

## ADMINISTRATIVE PANEL DECISION

BPCE v. Kallaa kallaa

Case No. D2023-5297

### 1. The Parties

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

The Respondent is Kallaa kallaa, France.

### 2. The Domain Name and Registrar

The disputed domain name <monespaceclientenligne-banquepopulaire.com> is registered with PSI-USA, Inc. dba Domain Robot (the “Registrar”).

### 3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 20, 2023. On December 21, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 22, 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 (redacted for privacy). The Center sent an email communication to the Complainant on December 22, 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 December 26, 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 10, 2024. In accordance with the Rules, paragraph 5, the due date for Response was January 30, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 5, 2024.

The Center appointed Marie-Emmanuelle Haas as the sole panelist in this matter on February 9, 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 joint stock company, which is the central institution responsible for the two banking networks Banques Populaires and Caisses d'Epargne.

BPCE, is the second largest banking group in France and pursues a full range of banking, financing and insurance activities, working through its two major Banque Populaire and Caisse d'Epargne cooperative banking networks and through its different subsidiaries. BPCE has put down deep roots in its local markets. Its 105,000 employees serve a total of 36 million customers, 9 of whom have decided to become cooperative shareholders.

BPCE is well-known in the international market and is present in more than 40 countries via its various subsidiaries.

The Complainant is the owner of numerous trademarks including the terms "BANQUE POPULAIRE", and notably the following:

- The French trademark BANQUE POPULAIRE registered under number 3113485 on July 25, 2001 for services in classes 35 and 38;
- The French word and device trademark BANQUE POPULAIRE registered under number 4605979 on December 9, 2019 for services in classes 9, 35 and 36;
- The European Union word and device trademark BANQUE POPULAIRE registered under number 018725733 on June 29, 2022 for services in classes 9, 35 and 36.

The Complainant also relies on domain names, such as <banque-populaire.com> registered in 1998, <banquepopulaire.com> registered in 2001, <banquepopulaire.fr> and <banque-populaire.fr> registered in 2002, <banquepopulaire.info> in 2007, resolving to the Complainant's official website. These domain names are registered in the name of the GIE BPCE IT, which is a distinct entity.

The disputed domain name was registered on October 30, 2023.

The Complainant claims that it was first used to lead to an active website offering banking services and that it further resolved to an inactive website.

The provided screenshot shows that it resolved to a landing page mentioning the name "Banque Populaire". The website displays a statement "connexion à votre espace personnel" and requires users to enter personal identification information.

A cease-and-desist letter was sent to the Registrar abuse email address provided on the Whois on November 17, 2023. It remained unanswered.

#### **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 the following.

Identity or similarity to the Complainant's trademarks

The disputed domain name <monespaceclientenligne-banquepopulaire.com> is highly similar to the Complainant's BANQUE POPULAIRE trademark.

It contains in its entirety the well-known BANQUE POPULAIRE trademark with addition of the French words “mon espace client en ligne” attached all together does not prevent a finding of confusing similarity. On the contrary, as they are the French translation of “my online customer account”, they will be understood as a reference to the personal portal of Banque Populaire customers or will be disregarded by the Internet users.

The Complainant relies on a prior UDRP decision which stated that “Accordingly, the mere addition of the generic and/or descriptive terms (...) (especially since these terms both directly point to Complainant’s company form and activity) is not at all capable to dispel the confusing similarity arising from the incorporation of Complainant’s BPCE trademark into the disputed domain name”. (*BPCE v. Jamie Hart*, WIPO Case No. [D2016-1487](#)).

More particularly, previous UDRP panels have found that where the relevant trademark is recognizable within the disputed domain name, the addition of descriptive terms would not prevent a finding of confusing similarity under the first element.

Thus, this use of the misspelled trademarks in the disputed domain name leads the public to believe that the Respondent disputed domain name belongs to the Complainant.

Considering the above mentioned, the disputed domain name registered by the Respondent should be considered as confusingly similar to the prior rights owned by the Complainant.

#### Absence of rights or legitimate interest

The Complainant has never authorized the Respondent to register and/or use any domain name incorporating the trademarks.

The Complainant has not granted any license, nor any authorization to use the trademarks, included as a domain name.

Indeed, the disputed domain name lead to an inaccessible website which show that there is no bona fide offering of goods or services by the Respondent. (*Orlane S.A. v. YongGuo Mei, Mei Yong Guo*, WIPO Case No. [D2016-1764](#)).

Under these circumstances, the Respondent has no rights or legitimate interests to use the disputed domain name.

#### Bad faith registration and use

As above mentioned, the trademarks are well-known in France and through the world, notably by the financial and banking market consumers. Besides, the notoriety of the trademarks has already been established by panels in previous decisions.

The Complainant relies on a prior WIPO UDRP decision, in which the Panel stated that “Indeed, given the fact that the Complainant’s trademarks are well-known in the banking and insurance services, the Respondent cannot credibly claim to have been unaware of the existence of the Complainant’s previous trademarks” (*BPCE v. Registration Private, Domains By Proxy, LLC of Arizona/ Sophie Gadoud, Shady’s corporation*, WIPO Case No. [D2021-2305](#)).

it is unquestionable that (i) the Complainant’s trademarks registrations predate the registration of the disputed domain name and as above mentioned, (ii) the trademarks are well-known in France and through the world, notably by the financial and banking market consumers.

Consequently, the choice of the disputed domain name cannot be a mere coincidence, but on the contrary seems to have been done on purpose to generate a likelihood of confusion with the disputed domain Name and the trademarks of BPCE.

Thus, in application with previous panel decision, it shall be deemed that the registration of the disputed domain name has been done per se in bad faith.

The Complainant reminds that the disputed domain name used to lead to a website offering banking services, i.e. competing services to the one offered by the Complainant, which clearly chose an intent to take advantage of the Complainant's trademark to deceive the Internet user and attempt to attract, for commercial gain, the Internet user to its website by creating a likelihood of confusion.

In any event, the disputed domain name currently leads to an inactive website.

The lack of active use of the disputed domain name does not prevent a finding of bad faith under the doctrine of passive holding. As stressed by many previous UDRP decisions, "While panelists 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, and (iv) the implausibility of any good faith use to which the domain name may be put." (see section 3.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"); *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#)).

The Complainant emphasizes that the Respondent chose to hide its identity.

Moreover, the information about the Respondent seems to be false. In fact, after a search on Internet, it appears the address indicated in the notice of the Registrant Information doesn't exist.

All of the above shows the Respondent's willingness to remain anonymous, which demonstrates his bad faith.

Furthermore, the Complainant is particularly concerned about this situation because in the field of banking services, consumer protection and security services are a key issue given the sensitive nature of the data processed.

This has been recognized in several WIPO previous decisions (*Deutsche Kreditbank AG v. Contact Privacy Inc. / Telford Foucault*, WIPO Case No. [D2019-1914](#)).

Therefore, the registration of the disputed domain name has been done in bad faith.

## **B. Respondent**

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

## **6. Discussion and Findings**

To prevail in the proceedings under the Policy, the Complainant must show that the three requirements set forth in paragraph 4(a) of the Policy are met. Those requirements are:

- (i) the domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) the Respondent has no rights or legitimate interests in respect of the domain name; and
- (iii) the domain name has been registered and is being used in bad faith.

Likewise, under paragraph 4(c) of the Policy, the Respondent can demonstrate its rights and legitimate interests in the disputed domain name in its response to the Complaint by demonstrating, among others, the circumstances mentioned under this paragraph of the Policy.

## **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 3.0](#), sections 1.7. and 1.8.

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., even if both French marks certificates mention an address which appears to be a prior address of the Complainant.

The Panel finds the mark is recognizable within the disputed domain name. The addition of the French terms "monespaceclientenligne" to the BANQUE POPULAIRE mark does not prevent a finding of confusing similarity between the disputed domain name and the mark. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7 and 1.8.

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

## **B. Rights or Legitimate Interests**

As set forth by paragraph 4(c) of the Policy, any of the following circumstances, in particular, but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate the Respondent's rights or legitimate interests to the domain name for purposes of paragraph 4(a)(ii):

(i) before any notice to the Respondent of the dispute, its use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or

(ii) the Respondent (as an individual, business, or other organization) has been commonly known by the domain name, even if it has acquired no trademark or service mark rights; or

(iii) the Respondent is 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 trademark or service mark at issue.

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.

The Respondent has not been licensed or authorized to use the BANQUE POPULAIRE mark or to register the disputed domain name.

The Respondent used the disputed domain name to give access to a landing page showing a photo of a building that could be a bank in association with the name "Banque Populaire" and with "Connection à votre espace personnel", and a dedicated login area. Even if no other content was available, this cannot be regarded as a bona fide use, in the meaning of the Policy.

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.

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

### **C. Registered and Used in Bad Faith**

Paragraph 4(b) of the Policy sets out examples of circumstances that will be considered by an Administrative Panel to be evidence of bad faith registration and use of a domain name. It provides that:

“For the purposes of paragraph 4(a)(iii), the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

- (i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant who is the owner of the trademark or service mark or to a competitor of that Complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or
- (ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or
- (iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location.”

In the present case, the Panel notes that, given the well-known character of the BANQUE POPULAIRE mark, the Respondent, who seems to be located in France, cannot have ignored the existence and the reputation of this mark at the time it registered the disputed domain name. There is no doubt that the Respondent was targeting the Complainant.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and 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. [WIPO Overview 3.0](#), section 3.2.1.

Based on the uncontested facts of this case, on balance, there does not appear to be any other reason for the Respondent's registration of the disputed domain name other than for the possibility to trade off the goodwill and reputation of the Complainant's BANQUE POPULAIRE mark.

The Panel finds that the Complainant has submitted proof that the disputed domain name is used to resolve to a landing page “Banque Populaire”, the content of which is only offering to login into a personal space, even if it did not apparently work.

Registering a domain name can always be associated with the creation of mail exchange (“MX”) servers, and then the creation of email addresses for phishing purposes.

Such a pattern is clearly aiming at creating a likelihood of confusion with the Complainant's BANQUE POPULAIRE mark, to mislead Internet users, and especially the Complainant's clients, to disrupt its activity and to benefit from the BANQUE POPULAIRE mark's reputation.

Such conduct is within paragraph 4(b)(iv) of the Policy.

Given the well-known character of the BANQUE POPULAIRE trademark, the Panel cannot conceive any use that the Respondent could make of the disputed domain name that would not interfere with the Complainant's trademark rights.

Based on the available record, 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 <monespaceclientenligne-banquepopulaire.com> be transferred to the Complainant.

*/Marie-Emmanuelle Haas/*

**Marie-Emmanuelle Haas**

Sole Panelist

Date: February 23, 2024