

ADMINISTRATIVE PANEL DECISION

BPCE v. Kim jonghyun
Case No. D2023-4843

1. The Parties

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

The Respondent is Kim jonghyun, Republic of Korea.

2. The Domain Name and Registrar

The disputed domain name <bpceinvestapplication.com> is registered with Whois Corp. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 21, 2023. On November 22, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 23, 2023, 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.

On November 29, 2023, the Center informed the Parties in Korean and English, that the language of the Registration Agreement for the disputed domain name is Korean. On November 30, 2023, the Complainant confirmed its request that English to be the language of the proceeding. The Respondent did not submit any comment on the Complainant’s submission.

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 in Korean and English of the Complaint, and the proceedings commenced on December 7, 2023. In accordance with the Rules, paragraph 5, the due date for Response was December 27, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on January 4, 2024.

The Center appointed Moonchul Chang as the sole panelist in this matter on January 24, 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 is a French banking group formed by the merger of Caisse d'Epargne and Banque Populaire, leading to the creation of Groupe BPCE ("Banques Populaires Caisses d'Epargne"). The Complainant is one of the largest banking groups in France, operating in retail banking, financing, and insurance fields. The Complainant has acquired a well-established presence in the international market, with subsidiaries in over 40 countries.

The Complainant is the owner of BPCE trademarks in a number of jurisdictions, including among the following:

- European Union Trademark Reg. No. 008375875 (figurative), applied June 19, 2009, and registered January 12, 2010, in Class 36;
- French trademark Reg. No. 3653852, applied May 29, 2009, and registered November 6, 2009, in Classes 9, 16, 35, 36, 38, 41, and 45; and
- International Trademark Reg. No. 1033662 (figurative), registered December 15, 2009, in Class 36.

The Complainant and its subsidiary GCE Technologies have registered multiple domain names reflecting the Complainant's BPCE mark, including <bpce.fr>, registered in 2008, and <groupebpce.fr>, registered in 2009. The Complainant's domain names are utilized by the Complainant with its websites.

The Respondent registered the disputed domain name on September 12, 2023. The disputed domain name redirects to a website using the identity of BPCE and Natixis, another banking entity from the network of the Complainant, and requiring personal information to log in. The Complainant upon learning of the Respondent's website dispatched a cease-and-desist letter to the Respondent on October 11, 2023, to which the Respondent offered no reply.

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.

The Complainant contends that:

(a) The disputed domain name is identical or confusingly similar to its trademark. The disputed domain name incorporates the Complainant's trademark BPCE in its entirety. The addition of the terms "invest" and "application" as a suffix would not prevent a finding of confusing similarity.

(b) The Respondent has no rights or legitimate interests in the disputed domain name. The Complainant has neither authorized nor given its consent to the Respondent to register or use the disputed domain name. The Respondent has no rights or legitimate interests in the BPCE mark and the Respondent has not used the disputed domain name in connection with a bona fide offering of goods or services or a legitimate noncommercial or fair use. In addition, the Respondent has not been commonly known by the name BPCE.

(c) The disputed domain name was registered and is being used in bad faith. Because the Complainant's trademark BPCE is well known, the registration of the disputed domain name has been done per se in bad

faith. The Respondent has used the disputed domain name in bad faith which redirects to the website using the identity of BPCE and Natixis.

B. Respondent

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

6. Discussion and Findings

6.1 Language of the Proceeding

The language of the Registration Agreement for the disputed domain name is Korean. Pursuant to the Rules, paragraph 11(a), in the absence of an agreement between the parties, or unless specified otherwise in the registration agreement, the language of the administrative proceeding shall be the language of the registration agreement.

The Complaint was filed in English. The Complainant requested that the language of the proceeding be English for following reasons: (1) since the Complainant is French and the Respondent is Korean as indicated in the Whois information database, the Parties use different languages and neither of them is likely to understand the language of the other. Therefore, English would be the fairest neutral language in this proceeding; (2) requiring the Complainant to translate the Complaint into Korean would add an additional expense and unnecessarily delay its request to resolve this matter; (3) the disputed domain name contains Roman letters and not Korean transliteration, which makes English the preferred language for this procedure.

On the other hand, the Respondent did not make any specific submissions with respect to the language of the proceeding.

In exercising its discretion to use a language other than that of the registration agreement, the Panel has to exercise such discretion judicially in the spirit of fairness and justice to both parties, taking into account all relevant circumstances of the case, including matters such as the parties' ability to understand and use the proposed language, time and costs (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.5.1). Having considered all the matters above, the Panel determines under paragraph 11(a) of the Rules that the language of the proceeding shall be English.

6.2 Substantive Issues

Under paragraph 4(a) of the Policy, the Complainants must demonstrate that the three elements enumerated in paragraph 4(a) of the Policy have been satisfied. These elements are that: (i) the disputed domain names are identical or confusingly similar to the Complainants' trademark or service mark; and (ii) the Respondents have 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. Identical or Confusingly Similar

The disputed domain name includes the Complainant's trademark BPCE in its entirety together with addition of the term "invest" and "application". Where the complainant holds a nationally or regionally registered trademark or service mark, this prima facie satisfies the threshold requirement of having trademark rights for purposes of standing to file a UDRP case. (Section 1.2.1 of the [WIPO Overview 3.0](#)). It is also well accepted that the first element functions primarily as a standing requirement. The threshold test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. (Section 1.7 of the [WIPO Overview 3.0](#)). Adding the terms "invest" and "application" does not prevent a finding of confusing similarity. (Section 1.8 of the

[WIPO Overview 3.0](#)). In addition, the generic Top-Level Domain (“gTLD”) “.com” is disregarded under the confusing similarity test. (Section 1.11.1 of the [WIPO Overview 3.0](#)).

Accordingly, the Panel finds that the first element under paragraph 4(a) of the Policy has been met by the Complainant.

B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, the overall burden of proof is on the Complainant. However, once the Complainant presents a prima facie case that the Respondent has no rights or legitimate interests in the disputed domain name, the burden of production of evidence shifts to the Respondent. (Section 2.1 of the [WIPO Overview 3.0](#)).

First, the Complainant contends that it has not authorized the Respondent to use the trademark BPCE or to register any domain names incorporating it. Nonetheless, the composition of the disputed domain name carries a risk of implying that it is affiliated with the Complainant. Secondly, the Respondent is using the disputed domain name by redirecting to a website which uses the identity of BPCE and Natixis. Further, the Respondent has no rights or legitimate interests in the BPCE mark and the Respondent has not used the disputed domain name in connection with a bona fide offering of goods or services or a legitimate noncommercial or fair use. Thirdly, there is no evidence to suggest that the Respondent has been commonly known by the disputed domain name.

Having reviewed the available record and in the consideration of the above circumstances, 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.

Further, panels have held that the use of a domain name for illegal activity, here, claimed impersonation/passing off, can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

Accordingly, the Panel concludes that the Complainant has satisfied the second element under paragraph 4(a) of the Policy in the present case.

C. Registered and Used in Bad Faith

Paragraph 4(a)(iii) of the Policy requires that the disputed domain name “has been registered and is being used in bad faith”. Thus, for the Complaint to succeed, a panel must be satisfied that a domain name has been registered and is being used in bad faith. These requirements are conjunctive; each must be proven or the Complaint fails. In addition, paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and is being used in bad faith, but other circumstances may be relevant in assessing whether a respondent’s registration and use of a domain name is in bad faith. (Section 3.2.1 of the [WIPO Overview 3.0](#)).

First, the Complainant had obtained the registration of BPCE trademarks in numerous jurisdictions earlier than the Respondent registered the disputed domain name. Having considered that the Complainant’s trademark BPCE is well known, it is highly likely that the Respondent has been aware of the reputation of the BPCE mark when registering a confusingly similar domain name that incorporates the Complainant’s mark plus the terms “invest” and “application”. Thus, it is also considered bad faith registration that the Respondent deliberately chose the disputed domain name to create a likelihood of confusion with the Complainant’s trademark so as to create a false association or affiliation with the Complainant.

Next, the Respondent uses the disputed domain name resolving to a website which uses the identity of BPCE and Natixis, another banking entity from the network of the Complainant, and requiring personal

information to log in. The Panel considers that the use of a domain name for illegal activity such as impersonation or passing off constitutes bad faith. (Section 3.4 of the [WIPO Overview 3.0](#)). It is also considered that the Respondent has intentionally attempted to attract Internet users for commercial gain to its website by creating a likelihood of confusion with the Complainant's trademarks.

Having reviewed the record, the Panel concludes that the Complainant has satisfied the third element under paragraph 4(a) of the Policy in the present case.

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 <bpceinvestapplication.com> be transferred to the Complainant.

/Moonchul Chang/

Moonchul Chang

Sole Panelist

Date: February 7, 2024