Decision for dispute CAC-UDRP-101457

Case number	CAC-UDRP-101457
Time of filing	2017-02-23 09:11:37
Domain names	arkean.com

Case administrator

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

Complainant

Organization	CREDIT MUTUEL ARKEA

Complainant representative

Organization	Nameshield (Laurent Becker)

Respondent

Name	Jullian Abinsay

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

The Complainant is the owner of several French trademark registrations for the term “ARKEA” – or at least having “ARKEA” as main distinctive portion – since 1996, including the French trademark registration no. 96636222 "ARKEA", filed on July 26, 1996 and duly renewed, in classes 35,36,42 and 45.

Likewise, the Complainant also owns several domain names incorporating the wording "ARKEA", all of them registered between 2002 and 2016.

FACTUAL BACKGROUND

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

- The Complainant – a cooperative and mutual bank-insurance group operating in France – owns a portfolio of brands including the French trademark registration no. 96636222 "ARKEA", filed on July 26, 1996 and duly renewed, in classes 35,36,42 and 45.

- The Complainant also owns of a portfolio of domain names including the wording "ARKEA" since 2002.

- The Respondent has registered the disputed domain name <ARKEAN.COM> on January 5, 2017, which, as of this day, has never been used in connection with an active website/webpage.

PARTIES CONTENTIONS

No administratively compliant Response has been filed.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name is 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).

(See “Principal Reasons for the Decision” for further details).

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 disputed domain name (within the meaning of paragraph 4(a)(ii)of the Policy).

(See “Principal Reasons for the Decision” for further details).

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name has been registered and is being used in bad faith (within the meaning of paragraph 4(a)(iii)of the Policy).

(See “Principal Reasons for the Decision” for further details).

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

1. THE COMPLAINANT HAS, TO THE SATISFACTION OF THE PANEL, SHOWN THAT THE DISPUTED DOMAIN NAME IS IDENTICAL OR CONFUSINGLY SIMILAR TO THE COMPLAINANT`S TRADEMARKS (within the meaning of paragraph 4(a)(i) of the Policy).

In particular, the Panel finds that the disputed domain name is confusingly similar to the trademark “ARKEA” and to the relative domain names registered by the Complainant, which has proven to have prior rights since 1996.

Although in theory “ARKEAN” could also been considered a word with a generic meaning (e.g. the Indonesian translation of “ARCHEAN”, a geologic eon), the lack of a response from the Respondent is quite eloquent.

With no argumentation at all provided by the disputed domain name owner, the Panel shall keep in mind the established WIPO case-law, according to which the addition of a single letter may not avoid confusing similarity with a Complainant’s mark. Besides the Forum decision mentioned by the Complainant (Am. Online Inc. v Tencent Commc’ns Corp, FA 93668, FORUM Mar 21, 2000), the Panel would like to remind WIPO Case No. D2006-0650 (ACCOR v. I&M Raamatupidamise O/Accora Consult OÜ), in which it has been underlined how “the mere addition of the single letter […] which moreover makes no difference with the Complainant's trademarks and may also be interpreted to be a misspelled suffix of [the trademark]. Indeed the single letter […] is an obvious attempt to “typosquat” the Domain Name and is insufficient to avoid confusion”.

See along the same lines ACCOR v. Eduardo Marchiori Leite, WIPO Case No. D2004-0680, where the panel stated “Respondent's domain name <thalassar.com> incorporates Complainant's registered trademark THALASSA in its entirety,

and adds only the letter “r” to the mark. The addition of the letter “r” adds nothing distinctive, and the emphasis remains on the name THALASSA to attract the attention of Internet users. The deletion or addition of one letter is an insignificant change for the purposes of the Policy paragraph 4(a)(i)”.

The Panel believes the above cases are particularly fitting for the present dispute.

THE COMPLAINANT HAS, TO THE SATISFACTION OF THE PANEL, SHOWN THE RESPONDENT TO HAVE NO RIGHTS OR LEGITIMATE INTERESTS IN RESPECT OF THE DISPUTED DOMAIN NAME (within the meaning of paragraph 4(a)(ii)of the Policy).

According to the information provided by the Complainant, the Respondent is not affiliated nor authorized by the Complainant in any way. Likewise, the Complainant neither licensed nor authorized the Respondent to make any use of its trademark “ARKEA”, or to apply for registration of the disputed domain name on behalf of the Complainant. The Complainant does not carry out any activity for, nor has any business with the Respondent. The Complainant also affirms that Jullian Abinsay is not commonly known by <ARKEAN.COM>.

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

Given all the above, the Panel accepts the contentions of the Complainant that the Respondent has no such rights or legitimate interests in <ARKEAN.COM>.

THE COMPLAINANT HAS, TO THE SATISFACTION OF THE PANEL, SHOWN THE DISPUTED DOMAIN NAME HAS BEEN REGISTERED AND IS BEING USED IN BAD FAITH (within the meaning of paragraph 4(a)(iii)of the Policy).

The Panel finds that the Complainant successfully submitted prima facie evidence that the Respondent has made no use of, or demonstrable preparations to use, neither of the disputed domain name in connection with a bona fide offering of goods or services, nor is making a legitimate non-commercial or fair use of the disputed domain name.

Again, even though the decision mentioned by the Complainant appears not so relevant for the present case (VideoLink, Inc. v. Xantech Corporation, FA1503001608735 actually concerns a domain name which has not been used for at least fifteen years and not only a few months as <ARKEAN.COM >), this prima facie evidence was not challenged at all by the Respondent.

In the absence of a response from Jullian Abinsay and given the reputation of the Complainant and its trademarks, the Panel infers that the Respondent had the Complainant's trademarks "ARKEA" in mind when registering the disputed domain name. Consequently, the Panel believes that the same was registered and is being (passively) used in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **ARKEAN.COM**: Transferred

PANELLISTS

Name	**Tommaso La Scala**

2017-04-01

DATE OF PANEL DECISION 2017-04-01

Publish the Decision