

ADMINISTRATIVE PANEL DECISION

BPCE v. BIDOT Gaetan

Case No. D2024-1480

1. The Parties

The Complainant is BPCE, France, represented by DBK Law Firm, France.

The Respondent is BIDOT Gaetan, France.

2. The Domain Name and Registrar

The disputed domain name <gestion-bp-ce.com> is registered with Squarespace Domains II LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 8, 2024. On April 9, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 9, 2024, 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 (Redacted for privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 10, 2024, 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 24, 2024.

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 April 25, 2024. In accordance with the Rules, paragraph 5, the due date for Response was May 15, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 17, 2024.

The Center appointed Fabrice Bircker as the sole panelist in this matter on May 29, 2024. 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, BPCE, is a French company acting as the central institution responsible for the two banking networks Banques Populaires and Caisses d'Epargne.

It is the second largest banking group in France. Besides, with 105,000 employees and 36 million customers, the Complainant is also active in more than 40 countries.

The Complainant's activities are notably protected through the following trademark registrations:

- BPCE, French trademark registration No. 3653852 registered on November 6, 2009, duly renewed since then, and designating products and services of classes 9, 16, 35, 36, 38, 41, and 45,



- European Union trademark No. 8375875, registered on January 12, 2010, duly renewed since then, and designating services of class 36.

The Complainant has also an online presence, in particular through the domain name <groupebpce.com>, which was registered on February 25, 2009, and which redirects to its official website.

The disputed domain name, <gestion-bp-ce.com>, was registered on March 1, 2024.

According to uncontested evidence, at the time of the filing of the Complaint, the disputed domain name:

- resolved to a website under construction,
- was used to send emails impersonating the Complainant and proposing financial investments to their recipient.

At the time of drafting this decision, the disputed domain name does not resolve to an active website.

Very little is known about the Respondent, except that he is apparently located in France, based on the information disclosed by the Registrar.

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant contends that the disputed domain name is confusingly similar to its BPCE trademark, because it reproduces the later, and the added elements do not prevent it from being recognizable.

Besides, the Complainant argues that the Respondent has no rights or legitimate interests in respect with the disputed domain name, in substance because:

- the Respondent does not hold any trademark or tradename corresponding to the disputed domain name,
- the Complainant has never authorized the Respondent to register and/or use any domain name incorporating its trademarks,
- the Respondent has created active MX records connected to the disputed domain name which has been used to send fraudulent emails proposing financial services to their recipient and intended to deceive the latter by making him believe that the proposed services were related to the Complainant.

Then, the Complainant contends that the disputed domain name has been registered and is being used in bad faith, notably because:

- it reproduces the BPCE prior trademark, which is well-known,
- it resolves to an inactive website, which amounts to bad faith use by virtue of the passive holding doctrine,
- it has been used to send fraudulent emails to potential BPCE clients, notably using the identity of one of the Complainant's employees,
- the Respondent concealed his identity when registering the disputed domain name.

B. Respondent

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

6. Discussion and Findings

Pursuant to paragraph 4(a) of the Policy, in order to obtain a transfer of the disputed domain name, the Complainant must establish each of the following three elements:

- 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.

Besides, paragraph 15(a) of the Rules provides that "[a] Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable".

Paragraphs 10(b) and 10(d) of the Rules also provide that "[i]n all cases, the Panel shall ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case" and that "[t]he Panel shall determine the admissibility, relevance, materiality and weight of the evidence".

Besides, the Respondent's failure to reply to the Complainant's contentions does not automatically result in a decision in favor of the Complainant, although the Panel is entitled to draw appropriate inferences therefrom, in accordance with paragraph 14(b) of the Rules (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.3).

Taking the foregoing provisions into consideration the Panel finds as follows.

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

Based on the available record (Annex 6 of the Complaint) and on the Panel verifications¹, the Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

¹ It is well established that the general powers of a panel as articulated inter alia in paragraphs 10 and 12 of the Rules include, among others, the possibility to undertake limited factual research into matters of public record if the panel considers such information useful to assessing the case merits and reaching a decision. These limited factual researches notably include visiting the website linked to the disputed domain name (see for instance, [WIPO Overview 3.0](#), section 4.8).

The entirety of the trademark is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Indeed, although the addition of other terms (here, “gestion” and a hyphen) may bear on assessment of the second and third elements, the Panel finds the addition of such terms does not prevent a finding of confusing similarity between the disputed domain name and the trademark for the purposes of the Policy because the BPCE trademark remains recognizable within said disputed domain name. [WIPO Overview 3.0](#), section 1.8.

The Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult task of “proving a negative”, requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant’s prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

Indeed, the Complainant contends that it has not given its consent to the Respondent to use its BPCE trademark in a domain name registration or in any other manner.

Besides, there is nothing in the record of the case likely to indicate that the Respondent may be commonly known by the disputed domain name.

Furthermore, it results from the available records that the disputed domain name has been used in a fraudulent phishing scheme where the Respondent has impersonated the Complainant (by sending emails notably reproducing in signature its brand and its logo) to try to induce the recipient to transfer sums of money in the false belief that, by doing so, it will realize financial investments with the Complainant, which is well-known in the financial field.

Obviously, such use of the disputed domain name does not amount to a legitimate noncommercial or fair use.

On the contrary, such use is made with the intent for commercial gain by misleadingly diverting the recipients of the fraudulent emails and may also tarnish the Complainant’s trademark.

In this respect, panels have held that the use of a domain name for illegal activity (such as phishing or impersonation) can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

The Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

In the present case, the Panel finds that:

- the disputed domain name is similar to the Complainant's BPCE trademark which is intrinsically distinctive, has a reputation (e.g., *BPCE v. WhoisGuard Protected, WhoisGuard, Inc. / Fransis Coarno, Danstic*, WIPO Case No. [D2020-0967](#); *BPCE v. Pierre Agou Michel*, WIPO Case No. [D2020-2361](#); *BPCE v. Emmanuel Asamoah*, WIPO Case No. [D2022-3866](#)) and predates the registration of the disputed domain name by 15 years,
- the term "gestion" in the disputed domain name refers to the Complainant's activities (this is the French word for "management"),
- one month after its registration, the disputed domain name has been used to send emails deceitfully impersonating the Complainant intended to obtain sums of money from their recipient,
- the Respondent, while invited to defend its case, has been remaining silent in this procedure.

It necessarily results from the above findings that the Respondent registered the disputed domain name being fully aware of the Complainant's prior trademark rights.

Besides, the conditions in which the disputed domain name has been used are deceptive, illegal, and made for commercial gain. In that regard, it is consistently held that the use of a domain name for illegitimate activity, such as fraudulent email scheme, is considered as manifest evidence of bad faith (see [WIPO Overview 3.0](#), sections 3.1.4 and 3.4).

The Panel finds that the Complainant has established the third 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 <gestion-bp-ce.com> be transferred to the Complainant.

/Fabrice Bircker/

Fabrice Bircker

Sole Panelist

Date: June 12, 2024