

ADMINISTRATIVE PANEL DECISION

Banque et Caisse d'Epargne De l'Etat, Luxembourg v. Privacy Service
Provided by Withheld for Privacy ehf / Levi Alexander
Case No. D2022-1934

1. The Parties

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

The Respondent is Privacy Service Provided by Withheld for Privacy ehf, Iceland / Levi Alexander, Nigeria.

2. The Domain Name and Registrar

The disputed domain name <spuerkeesslux.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 May 27, 2022. On May 30, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. Also on May 30, 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 June 2, 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 June 7, 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 June 8, 2022. In accordance with the Rules, paragraph 5, the due date for Response was June 28, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on June 29, 2022.

The Center appointed Mihaela Maravela as the sole panelist in this matter on July 1, 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.

The language of the proceeding is English, being the language of the Registration Agreement, as per paragraph 11(a) of the Rules.

4. Factual Background

According to the un rebutted information in the Complaint, the Complainant, based in Luxembourg, is an autonomous public establishment created in 1989, being internationally active in the banking sector. The SPUERKEESS trademark of the State of Luxembourg has a history of 160 years (since 1856). The Complainant has registered several trademarks consisting of or including SPUERKEESS including the European Union trademark registration No. 009110552, registered on November 2, 2010, and the Swiss trademark registration No. 615157, registered on May 10, 2011.

The disputed domain name was registered on May 9, 2022 and does not resolve to an active website.

5. Parties' Contentions

A. Complainant

The Complainant argues that the disputed domain name is identical, or at least almost identical, to the trademarks in which the Complainant has rights, save for the addition of the non-distinctive element "lux" that would be understood by the public as 'Luxembourg' as it is a commonly used abbreviation, throughout the world, of this country. As the Complainant is a Luxembourgish company, the element "lux" will only lead to an increase in the risk of confusion in the minds of the public who will think that they are dealing with a domain name owned and possibly a website run by the Complainant.

With respect to the second element, the Complainant argues that the Respondent is not affiliated with the Complainant in any way, nor has he been authorized by the Complainant to use and register its trademarks, or to seek registration of any domain name incorporating said trademark. Furthermore, the Respondent has no prior rights or legitimate interests in the domain name. The Complainant concludes that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

As regards the third element, the Complainant argues that the disputed domain name was registered in bad faith as it is implausible that the Respondent was unaware of the Complainant's trademark rights when the Respondent registered the disputed domain name, as the trademark SPUERKEESS does not exist in the English language and it is a pure Luxembourgish trademark, which establishes therefore a clear and evident link with the state bank of Luxembourg. Given its long-standing use, the Complainant argues that its trademark is well-known by the public worldwide. Furthermore, the Complainant argues that the fact that the Respondent is using the sign "spuerkeess" in the disputed domain name leads the Complainant to strongly believe that the Respondent will use it for phishing.

B. Respondent

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

6. Discussion and Findings

6.1 Preliminary Matters

No communication has been received from the Respondent in this case. However, given that notice of the Complaint was sent to the relevant address disclosed by the Registrar, the Panel considers that this satisfies the requirement in paragraph 2(a) of the Rules to “employ reasonably available means calculated to achieve actual notice”. Accordingly, the Panel considers it can proceed to determine the Complaint based on the statements and documents submitted by the Complainant as per paragraph 15(a) of the Rules and to draw inferences from the Respondent’s failure to file any Response.

The applicable standard of proof in UDRP cases is the “balance of probabilities” or “preponderance of the evidence”, and the Panel can draw certain inferences in light of the particular facts and circumstances of the case. See section 4.2, WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”).

6.2 Substantive Matters

Paragraph 4(a) of the Policy directs that the Complainant must prove each of the following elements:

- (i) that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) that the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) that the disputed domain name was registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant has provided evidence of its rights in the SPUERKEESS trademarks. The trademark SPUERKEESS is reproduced in its entirety in the disputed domain name. The addition of “lux” does not prevent a finding of confusing similarity with the Complainant’s trademark SPUERKEESS, which is recognizable in the disputed domain name. The fact that a domain name wholly incorporates a complainant’s trademark is sufficient to establish identity or confusing similarity for the purpose of the Policy, despite the addition of other words to such trademarks. The addition of an additional term (whether descriptive, geographical, pejorative, meaningless, or otherwise) does not prevent a finding of confusing similarity. See section 1.8 of the [WIPO Overview 3.0](#).

It is well accepted by UDRP panels that a generic Top level Domain (“gTLD”), such as “.com”, is typically ignored when assessing whether a domain name is identical or confusing similar to a trademark. See section 1.11 of the [WIPO Overview 3.0](#).

This Panel concludes that the disputed domain name is confusingly similar to the Complainant’s trademarks and therefore finds that the requirement of paragraph 4(a)(i) of the Policy is satisfied.

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* case demonstrating 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](#)).

In the present case, the Complainant has established a *prima facie* case that it holds rights over the trademark SPUERKEESS and claims that the Respondent has no legitimate reason to acquire and use the disputed domain name.

There is no evidence that the Respondent is using the disputed domain name in connection with a *bona fide* offering of goods or services, nor does the Respondent appear to engage in any legitimate noncommercial or fair use of the disputed domain name. Also, there is no evidence that the Respondent is commonly known by the disputed domain name. The Respondent has not replied to the Complainant's contentions, claiming any rights or legitimate interests in the disputed domain name.

Furthermore, the nature of the disputed domain name, that includes the Complainant's well-established trademark, carries a risk of implied affiliation and cannot constitute a fair use as it effectively impersonates or suggests sponsorship or endorsement by the Complainant. See section 2.5.1 of the [WIPO Overview 3.0](#).

With the evidence on file, the Panel finds that the requirement of paragraph 4(a)(ii) of the Policy is satisfied.

C. Registered and Used in Bad Faith

To fulfil the third requirement of the Policy, the Complainant must prove that the disputed domain name was registered and is being used in bad faith.

According to the un rebutted assertions of the Complainant, its SPUERKEESS trademark was widely used in commerce well before the registration of the disputed domain name in May 2022 and is well-known. The disputed domain name is confusingly similar with the Complainant's trademarks (reproducing the entirety of the Complainant's trademark along with "lux", which could be an abbreviation for Luxembourg, a term clearly connected to the Complainant). Under these circumstances, it is most likely that the Respondent was aware of the Complainant's trademark at the registration date of the disputed domain name. The Respondent provided no explanations for why he registered the disputed domain name.

As regards to the use, the disputed domain name is passively held.

Section 3.3 of the [WIPO Overview 3.0](#) describes the circumstances under which the passive holding of a domain will be considered to be a bad faith registration: "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 name may be put."

The Panel finds that passive holding of the disputed domain name does not in the circumstances of this case prevent a finding of bad faith. There is no evidence in the record of a legitimate use of the disputed domain name. The trademark of the Complainant is distinctive and widely used in commerce. UDRP panels have consistently found that the mere registration of a domain name that is identical or confusingly similar to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith. See section 3.1.4 of the [WIPO Overview 3.0](#).

Moreover, the Respondent has not formally participated in these proceedings and has failed to rebut the Complainant's contentions and to provide any evidence of actual or contemplated good faith use and indeed none would seem plausible. Further, the Respondent has provided an incomplete contact address to the Registrar, implying that he does not wish to be located.

Based on the evidence and circumstances of this case, the Panel concludes that the disputed domain name was registered and used in bad faith.

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 <spuerkeesslux.com> be transferred to the Complainant.

/Mihaela Maravela/

Mihaela Maravela

Sole Panelist

Date: July 13, 2022