Decision for dispute CAC-UDRP-101402

Case number	CAC-UDRP-101402
Time of filing	2017-01-03 09:54:11
Domain names	SMSCREDITAGRICOLE.COM, CREDIT-AGRICOLE-SMS.NET

Case administrator

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

Complainant

Organization	CREDIT AGRICOLE S.A.

Complainant representative

Organization	Nameshield (Maxime Benoist)

Respondent

Name	William Phillippe

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings which are pending or decided and which relate to the disputed domain names.

IDENTIFICATION OF RIGHTS

The Complainant is owner of the European trademark <CREDIT AGRICOLE> with the registration number 006456974, registered on October 23rd, 2008 in the classes 9, 16, 35, 36, 38 and 42 and the European word and figurative trademark <CA CREDIT AGRICOLE> with the registration number 005505995, registered on December 20th, 2007 in the classes 9, 36 and 38. The Complainant is also the owner of the French word and figurative trademark <CA CREDIT AGRICOLE> with the registration number 525634, registered on July 13th, 1988 in the classes 16, 35 and 36 and the French word and the figurative trademark <CA CREDIT AGRICOLE> with the registration number 441714, registered on October 25th, 1978 in the classes 16, 35, 36 and 42.

The Complainant is the holder of a huge number of domain names, i.e. the actively used domain name “credit-agricole.com”, created on December 31st, 1999, the domain name “creditagricole.com”, created on June, 11th, 2001, the domain name “credit-agricole.fr”, created on July 7th, 1995, the domain name “creditagricole.fr”, created on September 22nd, 2000, the domain name “creditagricole.net” created on January 7th, 2002, the domain name “creditagricole.biz”, created on November 7th, 2001 and also the domain name “creditagricole.org, created on March 11th, 1999 and the domain name “creditagricole.info”, created on September 28th, 2004.

FACTUAL BACKGROUND

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The Complainant is one of the largest banks in France and also in Europe as well as the leader in retail banking in France. The Complainant is particularly active in all areas of banking and trades associated with insurance management asset, leasing and factoring, consumer credit, corporate and investment.

The disputed domain names <SMSCREDITAGRICOLE.COM> and <CREDIT-AGRICOLE-SMS.NET> were both registered on December 26th, 2016 within a period of only 12 minutes by "William Phillippe".

The disputed domain name <CREDIT-AGRICOLE-SMS.NET> is used to display a copy of the Complainant's official home page and a false account service connection page, i.e. a false authentication process . The disputed domain name <SMSCREDITAGRICOLE.COM> is used to display a link ("404.shtml") which redirects to an URL associated to the disputed domain name <CREDIT-AGRICOLE-SMS.NET>.

PARTIES CONTENTIONS

THE COMPLAINANT:

As far as the Complainant's contentions are concerned, the Complainant claims the disputed domain names <SMSCREDITAGRICOLE.COM> and <CREDIT-AGRICOLE-SMS.NET> are confusingly similar to its <CREDIT AGRICOLE> trademarks and its domain names associated. Furthermore, the Complainant contends that the Respondent has no rights or legitimate interest in the disputed domain names <SMSCREDITAGRICOLE.COM> and <CREDIT-AGRICOLE-SMS.NET>. Finally, the Complainant states that the disputed domain names <SMSCREDITAGRICOLE.COM> and <CREDIT-AGRICOLE-SMS.NET> have been registered and used in bad faith.

The Complainant notes that

prior UDRP panels have established that the addition of a generic term associated to a trademark does not create a new or different right to the mark or diminish confusing similarity:

- WIPO Case No. D2016-0239, LEGO Juris A/S v. Viktor Tkachev, Lego Town, <lego-town.com>

prior UDRP panels have confirmed the Complainant's rights:

- WIPO case no. D2016-1668 Crédit Agricole S.A. v. Ronaldo Kabisa, Ronaldo Mika (<id-credit-agricolefrds. com>, <id-credit-agricole-frsd.com>)
- CAC case no. 101277 Crédit Agricole S.A. v. A Happy Dreamhost Customer (<creditagricole-login.com>)
- CAC case no. 101281 Crédit Agricole S.A. v. JOSEPH Kavanagh (<rti-creditagricole.com>, <poicrediagricole.com>, <oen-creditagricole.com>, <lvu-creditagricole.com>, <iuy-creditagricole.com>)
- CAC case no. 101253 Crédit Agricole S.A. v. garofalo giovanni (<ca-credit-agricole.info>)
- CAC case no. 101251 Crédit Agricole SA v. Amine Mansour (<surcredit-agricole.com>)

prior UDRP panels have held, the intention to divert or deceive internet users by using stranger trademarks does not constitute a bona fide offering of goods and services or a legitimate noncommercial or fair use. Please see for instance:

- NAF case FA 758981, Summit Group, LLC v. LSO, Ltd.: ''the respondent's use of the complainant's mark to redirect Internet users to respondent's own website for commercial gain does not constitute either a bona fide offering of goods or services pursuant to Policy, or a legitimate noncommercial or fair use pursuant to Policy.

prior UDRP panels have held, using a domain name in a fraudulent scheme to deceive internet users into providing personal information is not a bona fide offering of goods and services nor a legitimate noncommercial or fair use. Please see for instance:

- NAF case FA 241972 Juno Online Servs, Inc. v Nelson

prior UDRP panels have confirmed the notoriety of the Complainant's trademark <CREDIT AGRICOLE>. Please see:

- WIPO - D2010-1683 Crédit Agricole S.A. v. Dick Weisz ;
- WIPO - D2012-0258 - Credit Agricole S.A. v. Wang Rongxi ;
- CAC - 100688 - Credit Agricole S.A. v. EMPARK ;
- CAC - 100687 - Credit Agricole S.A. v. Hildegard Gruener ;
- CAC - 100633 - Credit Agricole S.A. v. Credit Agricole Assurance ;

prior UDRP panels have held, passing itself off as the Complainant by using its registered trademarks violate the Policy:

- NAF case FA 105890, Am. Online, Inc. v. Miles:

"Respondent is using the domain name at issue to resolve to a website at which Complainant's trademarks and logos are prominently displayed. Respondent has done this with full knowledge of Complainant's business and trademarks. The Panel finds that this conduct is that which is prohibited by Paragraph 4(b)(iv) of the Policy".

THE RESPONDENT:

No administratively complaint response has been filed timely but with emails of January 26th, 2017 and of January 30th, 2017 the wife of the Respondent finally contends, that her husband has not registered the disputed domain name. With a Nonstandard Communication over the ADR Platform the Respondent by himself states that he is not using the email address listed in the WHOIS database (Levulcain13@club-internet.fr).

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain names <SMSCREDITAGRICOLE.COM> and <CREDIT-AGRICOLE-SMS.NET> are identical or confusingly similar to the trademarks in which the Complainant has rights (within the meaning of paragraph 4(a)(i)of the Policy), namely the registered <CREDIT AGRICOLE> trademarks.

The disputed domain names <SMSCREDITAGRICOLE.COM> and <CREDIT-AGRICOLE-SMS.NET> are both confusingly similar to the trademark <CREDIT AGRICOLE>. The disputed domain names <SMSCREDITAGRICOLE.COM> and <CREDIT-AGRICOLE-SMS.NET> contain the trademark <CREDIT AGRICOLE> in its entirety and only differ in the addition of the merely generic term <SMS> once at the beginning (<SMSCREDITAGRICOLE.COM>) and once at the end (<CREDIT-AGRICOLE-SMS.NET>) of the disputed domain names. This addition of the term <SMS> is only a minor variation and therefore not sufficient to distinguish the disputed domain names <SMSCREDITAGRICOLE.COM> and <CREDIT-AGRICOLE-SMS.NET> from the Complainant's trademark <CREDIT AGRICOLE>; the Complainant's trademark <CREDIT AGRICOLE> constitutes the dominant component of the disputed domain names <SMSCREDITAGRICOLE.COM> and <CREDIT-AGRICOLE-SMS.NET>.

Therefore, the Panel holds that the Complainant has established its case with regard to paragraph 4(a)(i) of the Policy.

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant has, to the satisfaction of the Panel, shown the Respondent has no rights or legitimate interests in respect of the disputed domain names <SMSCREDITAGRICOLE.COM> and <CREDIT-AGRICOLE-SMS.NET> (within the meaning of paragraph 4(a)(ii)of the Policy).

The disputed domain name <CREDIT-AGRICOLE-SMS.NET> is used to display content highly similar to the Complainant's official website. The disputed domain name <CREDIT-AGRICOLE-SMS.NET> especially displays the Complainant's figurative trademark <CREDIT AGRICOLE> and also has an identical navigation as the Complainant's official website. Moreover, the disputed domain name <CREDIT-AGRICOLE-SMS.NET> displays a false account service connection page, i.e. a false

authentication process.

The disputed domain name <SMSCREDITAGRICOLE.COM> is used to display a link which redirects to the disputed domain name <CREDIT-AGRICOLE-SMS.NET>.

The Respondent has not made any legitimate non-commercial or fair use of the disputed domain names <SMSCREDITAGRICOLE.COM> and <CREDIT-AGRICOLE-SMS.NET>. Nor has the Respondent used or made demonstrable preparations to use the disputed domain names <SMSCREDITAGRICOLE.COM> and <CREDIT-AGRICOLE-SMS.NET> for a bona fide offering of goods or services. The use of a domain name to divert or deceive internet users, especially to redirect them to the Respondent's own website for commercial gain or to prompt them to provide personal information, does not of itself confer rights or legitimate interests.

Furthermore, the Respondent is not commonly known by the disputed domain names <SMSCREDITAGRICOLE.COM> and <CREDIT-AGRICOLE-SMS.NET>. The Respondent is not affiliated with the Complainant nor authorized by the Complainant to use the Complainant's trademark <CREDIT AGRICOLE>. There is no other basis on which the Respondent could claim a right or legitimate interest in the disputed domain names <SMSCREDITAGRICOLE.COM> and <CREDIT-AGRICOLE-SMS.NET>.

Accordingly, the Complainant has established the second element of paragraph 4(a) of the Policy.

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown the disputed domain names <SMSCREDITAGRICOLE.COM> and <CREDIT-AGRICOLE-SMS.NET> have been registered and are being used in bad faith (within the meaning of paragraph 4(a)(iii)of the Policy).

Given the distinctiveness and notoriety of the Complainant, the Complainant's <CREDIT AGRICOLE> trademarks and its reputation it is highly unlikely that the Respondent would have been unaware of this facts at the time of registration; rather it must be assumed that the Respondent has registered the disputed domain names <SMSCREDITAGRICOLE.COM> and <CREDIT-AGRICOLE-SMS.NET> in full knowledge of the Complainant's trademarks.

Also, the Respondent has registered and used the disputed domain names <SMSCREDITAGRICOLE.COM> and <CREDIT-AGRICOLE-SMS.NET> in bad faith, because – under the policy – it is evidence of bad faith that, "by using the domain name, you have intentionally attempted to attract, for commercial gain, internet users to your website, by creating a likelihood of confusion with the Complainant's trademark". The Respondent has used the disputed domain name <CREDIT-AGRICOLE-SMS.NET> intentionally to attempt to attract internet users, who intend to access the Complainant's official website, for commercial gain to the disputed domain name <CREDIT-AGRICOLE-SMS.NET> by creating a likelihood of confusion with the Complainant's <CREDIT AGRICOLE> trademarks. Furthermore, the Respondent is seeking to take unfair advantage of the Complainant's goodwill by profiting from the confusion so caused.

After all, the Panel considers that the Complainant has established its case with regard to 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.

The Complainant filed the Complaint against "William Phillippe residing 235 West 108th St #22, New York", who is listed in the WHOIS database. Hence, a prima facie evidence suggests that "William Phillippe residing 235 West 108th St #22, New York", i.e. the Respondent has registered the disputed domain names <SMSCREDITAGRICOLE.COM> and <CREDIT-AGRICOLE-SMS.NET>.´

PRINCIPAL REASONS FOR THE DECISION

The Panel finds that the disputed domain names <SMSCREDITAGRICOLE.COM> and <CREDIT-AGRICOLE-SMS.NET> both

are confusingly similar to the <CREDIT AGRICOLE> trademarks in which the Complainant has rights.

Furthermore, the Respondent has no rights or legitimate interests in the disputed domain names <SMSCREDITAGRICOLE.COM> and <CREDIT-AGRICOLE-SMS.NET>. The panel finds that the Complainant successfully submitted prima facie evidence that the Respondent has made no use of or demonstrable preparations to use the disputed domain names <SMSCREDITAGRICOLE.COM> and <CREDIT-AGRICOLE-SMS.NET> for a bona fide offering of goods or services.

Finally, the disputed domain names <SMSCREDITAGRICOLE.COM> and <CREDIT-AGRICOLE-SMS.NET> have been registered and are being used in bad faith. Considering the widespread awareness of the Complainant and the Complainant's <CREDIT AGRICOLE> trademarks and its reputation, the Panel infers that the Respondent had the Complainant's <CREDIT AGRICOLE> trademarks in mind when registering the disputed domain names <SMSCREDITAGRICOLE.COM> and <CREDIT-AGRICOLE-SMS.NET>. The disputed domain name <CREDIT-AGRICOLE-SMS.NET> is used to display content highly similar to the Complainant's official website. Therefore, the Panel is of the opinion that the Respondent intentionally attempted to attract, for commercial gain, internet users to the disputed domain names <SMSCREDITAGRICOLE.COM> and <CREDIT-AGRICOLE-SMS.NET>, by creating a likelihood of confusion with the Complainant's <CREDIT AGRICOLE> trademarks.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **SMSCREDITAGRICOLE.COM**: Transferred
2. **CREDIT-AGRICOLE-SMS.NET**: Transferred

PANELLISTS

Name	**Prof. Dr. Lambert Grosskopf, LL.M.Eur.**

DATE OF PANEL DECISION 2017-02-01

Publish the Decision