

ADMINISTRATIVE PANEL DECISION

Bread Financial Payments, Inc. v. Timo Schirmer, Aurelia Media
Case No. D2024-4316

1. The Parties

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

Respondent is Timo Schirmer, Aurelia Media, Germany.

2. The Domain Name and Registrar

The disputed domain name <breadnancial.com> (the "the Domain Name") is registered with IONOS SE (the "Registrar").

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the "Center") on October 18, 2024. On October 21, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On October 22, 2024, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent (REDACTED FOR PRIVACY, 1&1 Internet Limited) and contact information in the Complaint. The Center sent an email communication to Complainant on October 28, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amendment to the Complaint on October 29, 2024.

On October 28, 2024, the Center informed the parties in German and English, that the language of the registration agreement for the Domain Name is German. On October 29, 2024, Complainant requested English to be the language of the proceedings. Respondent did not submit any comments on the Complainant's submission.

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 Respondent in German and English of the Complaint, and the proceedings commenced on November 5, 2024. In accordance with the Rules, paragraph 5, the due date for Response was November 25, 2024. Respondent did not submit any formal response. However, an email from Respondent was received on November 18, 2024, wishing to explore the settlement opportunities. No suspension was requested by Complainant though. Accordingly, the Center notified the Parties that it would proceed to panel appointment on December 6, 2024.

The Center appointed Marina Perraki as the sole panelist in this matter on December 17, 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

Complainant is a wholly owned subsidiary of Bread Financial Holdings, Inc., a publicly traded financial services company founded in 1996. Complainant is a tech-forward financial services company. Complainant's goods and services are provided under the BREAD FINANCIAL mark and other BREAD formative marks.

Complainant offers private label and co-branded credit cards and related services to business, and also offers direct-to-consumer credit cards under its BREAD FINANCIAL mark. It further provides online consumer purchase financing to more than 1,000 small and medium-sized online retailers and online banking services, particularly direct-to-consumer savings accounts. As of December 31, 2023, the retail deposits were at USD 6.5 billion.

Complainant claims that it is the owner of, inter alia, the domain name <breadfinancial.com> under which it maintains its main website providing the majority of Complainant's retail financial services. For example, Complainant's retail customers can open and access their accounts, including savings accounts and credit card accounts, as well as apply for credit cards and loans at Complainant's website "www.breadfinancial.com".

Complainant owns trademark registrations for BREAD FINANCIAL including the United States trademark registration No. 7,300,264, BREAD FINANCIAL (word), filed on December 13, 2021 and registered on February 6, 2024 for services in international class 36.

The Domain Name was registered on September 22, 2024 and leads to an inactive website, while Mail Exchange ("MX") records have been configured for the Domain Name. As Complainant subsequently discovered, 90 minutes after the Domain Name was registered, another registration took place for the domain name <breadnancial.org>.

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 Domain Name.

B. Respondent

The Respondent did not formally reply to the Complainant's contentions. On November 18, 2024 Respondent sent an email communication to the Center stating that they were fully prepared to settle the case, and had communicated this to Complainant. They further specified that they had registered the Domain Name, but it was never "activated." They suggested that Complainant withdraw the Complaint.

6. Discussion and Findings

Language of the Proceedings

The language of the Registration Agreement for the Domain Name is German. 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. Complainant requested that the language of the proceeding be English for several reasons. The Panel considers the following assertions of Complainant:

- Complainant is a Delaware corporation with its principal office in the United States.
- Complainant's representatives responsible for this matter are familiar with English.
- Complainant's authorized representative for this matter has minimal knowledge of German and is therefore unable to meaningfully communicate in German.
- Complainant's BREAD FINANCIAL trademark and the Domain Name consist of English words ("bread" and "financial", misspelled as "nancial").
- The necessary translations of documents would cause delays and additional costs for Complainant.
- Subsequent to the filing of the Complaint, Respondent reached out to Complainant's representative via email in English, which shows that Respondent is fluent in English.

Furthermore, Respondent sent an email communication to the Center on November 18, 2024 in English, which proves that Respondent is fully capable of understanding and communicating well in English.

Respondent did not make any specific submissions with respect to the language of the proceedings.

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 proceedings shall be English.

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 Complainant's trademark and the Domain Name. [WIPO Overview 3.0](#), section 1.7.

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 Domain Name. Accordingly, the Domain Name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7. The omission of the letters "fi" in the second word ("financial") does not prevent a finding of confusing similarity between the Domain Name and the mark for the purposes of the Policy.

The generic Top-Level Domain ("gTLD") ".com" is disregarded, as gTLDs typically do not form part of the comparison on the grounds that they are required for technical reasons ([WIPO Overview 3.0](#), section 1.11.1).

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 Respondent may demonstrate rights or legitimate interests in a 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 Complainant has established a prima facie case that Respondent lacks rights or legitimate interests in the Domain Name. Respondent has not rebutted Complainant’s prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests (nor claimed any such rights or legitimate interests in its email communication to the Center dated November 18, 2024) in the Domain Name such as those enumerated in the Policy or otherwise. On the contrary, Respondent indicated in its communication to the Center dated November 18, 2024 that the Domain Name was never “activated.”

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.

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.

The Complainant’s BREAD FINANCIAL trademark was used and registered before the Domain Name registration. The Panel finds it more likely than not that Respondent had Complainant’s trademark in mind when registering the Domain Name. The whole of the Complainant’s trademark is included in the Domain Name, except for the letters “fi” of the second word “financial”. The above is a clear indication that Respondent knew of Complainant and its trademarks and chose the Domain Name having those in mind.

Having reviewed the available record, the Panel finds the non-use of the Domain Name does not prevent a finding of bad faith in the circumstances of these proceedings. 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, and (ii) the failure of the respondent to submit a formal response or to provide any evidence of actual or contemplated good-faith use. [WIPO Overview 3.0](#), section 3.3.

The Panel notes a) the lack of any good-faith use claims let alone evidence thereof from Respondent in their November 18, 2024 email communication to the Center, b) the fact that Respondent has not submitted a formal response, and c) the composition of the Domain Name, which incorporates Complainant’s trademark entirely, except for the letters “fi” from the second word “financial”. Taking all the above into account, the Panel finds that in the circumstances of this case the passive holding of the Domain Name does not prevent a finding of bad faith under the Policy.

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 Domain Name <breadnancial.com> be transferred to the Complainant.

/Marina Perraki/

Marina Perraki

Sole Panelist

Date: December 31, 2024