

ADMINISTRATIVE PANEL DECISION

**Banque Hottinguer v. Domain Administrator, See PrivacyGuardian.org /
Christain Welcote
Case No. D2022-1823**

1. The Parties

The Complainant is Banque Hottinguer, France, represented by Dreyfus & associés, France.

The Respondent is Domain Administrator, See PrivacyGuardian.org, United States of America / Christain Welcote, Senegal.

2. The Domain Name and Registrar

The disputed domain name <baquehottinguer.com> (the “Disputed Domain Name”) is registered with NameSilo, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 20, 2022. On May 20, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On May 20, 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 May 23, 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 May 26, 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 May 31, 2022. In accordance with the Rules, paragraph 5, the due date for Response was June 20, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 21, 2022.

The Center appointed Flip Jan Claude Petillion as the sole panelist in this matter on June 24, 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 Hottinguer, is a French credit institution and a member of the French Banking Federation.

The Complainant holds and invokes two registered trademarks:

- BANQUE HOTTINGUER, French trademark registered on March 13, 2008, under number 3562888 in classes 35 and 36;

- French figurative mark represented below, registered on March 9, 2009, under No. 3635277 in classes 35, 36 and 45:



In addition, the Complainant holds and operates the domain name <banque-hottinguer.com> to refer to its official website.

The Disputed Domain Name was registered on January 10, 2022. According to evidence provided by the Complainant, the Disputed Domain Name used to refer to a website which appeared to offer services similar to the Complainant's services, and including both the word and the figurative mark of the Complainant.

On February 25, 2022, the Complainant sent a cease and desist letter to the Registrar requesting the blocking of the Disputed Domain Name, and another letter to the hosting provider of the website linked to the Disputed Domain Name requesting to block the access to this website.

Following further correspondence, the Complainant noted that the website linked to the Disputed Domain Name was deactivated and instead resolved to an inactive page indicating, "This Account has been suspended". The Panel notes that this is still the case at the time of writing this decision.

5. Parties' Contentions

A. Complainant

The Complainant considers the Disputed Domain Name to be identical or confusingly similar to a trademark 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 Name. According to the Complainant, the Respondent is in no way affiliated with the Complainant, nor has the Respondent been authorized by the Complainant to use and register the Complainant's trademark, or to seek registration of any domain name incorporating said trademark. Also, according to the Complainant, the Respondent has not used the Disputed Domain Name in connection with a legitimate use as it resolved towards a fake website that reproduced the Complainant's visuals without its authorization and created a false impression that the Complainant has endorsed it or that it is an official website.

Finally, the Complainant claims that the Disputed Domain Name was registered and is being used in bad faith. According to the Complainant, it is implausible that the Respondent was unaware of the Complainant when registering the Disputed Domain Name. The Complainant contends that the Respondent registered and uses the Disputed Domain Name to intentionally attract visitors for commercial gain by creating confusion with the Complainant's trademarks.

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 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 his 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 Name. As the UDRP proceedings are administrative, the standard of proof is the balance of probabilities.

Thus, for the Complainant to succeed it must prove, within the meaning of paragraph 4(a) of the Policy, 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 has been registered and is being used in bad faith.

The Panel will therefore deal with each of these requirements.

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 BANQUE HOTTINGUER trademark has been registered and used in connection to the Complainant's banking services.

The Disputed Domain Name <baquehottinguer.com> exactly matches the Complainant's BANQUE HOTTINGUER trademark except for one omitted letter.

The Panel finds that this omission of one single letter can be considered as "typosquatting", as the Disputed Domain Name contains sufficiently recognizable aspects of the Complainant's mark (see section 1.9 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

Additionally, it is well established that generic Top-Level Domains ("gTLDs"), here ".com", 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 Name to be confusingly similar to the Complainant's BANQUE HOTTINGUER 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 Name.

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 Name 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 has not apparently been commonly known by the Disputed Domain Name and that the Respondent does not seem to have acquired trademark or service mark rights. According to the information provided by the Registrar, the Respondent is "Christain Welcote". The Respondent's use and registration of the Disputed Domain Name was not authorized by the Complainant. There are no indications that a connection between the Complainant and the Respondent exists or existed.

The Disputed Domain Name <baquehottinguer.com> exactly matches the Complainant's BANQUE HOTTINGUER trademark except for one omitted letter. The Panel finds that employing a misspelling in this way signals an intention on the part of the Respondent to confuse users seeking or expecting the Complainant.

Beyond looking at the domain name 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 name 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](#)).

Based on the evidence provided by the Complainant, the Panel observes that the Disputed Domain Name used to refer to a website which appeared to offer services similar to the Complainant's services, and including both the word and the figurative mark of the Complainant as shown above under section 4. In addition, the Panel observes that this website mentions the Complainant's word mark BANQUE HOTTINGUER using the exact same typeface and color as on the Complainant's official website. In the Panel's view, this does not amount to a legitimate noncommercial or fair use of the Disputed Domain Name. Moreover, the Panel finds that this use is not a *bona fide* offering of goods or services.

The Disputed Domain Name currently resolves to an inactive page.

The Respondent had the opportunity to demonstrate its 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 Name. 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 Name was registered in bad faith and that it is being 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. Among these factors demonstrating bad faith registration and use is the use of a domain name to intentionally attempt to attract, for commercial gain, Internet users to a 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 the website or location or of a product or service on the website or location.

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 Name. The Disputed Domain Name matches the Complainant's distinctive trademark in its entirety with the omission of one single letter, and the website linked to the Disputed Domain Name even included a copy of the Complainant's word and figurative trademarks displayed in the exact same way as on the Complainant's official website. 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 Respondent has used the Disputed Domain Name to redirect to a website, which appeared to offer services similar to the Complainant's services. As mentioned above, this website included a copy of the Complainant's word and figurative trademarks displayed in the exact same way as on the Complainant's official website. In the Panel's view, this indicates that the Respondent has intentionally attempted to attract Internet users to its website for commercial gain by creating a likelihood of confusion with the Complainant's trademark.

The Panel further holds that the omission of one single letter in the Disputed Domain Name as compared to the Complainant's mark is a form of typosquatting which is further evidence of bad faith (*ESPN, Inc. v. XC2*, WIPO Case No. [D2005-0444](#); *WestJet Airlines Ltd. v. Taranga Services Pty Ltd*, WIPO Case No. [D2010-1814](#); and *Compagnie Générale des Etablissements Michelin v. Terramonte Corp, Domain Manager*, WIPO Case No. [D2011-1951](#)).

Moreover, the Complainant provides evidence showing that the email function of the Disputed Domain Name was enabled. In the circumstances of this case, the Panel finds that the use of the Disputed Domain Name for fraudulent activity cannot be excluded, e.g. by profiting of the likelihood of confusion with the Complainant's trademark for phishing activities through the sending of emails.

The fact that the Disputed Domain Name currently resolves to an inactive page does not prevent a finding of bad faith.

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 established that the Disputed Domain Name was registered and is being 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 Name <baquehottinguer.com> be transferred to the Complainant.

/Flip Jan Claude Petillion/

Flip Jan Claude Petillion

Sole Panelist

Date: July 8, 2022