

ADMINISTRATIVE PANEL DECISION

Belfius Bank SA / Belfius Bank NV v. Michel Viyte
Case No. D2022-5022

1. The Parties

The Complainant is Belfius Bank SA / Belfius Bank NV, Belgium, internally represented.

The Respondent is Michel Viyte, France.

2. The Domain Name and Registrar

The disputed domain name <belfius-banque-be.com> is registered with Google LLC (the “Registrar”).

3. Procedural History

An initial Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on December 29, 2022 related to the domain names <belfiusverif.com>, <belfius-banque-be.com>, and <logbe-belfius.com>.

On December 29, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the domain names. On December 29, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrants and contact information for the domain names which differed from the named Respondent and contact information in the initial Complaint, each domain name having respectively been registered by a different domain name holder.

On January 9, 2023, the Center sent an email communication to the Complainant providing the registrants and contact information disclosed by the Registrar for each of the domain names. In light of that information, the Center further invited the Complainant in accordance with Rules paragraph 3(c) to either (i) amend the Complaint adding the Registrar-disclosed registrants as formal Respondents and provide relevant arguments or evidence demonstrating that all named Respondents are, in fact, the same entity and/or that all domain names are under common control to consolidate the disputes, and/or (ii) file a separate complaint for any domain name(s) for which it is not possible to demonstrate that all named Respondents are in fact the same entity and/or that all domain names are under common control and indicate (by short amendment or reply email) which domain name(s) will no longer be included in the current Complaint and inviting the Complainant to submit an amendment to the Complaint.

As a result, and following an exchange with the Center, the Complainant decided to file separate complaints for each of the above mentioned domain names and filed an amended Complaint on January 16, 2023 for each of them.

On January 19, 2023, the Center informed the Parties that, as a result of the Complainant's decision to proceed separately against each domain name, the domain names <belfiusverif.com> and <logbe-belfius.com> were withdrawn from this proceeding.

The Registrar having confirmed that the language of the registration agreement of the disputed domain name was French, the Center sent an email communication on January 26, 2023, to the Complainant, inviting it to provide satisfactory evidence of an agreement between the Complainant and the Respondent to the effect that the proceedings should be in English, to submit the Complaint translated into French, or to submit a request for English to be the language of the administrative proceedings.

On the same date, the Complainant requested that English be the language of the proceeding. The Respondent did not comment on the language of the proceeding.

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 February 1, 2023. In accordance with the Rules, paragraph 5, the due date for Response was February 21, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on February 22, 2023.

The Center appointed Philippe Gilliéron as the sole panelist in this matter on February 28, 2023. 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 Belgian bank and financial services provider that counts more than 650 agencies and 5000 employees.

The Complainant owns numerous trademarks consisting in all or in part of the term "Belfius", such as:

- European Union verbal trademark BELFIUS No. 010581205, registered on May 24, 2012 in classes 9, 16, 35, 36, 41 and 45 with a priority date as of January 23, 2012;
- Benelux verbal trademark BELFIUS No. 914650 registered on May 10, 2012 in classes 9, 16, 35, 36, 41 and 45 with a priority date as of January 23, 2012.

The Complainant further holds more than 200 domain names to conduct its activities, such as <belfius.com> and <belfius.be> since January 23, 2012.

The disputed domain name was registered on November 14, 2022, and it does not resolve to an active website.

On November 25 and November 30, 2022, the Complainant sent cease and desist letters to the Registrar, highlighting the risks that the disputed domain name had been registered for phishing purposes, inviting it to put the disputed domain name on hold and transfer it in its favor. The Registrar did not respond.

5. Parties' Contentions

A. Complainant

The Complainant first argues that the disputed domain name is confusingly similar to its trademarks as it entirely incorporates the term "belfius", and that the addition of descriptive terms such as "banque" and "be" do not exclude the resulting likelihood of confusion.

The Complainant then affirms that the Respondent has no rights or legitimate interests in the disputed domain name. The Respondent is in no way affiliated to the Complainant. The Complainant has not licensed or in any way authorized the Respondent to use the trademark BELFIUS. The Respondent has no trademark rights in the term "belfius" and is not known under that name. Furthermore, the Respondent does not make any legitimate noncommercial or fair use of the disputed domain name.

The Complainant finally affirms that the disputed domain name was registered and is being used in bad faith. It is the Complainant's view that the Respondent was aware of its trademarks when it registered the disputed domain name. The Complainant considers that there is no evidence that the disputed domain name could be used in any way in good faith and is of the view that, under the circumstances, the passive holding of the disputed domain name amounts to bad faith.

B. Respondent

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

6. Discussion and Findings

Paragraph 15(a) of the Rules instructs this Panel to "[...] 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".

Pursuant to paragraph 4(a) of the Policy, the Complainant must prove each of the following three elements to obtain an order that the disputed domain name should be cancelled or transferred:

- (i) the disputed domain name registered by the Respondent is identical or confusingly similar to a trademark or a service mark in which the Complainant has rights;
- (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.

Prior to turning to the merits of the case, the Panel however has to address a formal issue regarding the language of the proceedings.

A. Language of the proceedings

The Complaint was filed in English on December 29, 2022.

On January 26, 2023, the Center notified the Parties in both English and French that the language of the Registration Agreement for the disputed domain name was French. The Center invited the Complainant to provide satisfactory evidence of an agreement between the parties to the effect that the proceedings should be in French, to submit the Complaint translated in French or a request for English to be the language of the proceedings.

The Complainant requested the proceedings to be held in English. The Respondent, who was provided the opportunity to oppose the Complainant's request, did not proceed. As a result, the Panel sees no reason to reject the Complainant's request and the proceedings shall be held in English.

B. Identical or Confusingly Similar

According to the Policy, paragraph 4(a)(i), the Complainant has to prove that the disputed domain name is identical or confusingly similar to trademarks or service marks in which the Complainant has rights.

The Complainant is the holder of numerous trademarks consisting of the term "belfius".

UDRP panels widely agree that incorporating a trademark into a domain name can be sufficient to establish that the domain name is identical or confusingly similar to a registered trademark for purpose of the Policy (see, e.g., *Uniroyal Engineered Products, Inc. v. Nauga Network Services*, WIPO Case No. [D2000-0503](#); *Thaigem Global Marketing Limited v. Sanchai Aree*, WIPO Case No. [D2002-0358](#); and *F. Hoffmann-La Roche AG v. Relish Entreprises*, WIPO Case No. [D2007-1629](#)).

When the inserted trademark is recognizable in the disputed domain name, the added elements would not prevent a finding of confusing similarity (see Section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, "[WIPO Overview 3.0](#)": Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element. The nature of such additional term(s) may however bear on assessment of the second and third elements).

Such happens to be the case here. The addition of terms such as "banque" and "be" do not prevent a finding of confusing similarity.

As a result, the Panel considers paragraph 4(a)(i) of the Policy to be satisfied.

C. Rights or Legitimate Interests

According to the Policy, paragraph 4(a)(ii), the Complainant has to demonstrate that the Respondent has no rights or legitimate interests in the disputed domain name.

As the UDRP panel stated in *Do The Hustle, LLC v. Tropic Web*, WIPO Case No. [D2000-0624](#), demonstrating that a respondent has no rights or legitimate interests in a domain name "[...] would require complainant to prove a negative, a difficult, if not impossible, task". Thus, in that decision, the panel opined that "[w]here a complainant has asserted that the respondent has no rights or legitimate interests in respect of the domain name, it is incumbent upon the respondent to come forward with concrete evidence rebutting this assertion".

Following that decision, subsequent UDRP panels developed a consensus view that it is deemed sufficient for a complainant to make a *prima facie* case that the respondent lacks rights or legitimate interests in a domain name. Once a *prima facie* case has been made, the burden of production shifts to the respondent to come forward with evidence to demonstrate its rights or legitimate interests. If it fails to do so, the complainant is deemed to have satisfied to paragraph 4(a)(ii) of the Policy (see, e.g., section 2.1 of the [WIPO Overview 3.0](#)).

In the present case, the Complainant is the owner of numerous BELFIUS trademarks. The Complainant has no business or other relationships with the Respondent. The Complainant thus has made a *prima facie* case showing that the Respondent has no rights or legitimate interests in the disputed domain name.

On its side, the Respondent did not proceed. Considering the absence of a Response and the fact that the Respondent is neither commonly known by the disputed domain name, nor has made a legitimate

noncommercial or fair use of the disputed domain name, the Panel finds that the Respondent has failed to demonstrate any rights or legitimate interests in the disputed domain name.

Consequently, in light of the above, the Panel considers paragraph 4(a)(ii) of the Policy to be fulfilled.

D. Registered and Used in Bad Faith

For a complaint to succeed, a panel must be satisfied that a domain name has been registered and is being used in bad faith (Policy, paragraph 4(a)(iii)).

Bad faith requires a respondent to be aware of the goodwill of a complainant's trademarks. In the present case, the Complainant is the owner of numerous BELFIUS trademarks. There is no doubt in the Panel's opinion that the Respondent was aware of the Complainant's trademarks when it registered the disputed domain name, as clearly evidenced by the use of the term "banque" and the acronym "be" that will be understood by users as referring to "Belgium", *i.e.* the location where the Complainant is seated and carries out its activities.

Furthermore, from the inception of the UDRP, panels have found that the non-use of a domain name (including a blank or "coming soon" page) would not prevent a finding of bad faith under the doctrine of passive holding (section 3.3 of the [WIPO Overview 3.0](#)).

While UDRP panels 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 (section 3.3 of the [WIPO Overview 3.0](#)).

The Respondent, having neglected to participate in these proceedings, did not bring any evidence to support any good faith reason for having chosen to register the disputed domain name; such evidence is not apparent from the record, and the Respondent has to bear the consequences of its default in that regard.

Consequently, the Panel finds that the disputed domain name has been registered and is being used in bad faith under the 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 name <belfius-banque-be.com> be transferred to the Complainant.

/Philippe Gilliéron/

Philippe Gilliéron

Sole Panelist

Date: March 5, 2023