

ADMINISTRATIVE PANEL DECISION

Banque Palatine v. Alex McQueen, HN LTD
Case No. D2022-3353

1. The Parties

The Complainant is Banque Palatine, France, represented by DBK Law Firm, France.

The Respondent is Alex McQueen, HN LTD, Canada.

2. The Domain Names and Registrar

The disputed domain names <epalatine-fr2.top>, <epalatine-fr3.top>, <epalatine-fr4.top> and <epalatine-fr5.top> are registered with PDR Ltd. d/b/a PublicDomainRegistry.com (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 8, 2022. On September 9, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On September 10, 2022, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that the 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 September 14, 2022. In accordance with the Rules, paragraph 5, the due date for Response was October 4, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 5, 2022.

The Center appointed George R. F. Souter as the sole panelist in this matter on October 11, 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 French bank, founded in 1780, specialized in providing banking services to small and medium-sized companies.

Details of numerous registrations internationally of the Complainant's PALATINE trademark have been supplied to the Panel. These include European Union Trade Mark No. 004353223, registered on July 31, 2006.

The four disputed domain names in these proceedings were all registered on August 28, 2022, and each of the four resolves to an inactive page.

5. Parties' Contentions

A. Complainant

The Complainant alleges that the disputed domain names are all confusingly similar to its PALATINE trademark, containing its PALATINE trademark in its entirety, merely with descriptive or non distinctive additional elements.

The Complainant alleges that the Respondent lacks rights or legitimate interests in the disputed domain names, in particular that the Respondent has not made a legitimate noncommercial or a fair use of the disputed domain names as all four disputed domain names resolve to an inactive page, and the Complainant has never granted permission to the Respondent to use its PALATINE trademark in connection with the registration of a domain name, or otherwise.

The Complainant alleges that the disputed domain names were registered in bad faith, and are being used in bad faith under the doctrine of passive holding.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy lists three elements that the Complainant must prove to merit a finding that the disputed domain names be transferred to the Complainant:

- (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.

A. Confusing similarity

The Panel finds that the Complainant has rights to its PALATINE trademark for the purposes of these proceedings.

It is well established in prior decisions under the UDRP, with which the Panel agrees, that a generic Top-Level Domain ("gTLD") may generally be disregarded when comparing a trademark with a disputed domain name. The Panel considers the ".top" gTLD to be irrelevant in the circumstances of the present

case, and finds that it may be disregarded here.

The Complainant's PALATINE trademark is clearly recognizable in all the disputed domain names, rendering the disputed domain names confusingly similar to the Complainant's trademark, and the additional elements "e", "fr" and "2", "3", "4" and "5" do not prevent a finding of confusing similarity.

Accordingly, the Panel finds that the Complainant has satisfied the requirements of paragraph 4(a)(i) of the Policy in connection with the disputed domain names at issue.

B. Rights or Legitimate Interests

The Panel considers that the Complainant's allegations are sufficient to provide a *prima facie* case under this heading.

It is the consensus view of UDRP panels, with which the Panel agrees, that a *prima facie* case advanced by the complainant will generally be sufficient for the complainant to be deemed to have satisfied the requirement of paragraph 4(a)(ii) of the Policy, provided the respondent does not come forward with evidence demonstrating rights or legitimate interests in the domain name and the complainant has presented a sufficient *prima facie* case to succeed under paragraph 4(a)(ii) of the Policy.

The Respondent did not advance any claim of rights or legitimate interests in the disputed domain names to rebut this *prima facie* case.

Furthermore, the nature of the disputed domain names, incorporating the Complainant's well-known PALATINE trademark together with "fr" that can be read as the acronym of France, carries a risk of implied affiliation. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 2.5.1.

Accordingly, the Panel finds that the Complainant has satisfied the requirements of paragraph 4(a)(ii) of the Policy, in connection with the disputed domain names.

C. Registered and Used in Bad Faith

The Panel is of the view that the finding that a respondent has no rights or legitimate interests in a disputed domain name can lead, in appropriate circumstances, to a finding of registration of a disputed domain name in bad faith. The circumstance of the present case, in which the Panel regards it as self-evident that the Complainant's PALATINE trademark was deliberately appropriated in the disputed domain names are such that the Panel concludes that a finding of registration in bad faith is justified, in connection with the disputed domain names and so finds.

Although the disputed domain names are not currently being commercially used, it is well-established in prior decisions under the Policy, since the decision in *Telstra Corporation v Nuclear Marshmallows*, WIPO case number [D2000-0003](#), that the non-use of a disputed domain name does not preclude a finding of use in bad faith under the doctrine of passive holding. In the circumstances of the present case, where any commencement of use of the disputed domain names would, automatically, entail implied affiliation to the Complainant, the Panel considers that a finding of use in bad faith is clearly justified, and so finds.

Accordingly, the Panel finds that the Complainant has satisfied the requirements of 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 disputed domain names <epalatine-fr2.top>, <epalatine-fr3.top>, <epalatine-fr4.top> and <epalatine-fr5.top> be transferred to the Complainant.

/George R. F. Souter/

George R. F. Souter

Sole Panelist

Date: October 25, 2022