Decision for dispute CAC-UDRP-101281

Case number	CAC-UDRP-101281
Time of filing	2016-08-26 11:47:50
Domain names	rti-creditagricole.com, poi-crediagricole.com, oen-creditagricole.com, lvu-creditagricole.com, iuy-creditagricole.com

Case administrator

Organization	Iveta Špiclová (Czech Arbitration Court) (Case admin)

Complainant

Organization	CREDIT AGRICOLE S.A.

Complainant representative

Organization	Nameshield (Maxime Benoist)

Respondent

Name	JOSEPH Kavanagh

OTHER LEGAL PROCEEDINGS

None.

IDENTIFICATION OF RIGHTS

The Complainant owns various trademark registrations comprising the words "CREDIT AGRICOLE", including (i) the European Union trademark registrations no. 6456974 "CREDIT AGRICOLE", registered on 23 October 2008 for numerous goods and services in classes 09, 16, 35, 36, 38 and 42; and (ii) the US trademark registrations no. 73784147 "CA CREDIT AGRICOLE", registered on 5 June 1990 which currently covers "banking services, including providing loans and finance, financial consulting and reporting services" in class 36.

FACTUAL BACKGROUND

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

The Complainant is a leading retail bank in France and one of the largest banks in Europe. The Complainant contends that its “CREDIT AGRICOLE” trademark is widely known throughout the world, quoting various past panel decisions which have confirmed the notoriety of its brand (cf. Credit Agricole S.A. v. Dick Weisz, WIPO Case No. D2010-1683; Credit Agricole S.A. v. Wang Rongxi, WIPO Case No. D2012-0258; Credit Agricole S.A. v. EMPARK, CAC Case No. 100688; Credit Agricole S.A. v. Hildegard Gruener, CAC Case No. 100687; Credit Agricole S.A. v. Credit Agricole Assurance, CAC Case No. 100633).

The Respondent registered all five disputed Domain Names on 9 August 2016. Since then the Respondent has not used the disputed Domain Names for active websites, but has set up an automatic web forwarding of all five disputed Domain Names to the address < http://www.boite-creditagricole.com > (which displayed an inactive webpage).

The Complainant states that the Respondent is not affiliated with the Complainant nor authorized by the Complainant in any way. The Complainant states that the Respondent has no right or legitimate interest in the disputed Domain Names, and that the Respondent is not related in any way to the Complainant's business. The Complainant does not carry out any activity for, nor has any business with the Respondent. Neither licence nor authorization has been granted to the Respondent to make any use of the Complainant's "CREDIT AGRICOLE" trademark, nor to apply for registration of the disputed Domain Names

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

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

The disputed Domain Names are confusingly similar to Complainant's trademark. A three-letter prefix like "rti", "poi", "oen", "lvu" or "iuy", respectively, must be regarded as a mere addition to the prominent "creditagricole" part of the disputed Domain Names, which is practically identical to the Complainant's well-known "CREDIT AGRICOLE" mark and dominates the overall perception. Further, the addition of the generic top-level domain ".com" does nothing to distinguish the disputed Domain Names from the Complainant's mark.

The Complainant has made a prima facie showing that the Respondent lacks a right or legitimate interest in the disputed Domain Names. The Respondent registered the disputed Domain Names many years after the Complainants rights in the well-known "CREDIT AGRICOLE" mark arose. The Respondent has not used the disputed Domain Names in connection with a bona fide offering of goods or services. There is also no evidence that the Respondent is commonly known by the disputed Domain Names or that the Respondent makes a legitimate noncommercial or fair use of the Domain Names, particularly as there is no active website under the address < http://www.boite-creditagricole.com/ > to which the disputed Domain Names forward. Accordingly, the Panel accepts the arguments advanced by the Complainant that the Respondent has no rights or legitimate interests in the Disputed Domain Name within the meaning of paragraphs 4(a)(ii) and 4(c) of the Policy.

The Panel also finds that the Complainant successfully submitted prima facie evidence that the Respondent was aware of Complainant's rights in the well-known "CREDIT AGRICOLE" mark when he registered the disputed Domain Names. This prima facie evidence was not challenged by the Respondent, which supports the conclusion that the Domain Names were registered in bad faith (within the meaning of paragraph 4(a)(iii)of the Policy).

Given the fact that (i) the disputed Domain Names all forward to < http://www.boite-creditagricole.com/ > but (ii) even under this address do not resolve to an active website, the primary question of this proceeding is whether or not the Respondent has also used the Domain Names in bad faith (within the meaning of paragraph 4(a)(iii)of the Policy). The Complainant's case regarding such bad faith use is that the Respondent is effectively engaged in “passive holding” of the disputed Domain Names within the terms originally established by Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003. The panel in Telstra noted that the question as to which circumstances of “passive holding” may constitute use in bad faith cannot be answered in the abstract. This question may only be determined on the basis of the particular facts of each case. A panel should give close attention to all the circumstances of the Respondent's behaviour and a remedy can be obtained under the Policy only if those circumstances show that the Respondent's passive holding amounts to acting in bad faith (cf. Sanofi-aventis v. Gerard Scarretta, WIPO Case No. D2009-0229; Mount Gay Distilleries Limited v. shan gai gong zuo shi, CAC Case No. 100707; RueDuCommerce v. TOPNET, CAC Case No. 100617; INFRONT MOTOR SPORTS LICENCE S.r.l. v. VICTOR LEE, CAC Case No. 100385).

With this approach in mind, the Panel has identified the following circumstances as material to the present case:

(i) the Complainant's trademark has a long history, a strong reputation, is highly distinctive (particularly in countries where the primary language is not French) and is widely known;

(ii) the Respondent has provided no explanation or evidence whatsoever of any actual or contemplated good faith use of the disputed domain name;

(iii) taking into account the nature of the disputed Domain Names the Panel cannot conceive of any plausible actual or contemplated active use of the disputed Domain Names by the Respondent that would not be illegitimate, such as by being a passing off, an infringement of consumer protection legislation, or an infringement of the Complainant's rights under trademark law; and

(iv) forwarding the disputed Domain Names to < http://www.boite-creditagricole.com/ > is at least some (minute) form of active use, even if this address does not resolve to an active website.

Given these circumstances, the Panel finds that the manner in which the disputed Domain Names are being used constitutes use in bad faith. The requirements of paragraph 4(a)(iii) of the Policy have therefore been met.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **RTI-CREDITAGRICOLE.COM**: Transferred
2. **POI-CREDIAGRICOLE.COM**: Transferred
3. **OEN-CREDITAGRICOLE.COM**: Transferred
4. **LVU-CREDITAGRICOLE.COM**: Transferred
5. **IUY-CREDITAGRICOLE.COM**: Transferred

PANELLISTS

Name	**Dr. Thomas Schafft**

DATE OF PANEL DECISION 2016-10-06

Publish the Decision