

ADMINISTRATIVE PANEL DECISION

Alpha Bank S.A. v. Ehren Schaiberger
Case No. D2024-0818

1. The Parties

The Complainant is Alpha Bank S.A., Greece, represented by Ubilibet, Spain.

The Respondent is Ehren Schaiberger, United States of America (“United States”).

2. The Domain Name and Registrar

The disputed domain name <alpha.fund> (the “Disputed Domain Name”) is registered with Sav.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 23, 2024. On February 23, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On February 23, 2024, 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 February 27, 2024. In accordance with the Rules, paragraph 5, the due date for Response was March 22, 2024. The Response was filed with the Center March 16, 2024.

The Center appointed Flip Jan Claude Petillion, Delia-Mihaela Belciu, and Diane Cabell as panelists in this matter on April 24, 2024. The Panel finds that it was properly constituted. Each member of 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, Alpha Bank S.A, is a Greek bank founded in 1879.

The Complainant is the owner of various trademarks, including:

- ALPHA BANK, Albanian word mark registered under No. 008160 on October 20, 2000 in classes 16, 35 and 36;
- ALPHA BANK, North Macedonian word mark registered under No. 11193 on May 16, 2006 in class 36;
- ALPHA BANK, Bulgaria word mark registered under No. 00048265 on June 28, 2004 in class 36;
- ALPHA BANK, Serbia word mark registered under No. 48853 on August 9, 2005 in classes 16, 35 and 36
- ALPHA BANK, United Kingdom word mark registered under No. UK00905282918 on August 4, 2009 in classes 16, 35 and 36;
- ALPHA BANK, European Union word mark registered under No. 005282918 on August 4, 2009 in classes 16, 35 and 36;

The Complainant also appears to operate a website linked to the domain name <alpha.gr>.

The Disputed Domain Name was registered on March 25, 2023. The Panel observes that the Disputed Domain Name currently resolves to a webpage offering the Disputed Domain Name for sale for USD 19,999.

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 is identical to a trademark in which it claims to have rights.

The Complainant further claims that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name. The Complainant contends that:

- it has not authorized, licensed, or allowed the Respondent or any third party to use its trademarks through the Disputed Domain Name or in any other way that would confer validity or legitimacy upon such usage;
- there is no evidence of the Respondent's prior use of the Disputed Domain Name in connection with a bona fide offering of goods or services, no evidence of any form of use of the tradename "alpha" by the Respondent, or whether the Respondent has been commonly known by the tradename "alpha" in that sphere;
- considering the substantial notoriety and significance of the Complainant's trademarks, the Respondent, particularly in the deliberate registration of the ".fund" domain, knew or should have reasonably known about the Complainant's business and trademark protection. Hence, the Respondent's activity is speculative and unmistakably targets the Complainant. If the Respondent's use is determined to be in bad faith, it cannot, under any circumstance, be regarded as legitimate.

Finally, the Complainant claims that the Disputed Domain Name was registered and is being used in bad faith. According to the Complainant:

- the Respondent cannot credibly claim to have been unaware of the existence of Complainant's trademarks and the evident business interest of the Complainant in the Disputed Domain Name;
- the mere registration of a domain name that is identical or confusingly similar to a famous or widely-known trademark by an unaffiliated entity create a presumption of bad faith;
- the Disputed Domain Name is registered and used for the unique purpose of selling and the primary objective of the sale is to target either the Complainant or a competitor of the Complainant. The fact that the sale is intended for valuable consideration surpassing documented out-of-pocket costs also constitutes strong evidence of bad faith.

B. Respondent

The Respondent contends that the Disputed Domain Name is not confusingly similar to the Complainant's trademarks because these trademarks all distinguish themselves by featuring the words "bank" or "banking".

The Respondent states that it is using the Disputed Domain Name in connection with a bona fide offering of goods or services because it is in the business of curating and supplying domain names to new business entities. According to the Respondent, the Disputed Domain Name was registered for a wide scope of possible uses for either a company offering physical or digital products or services.

The Respondent further claims it has not registered and used the Disputed Domain Name in bad faith, as, according to the Respondent:

- it had never heard of the Complainant prior to the Complaint;
- the Complainant has never reached out to the Respondent;
- it does not target companies. It is only looking for the best available domain names expiring and dropping daily. On March 25, 2023, <alpha.fund> had expired and dropped. While scanning the daily expiry and drop lists, the Respondent identified <alpha.fund> as a good synergistic, descriptive, and brandable domain name to add to its portfolio;
- "Alpha" is a generic dictionary word with a variety of meanings. It is also a popular term in the world of investing. "Alpha" is one of the 100 most popular second-level domains in the world. "Alpha" is contained in over 150,000 domain names worldwide. There are thousands of companies around the world using "Alpha" in their names and brands with thousands of registered trademarks. An alpha fund is also a financial product. It is an investment fund that aim to achieve alpha and outperform a benchmark index or the entire market;
- it has the right to sell the Disputed Domain Name for whatever price it deems appropriate regardless of the value that Complainant or an appraiser may ascribe to the Disputed Domain Name.

Finally, the Respondent claims that the Complainant is abusing the UDRP in an attempt to steal domain names as the Complainant has simultaneously filed a complaint for the domain name <alpha.finance> owned by a different registrant not connected to the Respondent. According to the Respondent, this is a classic Plan B case by the Complainant, resorting to the UDRP when unhappy with the price on the market.

6. Discussion and Findings

Paragraph 15 of the Rules provides that the Panel is to decide the Complaint on the basis of the statements and documents submitted in accordance with the Policy, the Rules, and any rules and principles of law that it deems applicable.

The onus is on the Complainant to make out his case and it is apparent, both from the terms of the Policy and the decisions of past UDRP panels, that the Complainant must show that all three elements set out in paragraph 4(a) of the Policy have been established before any order can be made to transfer the Disputed Domain Name. As the UDRP proceedings are administrative, the standard of proof is the balance of probabilities.

Thus, for the Complainant to succeed it must prove, within the meaning of paragraph 4(a) of the Policy, that:

(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 therefore deal with each of these requirements.

A. Identical or Confusingly Similar

To prove this element, the Complainant must first establish that there is a trademark or service mark in which it has rights. The Complainant has established that there are trademarks in which it has rights. The Complainant's ALPHA BANK trademarks have been registered and used in various countries in connection to the Complainant's banking and financial activities.

The Panel finds that the Disputed Domain Name is confusingly similar to the Complainant's ALPHA BANK trademarks as it reproduces the dominant element of the trademark in question, namely the term "alpha". In cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

It is well established that the generic Top-Level Domain ("gTLD"), here ".fund", may be disregarded when considering whether the Disputed Domain Name is confusingly similar to a trademark in which the Complainant has rights. [WIPO Overview 3.0](#), section 1.11.1.

In light of the above, the Panel considers that the Complainant has established the first requirement under the Policy.

B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name.

As established by previous UDRP panels, it is sufficient for the Complainant to make a prima facie showing that the Respondent has no rights or legitimate interests in the Disputed Domain Name in order to place the burden of production on the Respondent. [WIPO Overview 3.0](#), section 2.1.

The Complainant's main argument in that regard is the fact that, according to the Complainant, the Respondent's registration and use of the Disputed Domain Name is speculative and unmistakably targets the Complainant.

The Respondent does not deny registering the Disputed Domain Name for the purpose of resale. However, the Respondent asserts it did not target the Complainant.

Generally speaking, panels have accepted that aggregating and holding domain names (usually for resale) consisting of acronyms, dictionary words, or common phrases can be bona fide and is not per se illegitimate under the UDRP, provided that this is not done with the intent to target the complainant.

[WIPO Overview 3.0](#), section 2.1 and *Zydus Lifesciences Ltd. (formerly known as Cadila Healthcare Ltd.) v. Jewella Privacy LLC / DNS, Domain Privacy LTD*, WIPO Case No. [D2022-0880](#).

In the present case, the Disputed Domain Name consists of the word “alpha”. The Panel notes that the word “alpha” is a dictionary word, being i.a. the first letter of the Greek alphabet or something that is first. Moreover, the Respondent shows that the term “alpha” is a popular second-level domain (“SLD”) and that thousands of companies around the world use “alpha” in their names and trademarks.

In the Panel’s view, the fact that the Disputed Domain Name’s gTLD is “.fund” does not mean that the Respondent is targeting the Complainant. In fact, as evidenced by the Respondent, the term “alpha” appears to be widely used in the specific finance sector and can thus not be exclusively linked to the Complainant or the Complainant’s ALPHA BANK marks. According to the Panel, there is insufficient evidence showing that the Respondent specifically targeted the Complainant or its marks when registering the Disputed Domain Name.

In view of the above, the Panel finds that the Complainant has not established the second requirement under the Policy.

C. Registered and Used in Bad Faith

Given the Panel’s findings regarding the second requirement, it is not necessary to address the third one. However, for the sake of completeness, the Panel adds the following regarding the alleged bad faith registration and use of the Disputed Domain Name.

While it is true that the Respondent seems to be a professional domain name reseller, which may imply some good-faith effort to avoid registering and using domain names corresponding to trademarks, this does not mean that the registration of the disputed domain name would automatically be considered to be in bad faith. [WIPO Overview 3.0](#), section 3.2.3.

For all the reasons mentioned under section 6.B, and especially the wide use of the term “alpha” even in the financial sector, the Panel finds that there is insufficient proof of the Respondent specifically targeting the Complainant with the Disputed Domain Name.

In view of the above, the Panel finds that the Complainant has not established that the Disputed Domain Name has been registered and is used in bad faith.

D. Reverse Domain Name Hijacking

Paragraph 15(e) of the Rules provides that, if “after considering the submissions the panel finds that the complaint was brought in bad faith, for example in an attempt at Reverse Domain Name Hijacking or was brought primarily to harass the domain-name holder, the panel shall declare in its decision that the complaint was brought in bad faith and constitutes an abuse of the administrative proceeding”.

For this purpose, paragraph 1 of the Rules defines Reverse Domain Name Hijacking (“RDNH”) to be “using the Policy in bad faith to attempt to deprive a registered domain name holder of a domain name”.

Reasons articulated by panels for finding RDNH as stated in the [WIPO Overview 3.0](#) include: (i) facts which demonstrate that the complainant knew it could not succeed as to any of the required three elements – such as the complainant’s lack of relevant trademark rights, clear knowledge of respondent rights or legitimate interests, or clear knowledge of a lack of respondent bad faith (see generally section 3.8) such as registration of the disputed domain name well before the complainant acquired trademark rights, (ii) facts which demonstrate that the complainant clearly ought to have known it could not succeed under any fair

interpretation of facts reasonably available prior to the filing of the complaint, including relevant facts on the website at the disputed domain name or readily available public sources such as the Whois database, (iii) unreasonably ignoring established Policy precedent notably as captured in this [WIPO Overview 3.0](#) – except in limited circumstances which prima facie justify advancing an alternative legal argument, (iv) the provision of false evidence, or otherwise attempting to mislead the panel, (v) the provision of intentionally incomplete material evidence – often clarified by the respondent, (vi) the complainant’s failure to disclose that a case is a UDRP refiling, (vii) filing the complaint after an unsuccessful attempt to acquire the disputed domain name from the respondent without a plausible legal basis, (viii) basing a complaint on only the barest of allegations without any supporting evidence. [WIPO Overview 3.0](#), section 4.16.

The mere lack of success of a complaint is not in itself sufficient for a finding of RDNH.

According to the Respondent, “[T]he Complainant is abusing the UDRP in an attempt to steal domain names. They have simultaneously also filed a Complaint against alpha.finance owned by a completely different registrant not connected to this Respondent. This is a classic Plan B case by the Complainant, resorting to the UDRP when unhappy with the price on the market”.

In the case at hand, the Panel finds no evidence that the Complaint was brought in bad faith. The Complainant has valid trademark rights and seems to have been legitimately convinced that, when registering the Disputed Domain Name, the Respondent was targeting the Complainant. The Complainant may have erroneously believed that the registration of the Disputed Domain Name for resale purposes constitutes a strong argument in support of bad faith together with the fact that the Disputed Domain Name was registered under a gTLD which may be related to its financial activities.

Moreover, the Respondent seems to have misunderstood the concept of the “Plan B case”, which is a case where someone attempts to purchase a domain name, is unsatisfied by the negotiations or ignorant of normal market pricing, and instead launches a UDRP while omitting evidence of its purchase attempt. The Respondent does not show any evidence that the Complainant tried to purchase the Disputed Domain Name prior to filing the Complaint.

The Panel therefore declines to declare that the Complaint was brought in bad faith and constitutes an abuse of the administrative proceeding.

7. Decision

For the foregoing reasons, the Complaint is denied.

/Flip Jan Claude Petillion/

Flip Jan Claude Petillion

Presiding Panelist

/Delia-Mihaela Belciu/

Delia-Mihaela Belciu

Panelist

/Diane Cabell/

Diane Cabell

Panelist

Date: May 7, 2024