



DECISION

Peoples Bank of Mississippi v. Domain Admin / Xedoc Holding SA

Claim Number: FA2007001906337

PARTIES

Complainant is **Peoples Bank of Mississippi** (“Complainant”), represented by **Alexis Crawford Douglas** of **K&L Gates LLP**, Illinois, USA. Respondent is **Domain Admin / Xedoc Holding SA** (“Respondent” or “Xedoc”), Luxembourg, represented by **Paul Raynor Keating, Esq.** of **Law.es**, Barcelona, Spain.

REGISTRAR AND DISPUTED DOMAIN NAME

The domain name at issue is **<peoplesbank.com>**, registered with **Sea Wasp, LLC**.

PANEL

The undersigned certify that they have acted independently and impartially and to the best of their knowledge have no known conflict in serving as Panelists in this proceeding.

Lynda M. Braun, The Honourable Neil Anthony Brown QC, and Steven M. Levy, Esq. (Chair) as Panelists.

PROCEDURAL HISTORY

Complainant submitted a Complaint to the FORUM electronically on July 28, 2020; the FORUM received payment on July 28, 2020.

On September 22, 2020, Sea Wasp, LLC confirmed by e-mail to the FORUM that the **<peoplesbank.com>** domain name is registered with Sea Wasp, LLC and that Respondent is the current registrant of the name. Sea Wasp, LLC has verified

that Respondent is bound by the Sea Wasp, LLC registration agreement and has thereby agreed to resolve domain disputes brought by third parties in accordance with ICANN's Uniform Domain Name Dispute Resolution Policy (the "Policy").

On September 22, 2020, the FORUM served the Complaint and all Annexes, including a Written Notice of the Complaint, setting a deadline of October 19, 2020 by which Respondent could file a Response to the Complaint, via e-mail to all entities and persons listed on Respondent's registration as technical, administrative, and billing contacts, and to postmaster@peoplesbank.com. Also on September 22, 2020, the Written Notice of the Complaint, notifying Respondent of the e-mail addresses served and the deadline for a Response, was transmitted to Respondent via post and fax, to all entities and persons listed on Respondent's registration as technical, administrative and billing contacts.

A timely Response was received and determined to be complete on October 19, 2020.

On October 29, 2020, pursuant to Respondent's request to have the dispute decided by a three-member Panel, the FORUM appointed Lynda M. Braun, The Honourable Neil Anthony Brown QC, and Steven M. Levy, Esq. as Panelists.

An Additional Submission from Complainant was received on November 3, 2020 and an Additional Submission was received from Respondent on November 9, 2020.

Having reviewed the communications records, the Administrative Panel (the "Panel") finds that the FORUM has discharged its responsibility under Paragraph 2(a) of the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules") "to employ reasonably available means calculated to achieve actual

notice to Respondent" through submission of Electronic and Written Notices, as defined in Rule 1 and Rule 2.

RELIEF SOUGHT

Complainant requests that the domain name be transferred from Respondent to Complainant.

PARTIES' CONTENTIONS

A. Complainant

Complainant is a community bank based in Mendenhall, Mississippi. Complainant has common law rights in the trademark PEOPLES BANK in relation to a range of services such as banking and lending. Complainant has established secondary meaning in the mark through its longstanding use since 1908, its notoriety, and extensive advertising and social media presence with the mark. Respondent's <peoplesbank.com> domain name, acquired by it on September 29, 2010, is identical to Complainant's mark as it incorporates the mark in its entirety and merely adds the ".com" generic top-level domain ("gTLD").

Respondent lacks rights and legitimate interests in the <peoplesbank.com> domain name. Complainant is not commonly known by the disputed domain name, nor has Complainant authorized Respondent to use its PEOPLES BANK mark in the disputed domain name. Respondent does not use the disputed domain name for any *bona fide* offering of goods or services, nor does it make any legitimate noncommercial or fair use thereof. Respondent attempts to divert internet users seeking Complainant's services to the disputed domain name's resolving website, where Respondent offers related credit checking services and seeks to collect their personal information, potentially for misuse.

Respondent registered and uses the <peoplesbank.com> domain name in bad faith. Respondent has engaged in a pattern of bad faith registration, as evidenced by past UDRP cases against it that resulted in the transfer of certain domain names from its possession. Respondent disrupts Complainant's business for commercial gain by attempting to divert internet users seeking Complainant's services to the disputed domain name's resolving website, where Respondent offers services that are related to, or competitive with Complainant's business. Respondent registered the disputed domain name with knowledge of Complainant's rights in the PEOPLES BANK mark.

B. Respondent

Respondent purchased the <peoplesbank.com> domain name in a public auction after its registration, by a prior owner, expired in 2010. Complainant leaves out key facts from its Complaint, namely that Complainant is a small bank, and one of over a thousand businesses and banks, both in Mississippi and around the world, that use the phrase "Peoples Bank" as their names. Further, the PEOPLES BANK mark has been registered by numerous other entities with the United States Patent and Trademark Office (USPTO). The PEOPLES BANK mark generates millions of hits in a Google search and Complainant is not even on the first five pages of results. Further, there are over 2588 domain names registered that use the PEOPLES BANK mark. In leaving out this information, Complainant attempts to mislead the panel and unfairly acquire the disputed domain name.

Complainant has failed to present compelling evidence to support its claim of rights in the PEOPLES BANK mark. Complainant's evidence in support of secondary meaning fails to establish the extent to which its mark is actually recognized by the public.

Respondent has rights and legitimate interests in the <peoplesbank.com> domain name. Respondent is not hidden behind a WHOIS privacy service, but is identified in the complaint. Respondent does not need a trademark to be commonly known by the disputed domain name. Complainant's cited precedents are distinguishable as those cases involved disputes over registered trademarks, many of which are clearly famous, and were decided on a "totality of the circumstances" analyses. Complainant itself acknowledges a logical relation between the disputed domain name's words and the services offered at its resolving website. Respondent does not need Complainant's permission to use the PEOPLES BANK mark in its domain name. The mark is comprised of extremely common and generic terms. Respondent uses the disputed domain name for a *bona fide* offering of goods or services by offering a legitimate credit score checking webpage. In any event, redirection of a disputed domain name is not, in itself, evidence of a lack of rights or legitimate interests, particularly in light of the common and generic nature of the asserted mark. Respondent did not register the domain name to target or divert Complainant's traffic, and Complainant has failed to provide evidence demonstrating otherwise. Respondent argues that Complainant's claimed rights in the mark do not preclude Respondent's legitimate interests in the disputed domain name. Finally, Respondent did not register the disputed domain name to disrupt a competitor. Respondent does not offer banking or lending services on the disputed domain name's resolving website.

Complainant has failed to provide evidence demonstrating bad faith registration and use of the <peoplesbank.com> domain name. Respondent has not prevented Complainant from registering a domain name that incorporates its claimed PEOPLES BANK mark. While Respondent has been the subject of past UDRP cases, Complainant ignores the vast number of cases where Respondent defeated these claims and kept its disputed domain names. Respondent does not use the disputed domain name to target Complainant nor divert users

seeking Complainant's services and Respondent, who is based in Luxembourg, had no prior knowledge of Complainant's claimed rights in the PEOPLES BANK mark when it registered the disputed domain name.

Complainant's omission of key facts about the generic and common nature of the PEOPLES BANK marks, as well as its use of bald assertions instead of facts and evidence demonstrate that Complainant is engaging in reverse domain name hijacking in filing this complaint.

Respondent requests that the dispute be considered by a three-member panel and it has submitted a list of five members from which a third panelist should be chosen.

C. Additional Submissions

The Additional Submission of each party tended to traverse issues already fully canvassed in the parties' principal pleadings. Accordingly, although the Panel has read both Additional Submissions, it is of the view that it is not necessary to discuss them any further in the course of this decision.

FINDINGS

(1) the domain name registered by Respondent is identical to a trademark in which Complainant has rights, namely Respondent's common law trademark PEOPLES BANK;

(2) Respondent has rights to or legitimate interests in respect of the domain name;

(3) the domain name was not registered or used by Respondent in bad faith; and

(4) Complainant engaged in reverse domain name hijacking by bringing the present case.

DISCUSSION

Paragraph 15(a) of the Rules instructs this Panel to "decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable."

Paragraph 4(a) of the Policy requires that Complainant must prove each of the following three elements to obtain an order that a domain name should be cancelled or transferred:

- (1) the domain name registered by Respondent is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (2) Respondent has no rights or legitimate interests in respect of the domain name; and
- (3) the domain name has been registered and is being used in bad faith.

Identical and/or Confusingly Similar

Complainant claims common law rights in the trademark PEOPLES BANK. In lieu of a trademark registration, evidence of common law rights may satisfy the requirement of demonstrating trademark rights under Policy ¶ 4(a)(i). *See Epic Games, Inc. v. M Vijfwinkel*, FA 1913288 (FORUM Oct. 26, 2020) ("Policy ¶ 4(a)(i) does not require a complainant to own a trademark prior to a respondent's registration if it can demonstrate established common law rights in the mark.") Common law trademark rights may be supported, for example, with evidence that the mark has gained secondary meaning, including longstanding use; media recognition; and promotional material/advertising. *See Marquette Golf Club v. Al Perkins*, 1738263 (FORUM July 27, 2017). Further, such common law trademark rights do not need to rise to a high level of notoriety as Panels view ¶ 4(a)(i) as a

threshold test concerning a trademark owner's standing to file a complaint. Issues such as the strength of the complainant's mark or the respondent's intent to provide its own legitimate offering of goods or services without trading off the complainant's reputation are decided under the second and third elements. *See Al-Dabbagh Group Holding Company v. Leo Radvinsky / Cybertania Inc*, FA 1913317 (FORUM Nov. 3, 2020).

In support of its claim, Complainant provides images of its website at <www.peoplesbank-ms.com> and its related mobile banking app, advertisements it has run going back fifty years, social media accounts that promote its services, articles written about it, and awards Complainant has received in the course of its business. While Respondent asserts that these submissions "show a total lack of any compelling evidence of secondary meaning", it does not dispute their veracity. Rather, it claims that these submissions either do "not evidence public awareness", are limited in their geographic scope to Complainant's location in Mendenhall, Mississippi, and it points out that Complainant "does not use 'tm' or 'sm'" in its materials. Finally, it claims that the phrase "peoples bank" is merely descriptive of banking services and notes that there are over one thousand third-party banks that use the phrase "Peoples Bank", some within a few hour's drive of Complainant's bank branches. While the Panel does not opine on the strength or scope of Complainant's rights in the PEOPLES BANK mark, it does find that at least some level of such rights do, in fact, exist. As such the Panel finds that Complainant has met the threshold standing requirement of demonstrating common law rights in the PEOPLES BANK mark under Policy ¶ 4(a)(i).

Next, Complainant argues that the <peoplesbank.com> domain name is identical to Complainant's PEOPLES BANK mark. Adding the ".com" gTLD is generally insufficient in differentiating a disputed domain name from the mark it incorporates under Policy ¶ 4(a)(i). *See David Duchovny v. Alberta Hot Rods c/o Jeff Burgar*, FA 1734414 (FORUM July 4, 2017) ("Respondent arrives at the

disputed domain name by simply taking Complainant's mark in its entirety and adding the gTLD '.com'. This is insufficient to distinguish the disputed domain name from Complainant's common law trademark.”). The disputed domain name incorporates Complainant's mark in its entirety and adds only the “.com” gTLD. Therefore, the Panel finds that the disputed domain name is identical to Complainant's mark under Policy ¶ 4(a)(i).

Rights or Legitimate Interests

Complainant must first make a *prima facie* case that Respondent lacks rights and legitimate interests in the disputed domain name under Policy ¶ 4(a)(ii). Should it succeed in this effort, the burden then shifts to Respondent to show that it does have rights or legitimate interests. *See Advanced International Marketing Corporation v. AA-1 Corp*, FA 780200 (FORUM Nov. 2, 2011) (finding that a complainant must offer some evidence to make its *prima facie* case and satisfy Policy ¶ 4(a)(ii)); *see also Neal & Massey Holdings Limited v. Gregory Ricks*, FA 1549327 (FORUM Apr. 12, 2014) (“Under Policy ¶ 4(a)(ii), Complainant must first make out a *prima facie* case showing that Respondent lacks rights and legitimate interests in respect of an at-issue domain name and then the burden, in effect, shifts to Respondent to come forward with evidence of its rights or legitimate interests”).

Complainant argues, under Policy ¶ 4(c)(ii), that Respondent is not commonly known by the <peoplesbank.com> domain name, nor has Complainant authorized or licensed Respondent to use its PEOPLES BANK mark in the disputed domain name. Relevant WHOIS information, as well as other evidence produced in UDRP proceedings may assist this inquiry. *See M. Shanken Commc'ns v. WORLDTRAVELERSONLINE.COM*, FA 740335 (FORUM Aug. 3, 2006) (finding that the respondent was not commonly known by the <cigaraficionada.com> domain name under Policy ¶ 4(c)(ii) based on the WHOIS information and other evidence in the record). The WHOIS record for the

disputed domain name, as verified by the concerned Registrar, identifies Respondent as “Xedoc Holding SA”. Complainant also provides results from trademark databases throughout the world, and argues these results show that “Respondent does not own any trademark rights in the Peoples Bank mark in any country in the world.” Finally, Complainant submits screenshots of Respondent’s other website to which users are automatically redirected after inputting the disputed domain name and it notes that this site makes no mention of the PEOPLES BANK mark. Based upon this evidence, Complainant argues that Respondent is not commonly known by the disputed domain name. For its part, Respondent does not contest any of this evidence but merely states that it does not need a trademark, Complainant’s permission, or to be commonly known by the disputed domain name as it bases its claim to rights or legitimate interests on other grounds. As such, the Panel finds that Respondent is not commonly known by the disputed domain name under Policy ¶ 4(c)(ii).

Next, Complainant argues that Respondent does not use the disputed domain name for any *bona fide* offering of goods or services and does not make any legitimate noncommercial or fair use thereof, but instead attempts to divert internet users seeking Complainant’s services to a credit checking website where Respondent seeks to collect user information, potentially for misuse. Attempting to divert internet users from a Complainant’s website to a disputed domain name’s resolving website, where Respondent attempts to improperly gather user information is generally not considered a *bona fide* offering of goods or services, nor a legitimate noncommercial or fair use under Policy ¶¶ 4(c)(i) and (iii). *See Ripple Labs Inc. v. NGYEN NGOC PHUONG THAO*, FA 1741737 (FORUM Aug. 21, 2017) (“Respondent uses the [disputed] domain name to divert Internet users to Respondent’s website... confusing them into believing that some sort of affiliation exists between it and Complainant... [which] is neither a bona fide offering of goods or services under Policy ¶ 4(c)(i) nor a legitimate noncommercial or fair use under Policy ¶ 4(c)(iii).”); *see also United States Postal*

Service v. Kehinde Okunola / Genuine ICT Centre, FA 1785420 (FORUM June 6, 2018) (“Respondent uses the <uspscouriers.com> domain name both to sell services competing with the business of Complainant and to phish for personal identification information from Internet users. Neither of these uses of the domain name constitutes a *bona fide* offering of goods or services under Policy ¶ 4(c)(i) or a legitimate noncommercial or fair use under Policy ¶ 4(c)(iii) such as would confirm in Respondent rights to or legitimate interests in the domain name as provided in those subsections of the Policy.”). Complainant provides screenshots of the website to which users are automatically redirected after inputting the disputed domain name and this offers users a purported credit check upon completion of a survey in which the user inputs various personal information. Complainant argues that credit checking is a function associated with banks and that it offers its own credit score repair program, thus confusing Internet users into believing they have arrived at Complainant’s website, while having users input personal information to allegedly have their credit checked.

Respondent claims that redirecting a domain name to another website is not, itself, evidence that the use is not *bona fide* and points out that this activity has been ongoing for over ten years and long prior to the time at which Respondent was on notice of Complainant’s dispute. Further, it notes that the destination website to which users are redirected is also owned by Respondent and that it does, in fact, provide the legitimate service of conveying to users their credit reports and scores as generated by the top credit reporting agencies in the United States. The fact that it collects personal information from users, it asserts, is necessary to provide this service and it notes that there is no evidence that such information is misused in any way. Further, there is, it claims, and the Panel agrees, a conceptual connection between the descriptive words “Peoples Bank” and such credit checking services thus further supporting its *bona fide* use.

Further, Respondent's case for *bona fide* use is based significantly upon its assertion that it is not infringing upon or otherwise causing confusion with Complainant's mark. It puts forth the argument that Complainant does not have a claim to exclusive use of the phrase "Peoples Bank" as this is "a common generic term subject to widespread global use." Respondent submits a variety of evidence showing a number of United States trademark registrations for marks that are owned by third parties and consist, in whole or in part, of the phrase "Peoples Bank"; a listing of hundreds of other banks by the relevant authorities of the United States and other countries which use this phrase in their titles¹; and listings of over fifty unrelated banks in Complainant's own state of Mississippi that use the name Peoples Bank. Based upon this evidence, Respondent states that "Complainant chose a 'mark' that is incredibly weak, knowing that it was descriptive and in widespread use by others." Thus, it is "not linked uniquely to Complainant."

Complainant retorts that its "rights are superior" to those of Respondent. However, the Panel notes that the Respondent need only show that it has "a" legitimate right or interest. The Respondent does not need to show that its rights or legitimate interests are better (however measured) than those of the Complainant. *Borges, S.A., Tanio, S.A.U. v. James English*, D2007-0477 (WIPO June 21, 2007). Here, Complainant has not presented nor supported a *prima facie* case under Policy ¶ 4(a)(ii). Although not critical to the Panel's overall decision in this case, for the reasons stated below, based upon the evidence presented here, the Panel reaches the conclusion that it is more likely than not that Respondent is making a *bona fide* offering of services with the disputed domain name under Policy ¶ 4(c)(i) and, thus, that it possesses rights and legitimate interests thereto under Policy ¶ 4(a)(ii).

¹ Respondent points out that no record exists of Complainant having objected to any of these registrations.

Registration and Use in Bad Faith

Complainant argues that Respondent registered the <peoplesbank.com> domain name in bad faith, as it must have had knowledge of Complainant's rights in the PEOPLES BANK mark at the time of registration. Actual knowledge of a complainant's rights may demonstrate bad faith registration under Policy ¶ 4(a)(iii), and may typically be established by a respondent's use of such mark in the disputed domain name and its use of the disputed domain name's resolving website for a related or competing purpose. *See iFinex Inc. v. xu shuaiwei*, FA 1760249 (FORUM Jan. 1, 2018) ("Respondent's prior knowledge is evident from the notoriety of Complainant's BITFINEX trademark as well as from Respondent's use of its trademark laden domain name to direct internet traffic to a website which is a direct competitor of Complainant"); *see also Orbitz Worldwide, LLC v. Domain Librarian*, FA 1535826 (FORUM Feb. 6, 2014) ("the Panel here finds actual knowledge through the name used for the domain and the use made of it."). Complainant argues that "Respondent's knowledge of Peoples Bank's rights in the PEOPLES BANK Mark may be presumed from the virtual identity between" the disputed domain name and the mark. It takes the position that Respondent should have known Complainant had rights in the trademark due to its longstanding use, press coverage, and the volume of its loan business. Respondent states that "Xedoc did not ever target Complainant." Rather, as a company based in the country of Luxembourg, "Xedoc did not know Complainant or its mark existed prior to this UDRP." Respondent also submits evidence demonstrating that, with respect to the phrase "Peoples Bank", "almost 1,000 other banks use the term globally, four (4) of them located within a short drive from Complainant." In sum, Respondent argues that "the phrase 'Peoples Bank' is a common generic term subject to widespread global use" and that Complainant has failed to meet its burden of proving, by a preponderance of the evidence, that Respondent knew or should have known of Complainant. The Panel finds this plausible and cannot find, based upon the presented facts, that

Respondent knew or should have known of Complainant at the time it acquired the disputed domain name.

Next, Complainant argues that Respondent registered and uses the <peoplesbank.com> domain name in bad faith by disrupting Complainant's business and creating confusion with its mark for commercial gain. Using a disputed domain name to divert internet users to a resolving website by creating confusion as to the sponsor or party behind such website may be considered bad faith disruption for commercial gain under Policy ¶¶ 4(b)(iii) and (iv). *See Allianz of Am. Corp. v. Bond*, FA 680624 (FORUM June 2, 2006) (finding bad faith registration and use under Policy ¶ 4(b)(iv) where the respondent was diverting Internet users searching for the complainant to its own website and likely profiting); *see also Artistic Pursuit LLC v. calcuttawebdevelopers.com*, FA 894477 (FORUM Mar. 8, 2007) (finding that the respondent's registration and use of the disputed domain name, which displayed a website virtually identical to the complainant's website, constituted bad faith pursuant to Policy ¶ 4(b)(iii)). Complainant argues that by using its PEOPLES BANK mark in the disputed domain name, and offering a service typically offered by banks, Respondent is attempting to divert internet users to the disputed domain name's resolving website by confusing them into believing the disputed domain name is affiliated with or run by Complainant. However, the Panel notes that Respondent's website makes no mention of Complainant or its mark and, based upon the plethora of third-party uses of the phrase "Peoples Bank" in the United States and elsewhere, as noted above, the Panel cannot conclude that a significant number of users who might encounter the disputed domain name would expect to reach Complainant's business or will otherwise be specifically confused about any association Complainant might have to the resolving website.

Finally, Complainant argues that Respondent's bad faith in registering and using the <peoplesbank.com> domain name is evidenced by its pattern of bad faith

registration and use of previous disputed domain names. Past cases where a domain name was successfully transferred from a Respondent may demonstrate a pattern of bad faith registration under Policy ¶ 4(b)(ii) and it cites three prior UDRP cases that were decided against Respondent. However, Policy ¶ 4(b)(ii) mentions a “pattern of ... conduct” as a supplement to a finding that the domain name in dispute was registered “in order to *prevent* the owner of the trademark or service mark from reflecting the mark in a corresponding domain name...” [emphasis added]. Here, the Panel notes, as discussed above, that there is insufficient evidence upon which to conclude that Respondent targeted Complainant or its mark. Further, the <peoplesbank.com> domain name was first created by a third-party in 1995, a time when Complainant’s bank was already in business for over eighty years and could have secured the domain name for itself. Respondent also points out that Complainant could have but did not participate in the public auction for the domain name at the time Respondent acquired it in 2010. Thus, Complainant has not satisfied all of the components of Policy ¶ 4(b)(ii). Even under these circumstances where the “prevent” element of ¶ 4(b)(ii) has not been technically satisfied, Panels have accepted the existence of past adverse UDRP decisions as supplemental support for a finding of bad faith made based upon other grounds, *see e.g., SAP SE v. Domain Privacy Service FBO Registrant, The Endurance International Group, Inc. / Amit Kumar*, D2020-2005 (WIPO Oct. 20, 2020) (“The fact that the Respondent has been found to have registered domain names which incorporate the names of well-known brands on two previous occasions ... amounts to a further basis for finding bad faith on the part of the Respondent”). Without proving the “prevent” element, such evidence of a pattern of conduct may not suffice, on its own, to fully carry a complainant’s burden of proof under Policy ¶ 4(a)(iii) and the Panel so finds in this case.

For the reasons stated above, the Panel finds that Complainant has failed to support its burden of proving that Respondent registered the disputed domain name in bad faith under Policy ¶ 4(a)(iii).

Reverse Domain Name Hijacking

Respondent has requested this Panel to find that Complainant has engaged in reverse domain name hijacking (RDNH) under ¶¶ 1 and 15(e) of the Rules. RDNH may be found where a complaint is brought “in bad faith to attempt to deprive a registered domain-name holder of a domain name”. For example, it may exist where a complaint “was brought primarily to harass the domain-name holder ... and constitutes an abuse of the administrative proceeding.” In support of its request, Respondent submits that Complainant has improperly sought to inflate “the quality and notoriety of its asserted trademark”, it “is represented by professional legal counsel who frankly should have known that its arguments would not be persuasive”, it bases its case on “few facts and relied heavily on the bald assertions of counsel”, and that “[b]ut for a response, Complainant’s ruse may well have worked to its advantage.” Further, Respondent submits that “Complainant was previously advised both by phone and by email of the failings of its initial complaint and many of the facts asserted by Xedoc in this Response including the plethora of third party users” of the PEOPLES BANK mark. In sum, Respondent asserts that “Complainant wants a better domain name than it currently has and is misusing the UDRP in an attempt to acquire Xedoc’s more valuable Domain Name for free.”

In opposing the request for a finding of RDNH and in seeking to justify its Complaint, Complainant states that “Respondent’s counsel gave no substantiated evidence that his client had any rights in the PEOPLES BANK Mark” and that “Complainant is conducting business under its PEOPLES BANK Mark and is seeking to own a domain name that encompasses that common law mark.” It notes that “[p]rior panels have found that conducting business under a

common law mark and then seeking to own that domain name is not reverse hijacking.”

Accepting Complainant’s establishment of common law rights, as discussed earlier, and even assuming, solely for purposes of argument, that Respondent does not itself own any rights to the PEOPLES BANK mark, it does not follow that a claim under the Policy is well-founded or not abusive. Targeting of a complainant, by the respondent, must still be shown. *See Técnica Industrial Oswaldo Filizola Ltda. v. Whois Agent (804833973), Whois Privacy Protection Service, Inc. / Raphael Barduche*, D2020-1987 (WIPO Oct. 14, 2020) (“In order to succeed, the Complainant would be required to show that its specific clientele and trademark rights were being targeted or singled out by the Respondent at the time of registration of the disputed domain name.”); *Daniel A. Rosen, Inc. d/b/a Credit Repair Cloud v. Michael Steele / Nemo Apps LLC*, FA 1910796 (FORUM Oct. 12, 2020) (even where false registration information was provided, “this conduct, without any evidence of targeting of a trademark, does not alone amount to bad faith registration in this case for purposes of the Policy.”)

Although existing, Complainant’s common law rights in its mark are diluted nearly to the vanishing point based upon the number of third-party users thereof. This fact must have been known to Complainant given its longstanding participation in the field of banking. In fact, Complainant does not dispute the existence of these other banks and virtually ignores Respondent’s argument but merely states that this “does not diminish the trademark rights Complainant owns in its field and geographic area.” The Complainant is professionally represented in this matter and, in the opinion of the Panel, knew or ought to have known that the Policy does not examine the relative rights to a mark as between two parties. For Complainant to claim, ten years after Respondent’s acquisition of the <peoplesbank.com> domain name, that it was registered and used by a Luxembourg-based entity with knowledge of and specifically to target one of the

multitude of Peoples Bank users, a small bank operating primarily within a limited geographic area of Mississippi, exhibits a disregard for the Policy and many prior decisions of UDRP Panels that have been made over more than twenty years. Complainant, or its counsel, should have known that there was no reasonable chance of prevailing in this proceeding – if not at the time the Complaint was filed, certainly after having received the Response and its accompanying evidence.

Taking into account all of the circumstances of this case, the Panel finds that the Complaint was brought in bad faith and constitutes an abuse of the administrative proceeding.

DECISION

Having not established all three elements required under the ICANN Policy, the Panel concludes that relief shall be **DENIED**.

Accordingly, it is Ordered that the <peoplesbank.com> domain name **REMAIN WITH** Respondent.



Steven M. Levy, Esq.
Panelist

Steven M. Levy, Esq. (Chair),
Lynda M. Braun
The Honourable Neil Anthony Brown QC

Panelists

Dated: November 11, 2020