

ADMINISTRATIVE PANEL DECISION

Banque et Caisse d'Epargne de l'Etat, Luxembourg v. Ida Westergren
Case No. D2023-5379

1. The Parties

The Complainant is Banque et Caisse d'Epargne de l'Etat, Luxembourg, Luxembourg, represented by Office Freylinger S.A., Luxembourg.

The Respondent is Ida Westergren, Sweden.

2. The Domain Name and Registrar

The disputed domain name <bcee.skin> is registered with Spaceship, Inc. (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on December 28, 2023. On December 28, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 29, 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 (Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 3, 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 January 4, 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 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 January 31, 2024.

The Center appointed Ganna Prokhorova as the sole panelist in this matter on February 12, 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 longstanding bank incorporated in 1989 in Luxembourg which operates internationally in the financial services sector under the trademark BCEE.

The Complainant holds a number of trademark registrations for BCEE around the globe, including, inter alia, European Union Trademark Registration No. 009110537, registered on November 2, 2010, and covering goods and services in classes 9, 16, 25, 35, 36, 38, 39, 41, 42, 43, and 45. The Complainant also operates at the domain name <bcee.snet.lu>.

The disputed domain name was registered on October 5, 2023, and resolves to an inactive page.

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:

- (1) the disputed domain name is identical to a trademark in which the Complainant has rights, because it reproduces precisely and entirely the Complainant's trademark BCEE, which cannot be a coincidence. The Top-Level Domain ("TLD") ".skin" is placed after the dominant element BCEE and may therefore go unnoticed by the consumers that will focus on the first identical element, BCEE;
- (2) the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent is not affiliated with the Complainant in any way, nor authorized by the Complainant to use and register its trademarks, or to seek registration of any domain name incorporating such trademarks. The Respondent has no prior rights or legitimate interests in the disputed domain name. None of its trademark rights have ever been licensed or otherwise made available for use to the Respondent by the Complainant. The disputed domain name is identical to the Complainant's trademarks such that the Respondent cannot reasonably pretend it was intending to develop legitimate activity through the disputed domain name. Trademark searches clearly show that the Respondent has no rights to the signs BCEE;
- (3) The disputed domain name was registered and is being used in bad faith. It is implausible that the Respondent was unaware of the Complainant's trademark rights when the Respondent registered the disputed domain name. The Complainant, owned by the State of Luxembourg, has a 160-year history, and has acquired throughout the years a reputation in the international financial markets. The term BCEE is generally known by the public in Luxembourg as being the acronym of the Luxembourgish Savings Bank being "Banque et Caisse d'Epargne de l'Etat, Luxembourg", completely owned by the government of Luxembourg. It is well-known by the public worldwide, being ranked among the 10 safest banks in the world in 2019. The fact that the Respondent registered the Complainant's trademark cannot be pure chance, but constitutes registration in bad faith. The Respondent is using the identical sign "bcee.skin" which is almost identical to the Complainant's trademarks registration "BCEE", at least to the dominant verbal element of the trademark invoked above and leads to strongly believe that he will use it for phishing. It is likely that the Respondent registered the disputed domain name to prevent the

Complainant from using its trademarks in the disputed domain name or to try to sell it. The disputed domain name is being used in bad faith.

The Complainant seeks transfer of the disputed domain name.

B. Respondent

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

6. Discussion and Findings

To succeed, the Complainant must demonstrate that all the elements listed in paragraph 4(a) of the Policy have been satisfied, as following:

- (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.

The Panel will further analyze the potential concurrence of the above circumstances.

Moreover, the Panel has taken note of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") and, where appropriate, will decide consistent with the consensus views captured therein.

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](#), section 1.7.

The Complainant has shown rights in respect of a trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

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

It is well accepted by UDRP panels that the addition of the TLDs, such as ".skin", is typically ignored when assessing whether a domain name is identical or confusingly similar to a trademark. [WIPO Overview 3.0](#), section 1.11.1.

Based on the available record, 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.

The Panel notes that the Respondent is not affiliated with the Complainant in any way, nor has he been authorised by the Complainant to use and register its trademarks, or to seek registration of any domain name incorporating the Complainant’s trademark. The Complainant has also asserted that the Respondent has no prior rights or legitimate interests in the disputed domain name on the basis that its trademark searches show that the Respondent has no trademark rights anywhere in the world for the sign “bcee”.

Furthermore, the Panel notes that the Respondent is not commonly known by the disputed domain name, whereas the Complainant has prior rights in the trademarks, which precede the Respondent’s registration of the disputed domain name by years.

There is no evidence in the case file that the Respondent is conducting any bona fide business in connection with the disputed domain name under the circumstances where it resolves to an inactive website. Neither there is evidence that the Respondent has used or made demonstrable preparations to use the disputed domain name in connection with a legitimate noncommercial or fair use or a bona fide offering of goods and services.

Based on the available record, 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 Complainant asserts that the Respondent has registered the disputed domain name with full knowledge of the Complainant’s trademarks. The Respondent has not refuted this contention, provided incomplete contact information, the Complainant has valid trademark rights for BCEE, and the disputed domain name is identical to the trademark. Accordingly, without any evidence to the contrary from the Respondent, the Panel infers that the Respondent was aware of the Complainant at the time it registered the disputed domain name.

Panels have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the available record, the Panel finds the non-use of the disputed domain name does not prevent a finding of bad faith in the circumstances of this proceeding. Although 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, and (iii) the respondent’s concealing its identity or use of false contact details (noted to be in breach of its registration agreement). [WIPO Overview 3.0](#), section 3.3.

Having reviewed the available record, the Panel notes the distinctiveness or reputation of the Complainant's trademark, and the composition of the disputed domain name, and finds that in the circumstances of this case the passive holding of the disputed domain name does not prevent a finding of bad faith under the Policy.

The Respondent has not participated in these proceedings and has failed to rebut the Complainant's contentions and to provide any evidence of actual or contemplated good-faith use.

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 <bcee.skin> be transferred to the Complainant.

/Ganna Prokhorova/

Ganna Prokhorova

Sole Panelist

Date: February 26, 2024