

ADMINISTRATIVE PANEL DECISION

BforBank v. Domains By Proxy, LLC

Case No. DAI2023-0011

1. The Parties

The Complainant is BforBank, France, represented by Nameshield, France.

The Respondent is Domains By Proxy, LLC, United States of America.

2. The Domain Name and Registrar

The disputed domain name <bforbank.ai> (“the Disputed Domain Name”) is registered with 1API GmbH (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 14, 2023. On June 14, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On June 15, 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.

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 of the Complaint, and the proceedings commenced on June 20, 2023. In accordance with the Rules, paragraph 5, the due date for Response was July 10, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 12, 2023.

The Center appointed Nick J. Gardner as the sole panelist in this matter on July 19, 2023. 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 online bank which commenced business in October 2009. It offers daily banking, savings, investment, and credit (consumer and real estate) services. It has approximately 240,000 customers.

The Complainant is the registered owner of European Union trademark registration No. 008335598 for BFORBANK (word), registered on December 8, 2009, for goods and services in classes 9, 35, 36, and 38 (the “BFORBANK trademark”).

The Disputed Domain Name was registered on June 4, 2023, and at the time of filing the Complaint, it resolved to a registrar parking 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.

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.

Based on the available record, the Panel finds 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 entirety of the mark is reproduced within the Disputed Domain Name. Accordingly, the Disputed Domain Name is identical or confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

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.

While 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 often impossible 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. 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 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.

The Panel considers that the record of this case reflects that:

- before any notice to the Respondent of the dispute, the Respondent did not use, nor has it made demonstrable preparations to use, the Disputed Domain Name or a name corresponding to the Disputed Domain Name in connection with a *bona fide* offering of goods or services. Paragraph 4(c)(i) of the Policy, and [WIPO Overview 3.0](#), section 2.2.
- the Respondent (as an individual, business, or other organization) has not been commonly known by the Disputed Domain Name. Paragraph 4(c)(ii) of the Policy, and [WIPO Overview 3.0](#), section 2.3.
- the Respondent is not 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. Paragraph 4(c)(iii) of the Policy, and [WIPO Overview 3.0](#), section 2.4.
- the record contains no other factors demonstrating rights or legitimate interests of the Respondent in the Disputed Domain Name.

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. However, 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 Panel considers that the record of this case reflects that:

Panels have found that the non-use of a domain name (including a blank or "coming soon" page) would not prevent a finding of bad faith under the doctrine of passive holding. Here, the Disputed Domain Name resolves to a registrar parking page stating that the Disputed Domain Name may be available and prompting Internet users to contact the registrar's brokerage service. Arguably, the website associated with the Disputed Domain Name fails to reflect any active use by the Respondent. Having reviewed the 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. 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 (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put. [WIPO Overview 3.0](#), section 3.3. Having reviewed the 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. Moreover, even if the Disputed Domain Name were ultimately being offered for sale after Internet users engaged with the registrar's brokerage service, as prompted on the website at the Disputed Domain

Name, such active offer for sale would reinforce the Panel's bad faith finding, given the totality of the circumstances here.

Based on the available record, the Panel finds the third element of the Policy has been established.

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, <bforbank.ai> be transferred to the Complainant.

/Nick J. Gardner/

Nick J. Gardner

Sole Panelist

Date: August 2, 2023