Decision for dispute CAC-UDRP-100916

Case number	CAC-UDRP-100916
Time of filing	2015-01-23 13:03:25
Domain names	cm-bretagne.com, cmb-clientfranc.com, cmb-clienvip.com

Case administrator

Name	Lada Válková (Case admin)

Complainant

Organization	FEDERATION DU CREDIT MUTUEL DE BRETAGNE

Complainant representative

Organization	Nameshield (Anne Morin)

Respondent

Organization	CORNIER (JONATHAN CORNIER)

OTHER LEGAL PROCEEDINGS

None of which the Panel is aware.

IDENTIFICATION OF RIGHTS

The Complainant submits that it is the owner of the registered trademarks CMB® and CREDIT MUTUEL DE BRETAGNE®. In support of that claim, the Complainant tenders, in Exhibit 3, documents showing that it is the registered owner of :

(a) Trademark number 1539019, for CREDIT MUTUEL DE BRETAGNE® applied for on June 30, 1989 with the French INPI, the Institut national de la propriété industrielle and currently registered; and

(b) Trademark number 1539020 for CMB® applied for on June 30, 1989 with the French INPI, the Institut national de la propriété industrielle and currently registered.

The Respondent has not filed a Response and hence has not mounted any case against the Complainant having the rights alleged. The Panel notes that it is now well established that registered trademarks of the sort established by the Complainant satisfy the requirements of the Policy. The Panel therefore concludes that the Complainant has adequately demonstrated its rights in the CMB® and CREDIT MUTUEL DE BRETAGNE® marks pursuant to paragraph 4(a)(i) of the Policy.

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:

CREDIT MUTUEL DE BRETAGNE is a federation of CREDIT MUTUEL. It is part of the group CREDIT MUTUEL ARKEA .It was founded in 1882. CREDIT MUTUEL is a major French bank, with headquarters in Strasbourg, in Alsace and it has 7.4 million customers.

The Complainant is the owner of the trademarks CMB® and CREDIT MUTUEL DE BRETAGNE® particulars of which have been supplied and are set out hereunder.

The disputed domain names <cm-bretagne.com>, <cmb-clientfranc.com> and <cmb-clienvip.com> were registered on December 12, 2014.They do not resolve to active websites.

The Complainant alleges that the disputed domain names are confusingly similar to its trademarks and branded services CMB® and CREDIT MUTUEL DE BRETAGNE®, that the Respondent has no rights or legitimate interests in them and that they were registered and used in bad faith.The Complainant has adduced evidence to that effect.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

PARTIES' CONTENTIONS:

COMPLAINANT:

CREDIT MUTUEL DE BRETAGNE is a federation of CREDIT MUTUEL. It is part of the group CREDIT MUTUEL ARKEA.

Founded in 1882, CREDIT MUTUEL is a major French bank, with headquarters in Strasbourg, in Alsace. It is currently run by Michel Lucas and Alain Fradin and has 7.4 million customers – roughly half of whom live in the Grand-Est.

The Complainant is the owner of the trademarks CMB® and CREDIT MUTUEL DE BRETAGNE®.

The disputed domain names <cm-bretagne.com>, <cmb-clientfranc.com> and <cmb-clienvip.com> were registered on December 12, 2014.

The Complainant states that the disputed domain names <cm-bretagne.com>, <cmb-clientfranc.com> and <cmb-clienvip.com> are confusingly similar to its trademarks and branded services CMB® and CREDIT MUTUEL DE BRETAGNE® , as the disputed domain names contain the Complainant's trademark CMB®.

The addition of the French generic terms "client", "clien", "vip" and "franc" (with spelling mistakes) does not change the overall impression of the designation as being connected to the Complainant's bank activity. Indeed, the domain names create a risk of confusion in the Internet users' mind. The users can indeed believe that the disputed domain names will respectively resolve to a website belonging to the Complainant and dedicated to its clients.

When a distinctive mark is paired with less distinctive terms, the combination will typically be found to be confusingly similar to the distinctive mark.

Furthermore, the Complainant contends that the addition of the gTLD ".COM" is not sufficient to escape the finding that the domain names are confusingly similar to the trademarks CMB® and CREDIT MUTUEL DE BRETAGNE®. It does not avoid the likelihood of confusion between the disputed domain names <cm-bretagne.com>, <cmb-clientfranc.com> and <cmb-clienvip.com> and the Complainant and his trademarks CMB® and CREDIT MUTUEL DE BRETAGNE®.

Finally, a Google search on the expression “CMB” or “CM BRETAGNE” provides several results, all of them being in relation with the Complainant.

Accordingly, the disputed domain names are confusingly similar to the Complainant’s trademarks.

Secondly, the Complainant submits that the Respondent does not have any rights or legitimate interests in the disputed domain name.

The Complainant is required to make out a prima facie case that the Respondent lacks rights or legitimate interests. Once such prima facie case is made, the Respondent carries the burden of demonstrating rights or legitimate interests in the domain names. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(a)(ii) of the UDRP.

The Complainant contends that the Respondent is not affiliated with nor authorized by him in any way. The Complainant contends that the Respondent has no rights or legitimate interests in respect of the domain name and that he is not related in any way to the Complainant’s business.

The Complainant does not carry out any activity or have any business with the Respondent.

According to the Whois information, the Registrant is "Registrant Name: JONATHAN CORNIER Registrant Organization: CORNIER" past panels have held that a Respondent was not commonly known by a disputed domain name if the Whois information was not similar to the disputed domain name.

Moreover, the websites in relation to the disputed domain names <cm-bretagne.com>, <cmb-clientfranc.com> and <cmb-clienvip.com> are inactive and have been so since their registration. This information demonstrates that the Respondent has no legitimate interests in respect of the domain names.

Indeed, the Respondent could not have used the disputed domain names without infringing the Complainant's intellectual property rights.

Accordingly, the Respondent has no rights or legitimate interests in the disputed domain names.

Thirdly, the domain names have been registered and are being used in bad faith

The Complainant’s trademarks CMB® and CREDIT MUTUEL DE BRETAGNE® are well-known, especially in France where the Respondent is domiciled.

Thus, given the distinctiveness of the Complainant's trademark and reputation, especially in France, the Respondent has registered the domain names with full knowledge of the Complainant's trademark and uses them for the purpose of misleading and diverting Internet traffic.

Moreover, the disputed domain names <cm-bretagne.com>, <cmb-clientfranc.com> and <cmb-clienvip.com> contain the Complainant's trademark CMB® with spelling mistakes.

Numerous panels have confirmed that the use of misspellings in domain names also indicates bad faith registration. Using misspellings of domain names in order to trick individuals into viewing unrelated websites is evidence of bad faith use of a domain name.

Finally, the website in relation with the disputed domain name <cm-bretagne.com>, <cmb-clientfranc.com> and <cmb-clienvip.com> are inactive and have been so since their registration. Indeed, the Respondent could not have used the disputed domain name without infringing the Complainant's intellectual property rights.

On these bases, the Complainant concludes that the Respondent has registered and is using the disputed domain names in

bad faith.

The Complainant therefore requests for the transfer of the disputed domain names.

RESPONDENT:

The Respondent did not submit a Response in this matter.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the Domain Names are identical or confusingly similar to a trademark or service mark in which the complainant has rights (within the meaning of paragraph 4(a)(i)of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant has, to the satisfaction of the Panel, shown the Respondent to have no rights or legitimate interests in respect of the Domain Names (within the meaning of paragraph 4(a)(ii)of the Policy).

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown the Domain Names have been registered and are being used in bad faith (within the meaning of paragraph 4(a)(iii)of the Policy).

PROCEDURAL FACTORS

The Panel is satisfied that all procedural requirements under UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

Identical and/or Confusingly Similar

The first question that arises is whether the Complainant has rights in a trademark or service mark. Complainant relies on its registered trademarks, CMB® and CREDIT MUTUEL DE BRETAGNE® and submits that it thus satisfies the requirement of paragraph 4(a)(i) of the Policy that it must shows rights in a trademark or service mark. The Complainant has submitted evidence which the Panel accepts of the trademark registrations relied on.

The Panel is required to satisfy itself that all elements are proved by evidence. It notes that it is now well established that registered trademarks of the sort established by the Complainant satisfy the requirements of the Policy. The Panel therefore concludes that the Complainant has adequately demonstrated its rights in the CMB® and CREDIT MUTUEL DE BRETAGNE® marks pursuant to paragraph 4(a)(i) of the Policy.

The second question that arises is whether the disputed domain names are identical or confusingly similar to Complainant's CMB® and CREDIT MUTUEL DE BRETAGNE® marks. The Complainant submits that the disputed domain names are confusingly similar to Complainant's marks due to the presence of the CMB® trademark in two of the domain names, <cmb-clientfranc.com> and <cmb-clienvip.com> and in the case of the domain name <cm-bretagne.com> the letters "cm" and the word "bretagne", which are clearly references to the entire trademark CMB®. Moreover, it was submitted that in the case of each domain name the addition of a generic word did not negate the confusing similarity between the respective domain name and the trademark; in particular in the case of the domain name <cm-bretagne.com>, the word 'bretagne' has been added; in the case of the domain name <cmb-clientfranc.com> the words "client" and "franc" have been added and in the case of the domain name <cmb-clienvip.com> the words "clien" and "vip" have been added. The Panel finds that the addition of those words is not sufficient to avoid the conclusion that the respective domain names are confusingly similar to the trademark. The reason why that is so is that the additional words suggest that the domain names are related to the Complainant and deal variously with its legitimate activities in Brittany and with VIP clients , which they do not. The Panel finds that by using Complainant's mark and adding the respective words referred to, the domain names are confusingly

similar to Complainant's CMB® mark. In each case, the objective internet user would naturally conclude that the domain name related to the activities of the Complainant. It is also now clear beyond any doubt that the addition of gTLDs does not negate a finding of confusing similarity that is otherwise established, as it is in the present case.

The Complainant has thus made out the first of the three elements that it must establish.

Rights or Legitimate Interests

It is now well established, as the Complainant has submitted, that the Complainant must first make a prima facie case that the Respondent lacks rights and legitimate interests in the disputed domain names under paragraph 4(a)(ii) of the Policy. The burden of proof than shifts to Respondent to show it does have rights or legitimate interests. There are many prior UDRP decisions to that effect, for example, Croatia Airlines d.d. v. Modern Empire Internet Ltd. WIPO Case no. D2003-0455.

The Panel finds that Complainant has made out a prima facie case that arises from the following considerations:

(a) the Respondent has chosen to take the Complainant's trademark and to use it in its domain names, adding only the generic words referred to, albeit with obvious spelling mistakes, thus implying that the domain names are official domain names of Complainant leading to an official website of Complainant dealing respectively with the business of the Complainant and specifically with services provided by the Complainant in Brittany and for the Complainant's French and VIP clients;

(b) The Complainant has also established from information contained in the WHOIS that the Registrant is "Registrant Name: JONATHAN CORNIER Registrant Organization: CORNIER" and that consequently the Respondent is not commonly known by the domain name. The Panel notes that past UDRP panels have held that a Respondent was not commonly known by a disputed domain name if the WHOIS information was not similar to the disputed domain name;

(c) The Complainant contends that the Respondent is not affiliated with nor authorized by it in any way, that the Respondent is not related in any way to the Complainant's business and that the Complainant does not carry out any activity or have any business with the Respondent; the Panel accepts those submissions and the evidence on which they are based;

(d) Moreover, the websites in relation to the disputed domain names <cm-bretagne.com>, <cmb-clientfranc.com> and <cmb-clienvip.com> are inactive and have been so since their registration. The Panel accepts that submission and the evidence on which it is based;

(e) Indeed, it is clear from the evidence that the Respondent could not have used the disputed domain names without infringing the Complainant's intellectual property rights;

(f) The Respondent has engaged in these activities without the consent or approval of the Complainant.

All of these matters go to make out the prima facie case against the Respondent. The Panel accepts the evidence and submissions of the Complainant on these matters and finds therefore that the Complainant has made out a prima facie case that the Respondent has no rights or legitimate interests in the disputed domain names.

As the Respondent has not filed a Response or sought by any other means to show a right or legitimate interest in the disputed domain names, the Panel finds that the Respondent has no rights or legitimate interest in any of the disputed domain names.

The Complainant has thus made out the second of the three elements that it must establish.

Registered and used in bad faith

To establish bad faith for the purposes of the Policy, the Complainant must show that the disputed domain names were

registered in bad faith and have been used in bad faith. It is also clear that the criteria set out in paragraph 4(b) of the Policy for establishing bad faith are not exclusive, but that Complainants in UDRP proceedings may also rely on conduct that is bad faith within the generally accepted meaning of that expression.

Having regard to those principles, the Panel finds that the disputed domain names were registered and used in bad faith. That is so for the following reasons.

The Complainant relies on several grounds. First, it is submitted that the Complainant's trademarks CMB® and CREDIT MUTUEL DE BRETAGNE® are well-known, especially in France where the Respondent is domiciled.Given the distinctiveness of the Complainant's trademark and reputation, especially in France, the Panel finds that Respondent has registered the domain names with full and actual knowledge of the Complainant's trademarks which shows that the domain names were registered in bad faith.

Secondly, it was submitted that the disputed domain names <cm-bretagne.com>, <cmb-clientfranc.com> and <cmb-clienvip.com> all contain the Complainant's trademark CMB® with spelling mistakes when additions are made to the trademark for the purpose of creating the domain names. In the case of the domain name <cm-bretagne.com>, the Respondent has taken the Complainant's trademark CMB® and spelt out the word "bretagne" making it quite clear that it has sought to invoke the entire CMB® trademark; in the case of the domain name <cmb-clientfranc.com> and the domain name <cmb-clienvip.com>, the Respondent has used the entire trademark CMB® with additional words. Again, this evidence shows that the domain names were registered and used in bad faith.

Thirdly, numerous panels have confirmed that the use of misspellings in domain names also indicates bad faith registration and use. Using misspellings of domain names as in the present case in order, as it must be inferred, to trick individuals into viewing unrelated websites is evidence of bad faith registration and use of the domain names.

Fourthly, the websites in relation with the disputed domain names <cm-bretagne.com>, <cmb-clientfranc.com> and <cmb-clienvip.com> are inactive and have been so since their registration. Indeed, the Respondent could not have used the disputed domain names without infringing the Complainant's intellectual property rights. Accordingly, the Panel finds that the intention of the Respondent in both registering and using the domain names was to do so in bad faith.

The Complainant has thus made out the third of the three elements that it must establish.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

AND THE DISPUTED DOMAIN NAME(S) IS (ARE) TO BE

1. **CM-BRETAGNE.COM**: Transferred
2. **CMB-CLIENTFRANC.COM**: Transferred
3. **CMB-CLIENVIP.COM**: Transferred

PANELLISTS

Name	**The Hon. Neil Brown, QC**

DATE OF PANEL DECISION 2015-03-02

Publish the Decision