

## **ADMINISTRATIVE PANEL DECISION**

Banque et Caisse d'Épargne de l'Etat, Luxembourg, v. Domain Admin,  
Whoisprotection.cc / hans larsson  
Case No. D2022-1505

### **1. The Parties**

The Complainant is Banque et Caisse d'Épargne de l'Etat, Luxembourg, Luxembourg, represented by Office Freylinger S.A., Luxembourg.

The Respondent is Domain Admin, Whoisprotection.cc, Malaysia / hans larsson, United States of America ("United States").

### **2. The Domain Names and Registrars**

The disputed domain name <spuerkeess.info> is registered with NETIM SARL (the "First Registrar").

The disputed domain names <spuerkeess-lu.com> and <spuerrkeess.com> are registered with Web Commerce Communications Limited dba WebNic.cc (the "Second Registrar").

The three disputed domain names are collectively referred to as the "Disputed Domain Names". The First and Second Registrar are collectively referred to as the "Registrars".

### **3. Procedural History**

The Complaint was filed against the domain name <spuerkeess-lu.com> with the WIPO Arbitration and Mediation Center (the "Center") on April 26, 2022. On April 27, 2022, the Center transmitted by email to the Second Registrar a request for registrar verification in connection with the domain name <spuerkeess-lu.com>. On April 28, 2022, the Second Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the domain name <spuerkeess-lu.com> which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on May 3, 2022, providing the registrant and contact information disclosed by the Second Registrar, and inviting the Complainant to submit an amendment to the Complaint. On May 3 and May 4, 2022, the Center received email communications from the Complainant requesting to add the domain names <spuerkeess.info> and <spuerrkeess.com> to the Complaint. On May 6, 2022, the Complainant filed an amended Complaint against the domain names <spuerkeess-lu.com>, <spuerkeess.info>, and <spuerrkeess.com>. On May 10 and May 11, 2022, the Registrars transmitted by email to the Center their verification responses with respect to the domain names <spuerkeess.info>, and <spuerrkeess.com> confirming that the Respondent is listed as the registrant and

reconfirming the contact details for these domain names.

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 May 18, 2022. In accordance with the Rules, paragraph 5, the due date for Response was June 7, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on June 15, 2022.

The Center appointed Flip Jan Claude Petillion as the sole panelist in this matter on June 21, 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, Banque et Caisse d'Epargne de l'Etat, Luxembourg, is a Luxembourgish company incorporated in 1989 and internationally active in the banking services. The Complainant is the holder of registered trademarks for *inter alia* banking, insurance, and financial services, including the following:

- SPUERKEESS, European Union word mark registered on November 2, 2010 under No. 009110552, covering goods and services in classes 9, 16, 25, 35, 36, 38, 39, 41, 42, 43 and 45;
- SPUERKEESS, United Kingdom word mark registered on November 2, 2010 under No. UK00909110552, covering goods and services in classes 9, 16, 25, 35, 36, 38, 39, 41, 42, 43 and 45.

The Disputed Domain Names have been registered on the following dates:

- <spuerkeess-lu.com>: March 20, 2022;
- <spuerkeess.info>: March 28, 2022;
- <spuerrkeess.com>: April 5, 2022.

The Disputed Domain Names appear to be inactive.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant considers the Disputed Domain Names to be identical or confusingly similar to trademarks in which it claims to have rights. The Complainant further claims that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Names. According to the Complainant, the Respondent is not commonly known by the Disputed Domain Names and is in no way affiliated with or authorized by the Complainant. Also, according to the Complainant, the Respondent cannot reasonably pretend it was intending to develop legitimate activity through the Disputed Domain Names given these are identical or almost identical to the Complainant's trademarks. Finally, the Complainant claims that the Disputed Domain Names were registered and are being used in bad faith. The Complainant contends that the Respondent knew or should have known of the existence of the Complainant's trademark rights. According to the Complainant, it is more than likely that the Respondent's intention is to use the Disputed Domain Names to intentionally attract, for commercial gain, Internet users to its websites by creating a likelihood of confusion with the Complainant's trademarks as to the source, sponsorship, affiliation or

endorsement of the websites. Moreover, the Complainant strongly believes that the Respondent will use the Disputed Domain Names for phishing purposes and registered the domain names to prevent the Complainant from using its trademark in the Disputed Domain Names or to try to sell them.

## **B. Respondent**

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

## **6. Discussion and Findings**

Paragraph 15 of the Rules provides that the Panel is to decide the Complaint on the basis of the statements and documents submitted and in accordance with the Policy, the Rules, and any rules and principles of law that it deems applicable.

The onus is on the Complainant to make out its case and it is apparent, both from the terms of the Policy and the decisions of past UDRP panels, that the Complainant must show that all three elements set out in paragraph 4(a) of the Policy have been established before any order can be made to transfer the Disputed Domain Names. As the proceedings are administrative, the standard of proof is the balance of probabilities.

Thus, for the Complainant to succeed, they must prove, within the meaning of paragraph 4(a) of the Policy and on the balance of probabilities that:

- i. the Disputed 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 respect of the Disputed Domain Names; and
- iii. the Disputed Domain Names have been registered and are being used in bad faith.

The Panel will deal with each of these requirements in turn.

### **A. Identical or Confusingly Similar**

To prove this element, the Complainant must first establish that there is a trademark or service mark in which it has rights. The Complainant has clearly established that there are trademarks in which it has rights. The Complainant's SPUERKEESS trademarks have been registered and used in connection to the Complainant's banking, insurance, and financial services.

All of the Disputed Domain Names incorporate the Complainant's SPUERKEESS trademark.

The disputed domain name <spuerkeess.info> is identical to the Complainant's SPUERKEESS trademark.

The disputed domain name <spuerkeess-lu.com> incorporates the Complainant's SPUERKEESS trademark in its entirety and adds a hyphen and the term "lu". Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms would not prevent a finding of confusing similarity under the first element (see section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)")).

The disputed domain name <spuerrkeess.com> simply adds a second letter "r" to the Complainant's mark. The Panel finds that the addition of only one letter to the Complainant's mark can be considered as "typosquatting" and creates virtually an identical and/or confusingly similar domain name to the Complainant's mark (see section 1.9 of the [WIPO Overview 3.0](#); *VIEFFE S.R.L. v. Contact Privacy Inc. Customer 0161579289 / TAI0 ECOM, Valentin Feirraghi, and Contact privacy inc. Customer 0161569583 / TAI0 ECOM, Taioecom3*, WIPO Case No. [D2021-1510](#); *Mapfre S.A. y Fundación Mapfre v. Josep Sitjar*,

WIPO Case No. [D2011-0692](#)).

It is well established that generic Top-Level Domains (“gTLDs”), here “.com” and “.info”, may be disregarded when considering whether a disputed domain name is confusingly similar to a trademark in which a complainant has rights.

In light of the above, the Panel considers the Disputed Domain Names to be either identical or confusingly similar to the Complainant’s SPUERKEESS trademark.

## **B. Rights or Legitimate Interests**

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Names.

As established by previous UDRP panels, 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 the Respondent does not appear to be commonly known by the Disputed Domain Names and that the Respondent does not seem to have acquired trademark or service mark rights (there being no Response or evidence of any such rights). According to the Registrars’ information provided, the Respondent of the Disputed Domain Names is “hans larsson”. The Respondent’s use and registration of the Disputed Domain Names was not authorized by the Complainant. There are no indications that a connection between the Complainant and the Respondent exists.

Where a domain name is identical to a complainant’s trademark, UDRP panels have largely held that it carries a high risk of implied affiliation. Even where a domain name consists of a trademark plus an additional term, UDRP panels have largely held that such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner (see section 2.5.1 of the [WIPO Overview 3.0](#)). In addition to the situations mentioned above, the Panel finds that subtle misspellings of a complainant’s mark in a domain name can also impersonate the complainant, as there is a risk that Internet users will not notice the difference between such misspelling and the complainant’s mark. In the present case, the Panel therefore finds that the Disputed Domain Names carry a risk of implied affiliation with the Complainant and cannot constitute fair use:

- <spuerkeess.info> is identical to the Complainant’s trademark, and the “.info” gTLD does nothing to avoid any confusion;
- <spuerkeess-lu.com> combines the Complainant’s mark with the term “lu”, which can be considered as an abbreviation for “Luxembourg” where the Complainant is located; and
- <spuerrkeess.com> contains a subtle misspelling of the Complainant’s mark by adding only one letter to the mark.

Beyond looking at the domain names and the nature of any additional terms appended to it, UDRP panels assess whether the overall facts and circumstances of the case, such as the content of the website linked to the disputed domain names and the absence of a response, support a fair use or not (see sections 2.5.2 and 2.5.3 of the [WIPO Overview 3.0](#)).

In this case, the Panel is of the opinion that the Respondent is not making a legitimate noncommercial or fair use of the Disputed Domain Names. In fact, the Respondent does not appear to make any use of the Disputed Domain Names. The passive holding or non-use of domain names is, in appropriate circumstances, evidence of a lack of rights or legitimate interests in the domain names (see *Red Bull GmbH v. Crédit du Léman SA, Jean-Denis Deletraz*, WIPO Case No. [D2011-2209](#)).

The Respondent had the opportunity to demonstrate his rights or legitimate interests but did not do so. In the absence of a Response from the Respondent, the *prima facie* case established by the Complainant has not been rebutted.

Therefore, the Panel finds that the Complainant has established that the Respondent has no rights or legitimate interests in the Disputed Domain Names.

In light of the above, the Complainant succeeds on the second element of the Policy.

### **C. Registered and Used in Bad Faith**

The Complainant must prove on the balance of probabilities both that the Disputed Domain Names were registered in bad faith and that these are used in bad faith (see section 4.2 of the [WIPO Overview 3.0](#) and, for example, *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#), and *Control Techniques Limited v. Lektronix Ltd*, WIPO Case No. [D2006-1052](#)).

Paragraph 4(b) of the Policy provides a non-exclusive list of factors, any one of which may demonstrate bad faith.

In the present case, the Panel finds that it is inconceivable that the Respondent was unaware of the Complainant and its trademark rights when it registered the Disputed Domain Names. As explained under section B above, the Disputed Domain Names include the Complainant's distinctive SPUERKEESS trademark in its entirety or an obvious misspelling thereof. Moreover, one of the Disputed Domain Names adds the term "lu", which can be considered as an abbreviation for "Luxembourg" where the Complainant is located. According to the Panel, this further suggests that the Respondent knew of the Complainant and its rights. In the Panel's view, the Respondent's awareness of the Complainant's trademark rights at the time of registration suggests bad faith (see *Red Bull GmbH v. Credit du Léman SA, Jean-Denis Deletraz*, WIPO Case No. [D2011-2209](#); *BellSouth Intellectual Property Corporation v. Serena, Axel*, WIPO Case No. [D2006-0007](#), where it was held that the respondent acted in bad faith when registering the disputed domain name, because widespread and long-standing advertising and marketing of goods and services under the trademarks in question, the inclusion of the entire trademark in the domain name, and the similarity of products implied by addition of a telecommunications services suffix ("voip") suggested knowledge of the complainant's rights in the trademarks).

The Panel observes that the Respondent is not presently using the Disputed Domain Names. While 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, (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain names may be put (see section 3.3 of the [WIPO Overview 3.0](#)).

In the present case, the Panel is of the opinion that all above factors apply:

- the Panel finds that the Complainant's SPUERKEESS trademark is distinctive;
- the Respondent did not submit any response or provided any evidence of actual or contemplated good-faith use;
- there are indications that the Respondent concealed its identity by using false contact details. Indeed, according to the information provided by the Second Registrar, the Respondent provided nonsensical address details such as "jkk", "kbhbb" and "khhb";
- given the identity or confusing similarity with the Complainant's name and registered trademark, the Panel finds it difficult to conceive any plausible legitimate future use of the Disputed Domain Names by the

Respondent.

By failing to respond to the Complaint, the Respondent did not take any initiative to contest the foregoing. Pursuant to paragraph 14 of the Rules, the Panel may draw the conclusions it considers appropriate.

Therefore, the Panel finds that, on the balance of probabilities, it is sufficiently shown that the Disputed Domain Names were registered and are used in bad faith. In light of the above, the Complainant also succeeds on the third and last 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 Names <spuerkeess.info>, <spuerkeess-lu.com> and <spuerrkeess.com>, be transferred to the Complainant.

*/Flip Jan Claude Petillion/*

**Flip Jan Claude Petillion**

Sole Panelist

Date: July 5, 2022