Decision for dispute CAC-UDRP-101499

Case number	CAC-UDRP-101499
Time of filing	2017-04-03 12:22:24
Domain names	LIEN-CREDIT-AGRICOLE.NET

Case administrator

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

Complainant

Organization	CREDIT AGRICOLE S.A.

Complainant representative

Organization	Nameshield (Maxime Benoist)

Respondent

Organization	MARTEVILLE Jean Claude

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings.

IDENTIFICATION OF RIGHTS

In this proceeding, the Complainant relies on the following trademarks:

- CREDIT AGRICOLE (word) International Registration No. 1064647 registered on January 4, 2011;
- CREDIT AGRICOLE (device) International Registration No. 525634 registered on July 13, 1988;
- CREDIT AGRICOLE (device) International Registration No. 441714 registered on October 25, 1978;
- CREDIT AGRICOLE (word) European Union Registration No. 006456974 registered on October 23, 2008.

FACTUAL BACKGROUND

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

The Complainant states that it is the leader in retail banking in France and one of the largest banks in Europe. CREDIT AGRICOLE S.A. assists its clients' projects in France and around the world, in all areas of banking and trades associated with it: insurance management asset leasing and factoring, consumer credit, corporate and investment.

The Complainant owns several trademarks with the word element CREDIT AGRICOLE.

The Complainant is also the owner of domain names including the same distinctive words CREDIT AGRICOLE.

The disputed domain name <LIEN-CREDIT-AGRICOLE.NET> was registered by the Respondent on March 23, 2017 and the disputed domain name displays a message that it is under construction: “sito in costruzione”.

The Complainant states that the disputed domain name is confusingly similar to its trademarks CREDIT AGRICOLE and its domain names.

The Complainant contends that the addition at the beginning of the disputed domain name <LIEN-CREDIT-AGRICOLE.NET> of the generic word “LIEN” (“link” in French) separated from the trademark by a hyphen and the use of the gTLD “.NET”, are not sufficient elements to escape the finding that the disputed domain name is confusingly similar to the Complainant's trademarks.

The Complainant alleges that the Respondent does not have any rights or legitimate interests in the disputed domain name because the Respondent is not affiliated with nor authorized by the Complainant in any way.
Neither license nor authorization has been granted to the Respondent to make any use of the Complainant’s trademarks, or apply for registration of the disputed domain name.

According to the Complainant, since the website is not operating it also demonstrates that the Respondent did not make any use of the disputed domain name since its registration, and it confirms that the Respondent has no demonstrable plans to use the disputed domain name.

The Complainant states that the disputed domain name has been registered and is being used in bad faith.

According to the Complainant, given the distinctiveness of the Complainant's trademarks and reputation, it is reasonable to infer that the Respondent has registered the disputed domain name with full knowledge of the Complainant's trademarks.

The Complainant contends that the Respondent has registered the disputed domain name with the sole aim to create a likelihood of confusion with the Complainant’s trademarks and domain names.

The Respondent has not demonstrated any activity in respect of the disputed domain name.

The Complainant states that the Respondent has failed to demonstrate any preparations to use the disputed domain name in connection with a legitimate purpose.

According to the Complainant, it seems inconceivable that the Respondent can use the disputed domain name without infringing the Complainant’s intellectual property rights.

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).

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).

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).

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

A. Identical or confusingly similar with the Complainant's trademark

The Complainant is the owner of numerous trademark registrations incorporating the "CREDIT AGRICOLE" element.

As confirmed by WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Second Edition ("WIPO Overview 2.0"), see paragraph 1.1: "If the complainant owns a trademark, then it generally satisfies the threshold requirement of having trademark rights."

The Complainant clearly has trademark rights based on its trademark registrations and Complainant's trademark rights have also been confirmed by previous panels, e.g. CAC Case No. 101459; CAC Case No. 101404 and CAC Case No. 101402.

The disputed domain name incorporates the Complainant's CREDIT AGRICOLE marks.

The only difference between the disputed domain name and the Complainant's trademarks is the addition of the word "LIEN" which does not change overall impression and does not eliminate the confusing similarity.

The gTLD suffix ".net" is to be generally disregarded under the confusing similarity test.

Therefore, the Panel finds that the first requirement of the Policy has been satisfied.

B. Rights or Legitimate Interests

The general rule is the following:

(i) a complainant is required to make out a prima facie case that the respondent lacks rights or legitimate interests; and

(ii) once such prima facie case is made, the burden shifts to the respondent who has to demonstrate his rights or legitimate interests in respect of the domain name under paragraph 4 (c) of the Policy.

If the Respondent fails to do so, the second element of the Policy is satisfied, see Julian Barnes v. Old Barn Studios, WIPO Case No. D2001-0121; Belupo d.d. v. WACHEM d.o.o., WIPO Case No. D2004-0110 and CAC Case No. 101284.

The Respondent failed to respond.

The Complainant states that the Respondent does not have any business relationships with the Complainant.

According to the evidence provided by the Complainant the disputed domain name is used for an inactive web site with a notice "under construction".

The Panel agrees that this per se could not constitute legitimate, non-commercial or fair use of the disputed domain name or otherwise create rights or legitimate interests under the Policy.

The Panel, therefore, finds that the Complainant has shown a prima facie case that has not been rebutted by the Respondent and, therefore, satisfied the second requirement of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy lists non-exhaustive circumstances indicating registration and use in bad faith.
These circumstances are non-exhaustive and other factors can also be considered in deciding whether the disputed domain name is registered and used in bad faith.

In the present case the disputed domain name is not actively used.

As stated in WIPO Overview 2.0: “The apparent lack of so-called active use (e.g., to resolve to a website) of the domain name without any active attempt to sell or to contact the trademark holder (passive holding), does not as such prevent a finding of bad faith. The panel must examine all the circumstances of the case to determine whether the respondent is acting in bad faith” (see paragraph 3.2).

The following circumstances inter alia have to be considered in such a case:

(i) Whether the Complainant’s trademark has a strong reputation and is widely known?

(ii) Has the Respondent provided any evidence whatsoever of any actual or contemplated good faith use by it of the disputed domain name?

(iii) Is it possible to conceive of any plausible actual or contemplated active use of the disputed domain name by the Respondent that would not be illegitimate? (See see Telstra Corporation Limited v. Nuclear Marshmallow, WIPO Case No. D2000-0003. See also CAC Case No. 101277).

The Panel finds that the Complainant’s “CREDIT AGRICOLE” trademarks have indeed a strong reputation and are well recognized, the Respondent failed to provide any explanations regarding registration and use of the disputed domain name (including any explanations as to why he chose the disputed domain name) and it is hard, if not impossible, to imagine any legal use of the disputed domain name by the Respondent.

Besides, taking into account the evidence submitted by the Complainant and circumstances of the case (including the fact that the Respondent is a French national and the Complainant is a legal entity from France), it appears that the Respondent clearly had in mind the Complainant’s marks and had the intention to profit from Complainant’s reputation.

As stated by one of the previous panels “the fact that the disputed domain name points to an inactive website shows that the registration and use of the disputed domain name was for opportunistic reasons which amount to bad faith as this could not have been for a valid reason” (see CAC Case No. 101253).

The Panel holds that the third requirement of the Policy has been satisfied.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **LIEN-CREDIT-AGRICOLE.NET**: Transferred

PANELLISTS

Name	**Igor Motsnyi**

DATE OF PANEL DECISION 2017-05-10

Publish the Decision