

ADMINISTRATIVE PANEL DECISION

Bread Financial Payments, Inc. v. Aldin Nicevic, Aldin Nicevic
Case No. D2024-0927

1. The Parties

The Complainant is Bread Financial Payments, Inc., United States of America ("United States"), represented by Porter Wright Morris & Arthur, LLP, United States.

The Respondent is Aldin Nicevic, Aldin Nicevic, United Kingdom.

2. The Domain Name and Registrar

The disputed domain name <breadfinancial.com> is registered with Domain.com, LLC (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on March 2, 2024. On March 5, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 5, 2024, 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 (Domain.com, LLC), and contact information in the Complaint. The Center sent an email communication to the Complainant on March 13, 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 amendment to the Complaint on March 13, 2024.

The Center verified that the Complaint together with the amendment to 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 of the Complaint, and the proceedings commenced on March 14, 2024. In accordance with the Rules, paragraph 5, the due date for Response was April 3, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on April 8, 2024.

The Center appointed Jeremy Speres as the sole panelist in this matter on April 15, 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 financial services provider operating in the United States, particularly providing direct-to-consumer, or retail, savings accounts (also known as deposit accounts) and certificates of deposit under its BREAD-formative marks, including BREAD FINANCIAL and BREAD SAVINGS, which it adopted in early 2022. Among others, the Complainant owns the domain names <breadfinancial.com> and <breadsavings.com>.

The Complainant's BREAD-formative marks are registered in the United States, including Trade Mark Registration No. 7300264 BREAD FINANCIAL in class 36, with a registration date of February 6, 2024, and a claimed first use in commerce date of April 2022.

The disputed domain name was registered on March 28, 2023, and currently does not resolve to any website. The Complainant's evidence establishes that the disputed domain name previously resolved to a replica of the Complainant's BREAD SAVINGS login page, featuring an identical copy of the Complainant's BREAD SAVINGS logo¹ as well as the Complainant's copyright notice and links to the Complainant's Privacy Policy, enrollment page, and account recovery 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 the disputed domain name was registered and used in bad faith as a typosquatting variant of the Complainant's BREAD FINANCIAL mark in order to deceive the Complainant's customers into supplying the Respondent with their login credentials.

B. Respondent

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

6. Discussion and Findings

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 of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

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. The Panel finds the mark is recognizable within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7. A domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by UDRP panels to be confusingly similar to the relevant mark for purposes of the first element. [WIPO Overview 3.0](#), section 1.9. Here, the substitution of the "i" in

¹ Subject to United States Trade Mark Registration No. 7237586, registered on December 5, 2023, and citing first use as April 2022.

the Complainant's mark with a "y" is an obvious misspelling of the mark, and the Complainant's mark remains recognizable within the disputed domain name despite it.

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.

Panels have held that the use of a domain name for illegal activity, here likely phishing, can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1. For the reasons discussed in relation to bad faith below, it is likely that the disputed domain name was registered in order to perpetuate phishing.

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.

Here, the evidence in the record establishes that the Complainant's BREAD FINANCIAL and BREAD SAVINGS marks are well-known within its industry. UDRP panels have consistently found that the registration of a domain name that is confusingly similar to a well-known trade mark (as in this case) can by itself create a presumption of bad faith. [WIPO Overview 3.0](#) at sections 3.1.4 and 3.2.1. While the Complainant's BREAD SAVINGS mark was registered following the disputed domain name, the registration certificate of such mark reflects its use prior to the registration of the disputed domain name and the fact that the disputed domain name includes such registered logo and text in its entirety reflects the Respondent's awareness of, and intent to target, the Complainant and its marks.

Panels have held that the use of a domain name for illegal activity, here likely phishing, constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Considering the indicators of impersonation apparent on the Respondent's erstwhile website highlighted in the Factual Background Section 4 above, it is clear that the Respondent intended to impersonate the Complainant in order to phish for the Complainant's customers' credentials. The composition of the disputed domain name, featuring a typosquatting variant of the Complainant's well-known BREAD FINANCIAL mark, strengthens this conclusion. [WIPO Overview 3.0](#) at section 3.2.1. Paragraph 4(b)(iv) of the Policy is thus eminently applicable.

The fact that the disputed domain name does not currently resolve to any website does not prevent a finding of bad faith under the doctrine of passive holding; all the factors that panels typically consider under that doctrine favour the Complainant ([WIPO Overview 3.0](#) at section 3.3).

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 <breadfynancial.com> be transferred to the Complainant.

/Jeremy Speres/

Jeremy Speres

Sole Panelist

Date: April 25, 2024