

ADMINISTRATIVE PANEL DECISION

Belfius Bank S.A. / Belfius Bank N.V. v. Jhonny Musk
Case No. D2023-0051

1. The Parties

The Complainant is Belfius Bank S.A. / Belfius Bank N.V., Belgium, internally represented.

The Respondent is Jhonny Musk, Spain.

2. The Domain Name and Registrar

The disputed domain name <belfius-contact.com> is registered with Eranet International Limited (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on January 5, 2023. On January 5, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 6 and 10, 2023, 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 January 6, 2023, 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 January 9, 2023.

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 January 11, 2023. In accordance with the Rules, paragraph 5, the due date for Response was January 31, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on February 1, 2023.

The Center appointed Angelica Lodigiani as the sole panelist in this matter on February 9, 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 public company operating in the banking and financial fields with more than 5,000 employees and 650 agencies in the country.

The Complainant is the owner of the following trademarks:

- BELFIUS (word), European Union registration No. 010581205, filed on January 23, 2012, and registered on May 24, 2012, covering goods and services in classes 9, 16, 35, 36, 41, and 45;
- BELFIUS (word), Benelux registration No. 914650, filed on January 23, 2012, and registered on May 10, 2012, for goods and services in classes 9, 16, 35, 36, 41, 45;
- BELFIUS (figurative), Benelux registration No. 915962, filed on March 2, 2012, and registered on June 11, 2012, for goods and services in classes 9, 16, 35, 36, 41, and 45;
- BELFIUS (figurative), Benelux registration No. 915963, filed on March 2, 2012, and registered on June 11, 2012, for goods and services in classes 9, 16, 35, 36, 41, and 45.

The Complainant is also the owner of more than 200 generic Top-Level Domains (“gTLDs”) and country-code Top-Level Domains (“ccTLDs”), which incorporate the trademark BELFIUS, among which the domain names <belfius.be>, resolving to the Complainant’s official website, and <belfius.com>, resolving to a website intended for institutional partners and journalists.

The disputed domain name was registered on June 16, 2022, and does not resolve to an active website. On July 8, 2022, the Complainant sent an email to the Registrar of the disputed domain name asking to suspend the URL associated with the disputed domain name, and to ask the Registrant to discontinue any use of the disputed domain name and take immediate steps for its transfer to the Complainant. Having received no answer, on July 13, 2022, the Complainant reiterated its requests but still with no answer. On January 9, 2023, after starting this UDRP dispute, the Complainant sent the same request to the Respondent. However, also this third attempt was not successful.

5. Parties’ Contentions

A. Complainant

The Complainant maintains that the disputed domain name is confusingly similar to the trademark BELFIUS as it incorporates it entirely and is well recognizable within the disputed domain name. As such, the addition of the word “contact” preceded by a hyphen cannot prevent a finding of confusing similarity.

The Complainant further maintains that the Respondent lacks rights or legitimate interests in the disputed domain name, as the Respondent is in no way associated with the Complainant. The Complainant has not licensed, approved or in any way consented to the Respondent’s registration and use of the BELFIUS trademark in the disputed domain name. The Respondent has no trademark rights on the word “belfius”, and does not seem to carry out any (legitimate) activity. The Respondent is not making a legitimate, noncommercial or fair use of the disputed domain name. The Respondent is passively holding the disputed domain name and there are no demonstrable preparations to use the disputed domain name. The passive holding or non-use of domain names is, in appropriate circumstances, evidence of a lack of rights or legitimate interest in the domain names.

The Complaint contends that the Respondent either knew or should have known the Complainant's trademark at the time of registration of the disputed domain name. Had the Respondent conducted some searches before registering the disputed domain name, it would have readily found reference to the Complainant and noticed the confusing similarity of the disputed domain name. The disputed domain name incorporates the Complainant's trademark in its entirety. The fact that the Respondent chose to register a domain name comprising an identical invented name such as "belfius", cannot be a mere coincidence. The Respondent's awareness of the Complainant's rights at the time of registration of the disputed domain name suggests bad faith.

Although at the time of the filing of the Complaint, the Respondent was not actively using the disputed domain name, such passive use does not exclude bad faith, when it is difficult to imagine any plausible future active use that would be legitimate and not infringing the Complainant's well-known trademark.

Lastly, the Complainant maintains that the Respondent concealed its identity when it registered the disputed domain name. The concealment of the Respondent's identity is an indication of bad faith as it is not inspired by a legitimate need to protect the Respondent's identity but solely to make it difficult for the Complainant to protect its trademark rights.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

The Panel finds that the Complainant has shown that it is the owner of BELFIUS trademark, registered in Belgium and in the European Union, since at least a decade. The Panel also finds that the disputed domain name is confusingly similar to the Complainant's mark, as it incorporates it entirely. The addition of the hyphen followed by the term "contact" cannot prevent a finding of confusing similarity, since the Complainant's trademark is clearly recognizable within the disputed domain name even with the addition of these elements. According to 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 of the Policy.

Accordingly, the Panel is satisfied that the first condition under the Policy is met.

B. Rights or Legitimate Interests

While the overall burden of proof rests with the complainant, UDRP panels have recognized that this could result in the often impossible task of proving a negative, requiring information that is often primarily within the knowledge of the respondent. As such, where a complainant makes a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain name.

In the instant case, according to the Complainant, the Complainant did not license its trademark to the Respondent, nor authorized the Respondent to incorporate its trademark or a very similar one in a domain name. The Respondent is not associated with the Complainant, nor has a business or other kind of relationship with it. Nothing in the case file shows that the Respondent is commonly known by the disputed domain name.

The Respondent is not using the disputed domain name, but this circumstance cannot affect its lack of rights or legitimate interests. The Respondent registered a domain name that is partially identical to the Complainant's BELFIUS trademark. In light of the highly distinctive character of the Complainant's mark and the character of the term "contact", the Panel finds that the mere registration of the disputed domain name carries a high risk of implied affiliation with, or endorsement by, the Complainant. A consumer looking for the Complainant on the Internet, could consider that the disputed domain name resolves to a website displaying the Complainant's contact details and thus would be misled as to the origin of, or endorsement by, the Complainant of the disputed domain name. As such, the Respondent is not using, or making demonstrable preparations to use the disputed domain name in connection with a *bona fide* offering of goods or services, and is not making a legitimate, noncommercial or fair use of the disputed domain name without intent for commercial gain to misleadingly divert consumers, or to tarnish the Complainant's mark.

In the absence of any other evidence in the file, the Panel finds that the Complainant has made a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name.

In light of the above, the Panel is satisfied that also the second condition of the Policy is met.

C. Registered and Used in Bad Faith

To succeed under the Policy, a complainant must show that a domain name has been both registered and is being used in bad faith.

In relation to registration in bad faith, the Panel finds that the trademark BELFIUS is highly distinctive and is uniquely associated with the Complainant. The fact that the Respondent has registered a domain name incorporating this trademark and in association with the misleading term "contact", cannot amount to a mere coincidence. According to the Panel, it is more likely than not that the Respondent was perfectly aware of the Complainant and of its trademark when it registered the disputed domain name. The BELFIUS trademark is certainly highly distinctive and its strict (and probably unique) connection to the Complainant induces the Panel to believe that its incorporation in the disputed domain name by an unaffiliated entity can create by itself a presumption of bad faith (see section 3.1.4 of the [WIPO Overview 3.0](#)).

Although the disputed domain name has only been passively held, such non-use cannot prevent a finding of bad faith under the passive holding doctrine ((see section 3.3 of the [WIPO Overview 3.0](#)). In particular, in the instant case, the Panel notes the following factors that are relevant to assess bad faith:

- (i) the disputed domain name incorporates a highly distinctive trademark, uniquely associated to the Complainant, with the addition of a term that could induce Internet users looking for the Complainant to erroneously believe that the disputed domain name originates from the Complainant, or is endorsed by the Complainant;
- (ii) the Respondent failed to reply to the various Complainant's requests to transfer the disputed domain name;
- (iii) given the presence of the Complainant's distinctive mark in the disputed domain name and the fact that the Complainant operates in a highly regulated sector such as the banking and financial sector, any possible use of the disputed domain name by the Respondent cannot be legitimate and in good faith.

In light of the above, the Panel finds that the Complainant has successfully proved that the disputed domain name has been registered and is being used in bad faith. Therefore, the third and last condition under the Policy is met.

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-contact.com>, be transferred to the Complainant.

/Angelica Lodigiani/

Angelica Lodigiani

Sole Panelist

Date: February 23, 2023