, including in the financial services which the Domain Names refer to. Finally, the Panel notes that the Respondent did not comment on the language of the proceeding and did not participate in the proceeding, even though the Respondent was notified in English and Russian regarding the language of the proceeding and the Complainant submitted the Complaint translated into Russian.

Thus, taking these circumstances into account, the Panel finds that it is appropriate to exercise its discretion and allow the proceeding to be conducted in English.

B. Identical or Confusingly Similar

The first element that the Complainant must establish is that the Domain Names are identical or confusingly similar to the Complainant’s trademark in which it has rights.

The Complainant holds several valid BPCE trademark registrations, which precede the registration of the Domain Names.

The Domain Names incorporate the Complainant's BPCE trademark in its entirety. As numerous UDRP panels have held, incorporating a trademark in its entirety is sufficient to establish that a domain name is identical or confusingly similar to a registered trademark (see *PepsiCo, Inc. v. PEPSI, SRL (a/k/a P.E.P.S.I.) and EMS Computer Industry (a/k/a EMS)*, WIPO Case No. [D2003-0696](#)).

The addition of the term "capital" does not prevent a finding of confusing similarity between the Domain Names and the Complainant's trademark. UDRP panels have consistently held that where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element. See section 1.8, [WIPO Overview 3.0](#).

The generic Top-Level Domains ".info" and ".site" in the Domain Names are viewed as a standard registration requirement and as such are disregarded under the first element confusing similarity test. See section 1.11.1, [WIPO Overview 3.0](#).

Given the above, the Panel finds that the Domain Names are confusingly similar to the Complainant's trademark. Thus, the Complainant has proved the requirements under paragraph 4(a)(i) of the Policy.

C. Rights or Legitimate Interests

The second requirement the Complainant must prove is that the Respondent has no rights or legitimate interests in the Domain Names.

The respondent may establish a right or legitimate interest in the disputed domain name by demonstrating in accordance with paragraph 4(c) of the Policy any of the following:

- (i) that it has used or made preparations to use the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services prior to the dispute; or
- (ii) that it is commonly known by the domain name, even if it has not acquired any trademark rights; or
- (iii) that it intends to make a legitimate, noncommercial or fair use of the domain name without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark.

Although given the opportunity, the Respondent has not submitted any evidence indicating that any of the circumstances foreseen in paragraph 4(c) of the Policy are present in this case.

On the contrary, it results from the evidence in the record that the Complainant's BPCE trademark registrations predate the Respondent's registration of the Domain Names. There is no evidence in the case file that the Complainant has licensed or otherwise permitted the Respondent to use the BPCE trademark or to register the Domain Names incorporating this trademark. There is also no evidence to suggest that the Respondent has been commonly known by the Domain Names.

Moreover, it results from the evidence in the record that the Respondent does not make use of the Domain Names in connection with a *bona fide* offering of goods or services, as well as it does not make a legitimate, noncommercial or fair use of the Domain Names without intent for commercial gain.

On the contrary, the Respondent uses the Domain Names to attract Internet users to the Website offering the financial services, namely the services in the same field of business which the Complainant operates in. Such use of the Domain Names does not constitute a *bona fide* offering of goods and services, as well as does not qualify as a legitimate, noncommercial or fair use without intent for commercial gain.

Finally, the Panel finds that the nature of the Domain Names carries a risk of implied affiliation, as the Domain Names incorporate the Complainant's trademark in its entirety with the addition of the term "capital".

See section 2.5.1, [WIPO Overview 3.0](#).

Given the above, the Respondent has failed to invoke any circumstances, which could demonstrate, pursuant to paragraph 4(c) of the Policy, any rights or legitimate interests in respect of the Domain Names. Thus, there is no evidence in the case file that refutes the Complainant's *prima facie* case. The Panel concludes that the Complainant has also proved the requirement under paragraph 4(a)(ii) of the Policy.

D. Registered and Used in Bad Faith

The third requirement the Complainant must prove is that the Domain Names have been registered and are being used in bad faith.

Bad faith under the UDRP is broadly understood to occur where a respondent takes unfair advantage of or otherwise abuses a complainant's mark. See section 3.1, [WIPO Overview 3.0](#).

Under paragraph 4(b) of the Policy, evidence of bad faith registration and use includes without limitation:

- (i) circumstances indicating the domain name was registered or acquired primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the owner of a trademark or to a competitor of the trademark owner, for valuable consideration in excess of the documented out-of-pocket costs directly related to the domain name; or
- (ii) circumstances indicating that the domain name were registered in order to prevent the owner of a trademark from reflecting the mark in a corresponding domain name, provided it is a pattern of such conduct; or
- (iii) circumstances indicating that the domain name was registered primarily for the purpose of disrupting the business of a competitor; or
- (iv) circumstances indicating that the domain name has intentionally been used in an attempt to attract, for commercial gain, Internet users to a website or other online location, by creating a likelihood of confusion with a trademark as to the source, sponsorship, affiliation, or endorsement of the website or location or of a product or service on a website or location.

As indicated above, the Complainant's rights in the BPCE trademark predate the registration of the Domain Names. This Panel finds that the Respondent was or should have been aware of the Complainant's trademark at the time of registration of the Domain Names. This finding is supported by the content of the Website offering the services in the field of finance, in which the Complainant operates. Moreover, it has been proven to the Panel's satisfaction that the Complainant's BPCE is well-known and unique to the Complainant. Thus, the Respondent could not likely reasonably ignore the reputation of products and services under this trademark. In sum, the Respondent in all likelihood registered the Domain Names with the expectation of taking advantage of the reputation of the Complainant's BPCE trademark.

Moreover, the Complainant presented evidence that the Domain Names are used in bad faith by the Respondent to attract Internet users to the Website offering financial services. The Website also features an option to create a user's account which requires providing the Respondent the personal data of the Internet users. Thus, this Panel finds that the Respondent uses the Domain Names in an attempt to attract, for commercial gain, Internet users to the Website by creating a likelihood of confusion with the BPCE trademark as to the source, sponsorship, affiliation, or endorsement of the Website or the activity carried out through this Website by the Respondent.

For the reasons discussed above, the Panel finds that the Complainant has proved the requirements under paragraph 4(a)(iii) 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 Domain Names <bpcecapital.info> and <bpcecapital.site> be transferred to the Complainant.

/Piotr Nowaczyk/

Piotr Nowaczyk

Sole Panelist

Date: June 14, 2022