Decision for dispute CAC-UDRP-101721

Case number	CAC-UDRP-101721
Time of filing	2017-10-13 08:59:20
Domain names	SERVICEG3-ENLIGNE-CREDIT-AGRICOLE.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	mery sapo

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings that relate to the Disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant is the registrant of the following trademarks:

- International trademark registration No. 441714, "CA CREDIT AGRICOLE", registered on October 25, 1978, for goods and services in classes 16, 35, 36, 42.

- International trademark registration No. 1064647, "CREDIT AGRICOLE", registered on January 4, 2011, for goods and services in classes 9, 16, 35, 36, 38, 42.

The Disputed domain name was registered by the Respondent on October 2, 2017.

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.

The Complainant points out that it assists its clients' projects in France and around the world, in all areas of banking and trading associated with it.

The Complainant submits that it has more than 52 million of customers over 52 countries, and more than 11 000 group branches all over the world.

The Complainant underlines that it is the owner of several trademarks and domain names including the distinctive wording "CREDIT AGRICOLE".

The Complainant observes that the Disputed domain name, registered by the Respondent on October, 2, 2017, is not pointing to any active website.

The Complainant contends that the Disputed domain name is confusingly similar to the trademarks "CA CREDIT AGRICOLE" and "CREDIT AGRICOLE", and to the domain names associated with them.

The Complainant points out that the Disputed domain name contains the Complainant's well known trademark "CREDIT AGRICOLE".

The Complainant asserts that the Disputed domain name only differs from the "CREDIT AGRICOLE" trademark by the addition of the generic terms "SERVICEG3" and “ENLIGNE” before the trademark, separated by hyphens.

The Complainant takes the view that, in line with similar UDRP cases, the addition of generic terms like "SERVICEG3" and "ENLIGNE" are not sufficient to distinguish the Disputed domain name from the Complainant's trademark.

The Complainant adds that the generic top-level domain ".COM" may be disregarded in the assessment under paragraph 4(a)(i) of the Policy when comparing domain names and trademarks.

The Complainant argues that the Respondent does not have any rights or legitimate interest in the domain name.

The Complainant contends that it does not carry out any activity for the Respondent and that:

- the Respondent is not affiliated to the Complainant;

- the Respondent has not been authorized by the Complainant in any way;

- the Respondent is not related in any way with the Complainant's business;

- the Respondent does not have any business with the Complainant;

- the Respondent has not been authorized to make any use of the Complainant's trademarks;

- the Respondent has not been authorized by the Complainant to register the Disputed domain name.

The Complainant submits that the Disputed domain name was used for phishing activities. The Complainant states that the hosting provider, after having received a notification about that fraudulent behavior, suspended the Respondent's website.

The Complainant argues that the Respondent is not using the Disputed domain name in connection with a bona fide offering of goods and service or a legitimate non-commercial or fair use.

The Complainant contends that, taking into account the Complainant's well-known trademarks, the Respondent registered the Disputed domain name for the purpose of creating an impression of an association with the Complainant.

The Complainant underlines the distinctiveness and reputation of its trademarks and considers that the Respondent has registered the Disputed domain name with full knowledge of the Complainant's trademarks.

The Complainant reminds that the Disputed domain name resolves to an inactive website and consider this fact as a further proof that the Respondent has registered and is using the Disputed domain name in bad faith.

In light of the above, the Complainant requests the transfer in its favor of the Disputed domain name.

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

In accordance with paragraph 4(a) of the Policy, in order to obtain the transfer of the Disputed domain name, the Complainant has to demonstrate that:

(i) The Disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and

(ii) The Respondent has no rights or legitimate interests in respect of the Disputed domain name; and

(iii) The Disputed domain name has been registered and is being used in bad faith.

IDENTICAL OR CONFUSINGLY SIMILAR

The first requirement that the Complainant must establish is that the Disputed domain name is identical with, or confusingly similar to, the Complainant’s trademark or service mark rights.

There are two elements of this test: the Complainant must demonstrate that it has rights in a trademark or service mark and, if so, the Disputed domain name must be shown to be identical or confusingly similar to the trademark or service mark.

The Complainant has proven ownership of the registered trademarks, "CA CREDIT AGRICOLE" and "CREDIT AGRICOLE" , identified in section "Identification of rights" above.

On the question of identity or confusing similarity, what is required is simply a comparison and assessment of the Disputed domain name itself to the Complainant’s trademarks.

The Disputed domain name differs from the Complainant’s trademark "CREDIT AGRICOLE" only by the addition of the words "SERVICEG3" and "ENLIGNE" separated by hyphens, and of the top-level domain ".COM".

The Panel observes that it is well accepted that the hyphen is not relevant in the confusing similarity test (see, for example, WIPO case No. D2016-0676).

It is also a common view that where a trademark is the distinctive part of a domain name, the domain name is considered to be confusingly similar to the trademark (see, for example, WIPO case No. D2017-1266).

In the present case the addition of the words "SERVICEG3" and "ENLIGNE", separated by hyphens, have no impact on the distinctive part "CREDIT AGRICOLE". Furthermore, the words preceding the Complainant's trademark in the Disputed domain name, have a specific meaning in the French language. Indeed, the first one refers to a specific service, while the second one means "online". It is well established that where the relevant trademark is recognizable within the domain name, the addition of other terms would not prevent a finding of confusing similarity.

It is also well established that the top-level domain may generally be disregarded in the confusing similarity test (see, for example, WIPO case No. D2016-2547).

Therefore, the Panel considers that the Disputed domain name is confusingly similar to the Complainant's trademarks.

Accordingly, the Panel finds that the Complainant has satisfied paragraph 4(a)(i) of the Policy.

RIGHTS OR LEGITIMATE INTERESTS

The second requirement that the Complainant must prove is that the Respondent has no rights or legitimate interests in the Disputed domain name.

Paragraph 4(c) of the Policy provides that the following circumstances can be situations in which the Respondent has rights or legitimate interests in the Disputed domain name:

(i) before any notice to [the Respondent] of the dispute, [the Respondent’s] use of, or demonstrable preparations to use, the [Disputed] domain name or a name corresponding to the [Disputed] domain name in connection with a bona fide offering of goods or services; or

(ii) [the Respondent] (as an individual, business, or other organization) [has] been commonly known by the [Disputed] domain name, even if [the Respondent] [has] acquired no trademark or service mark rights; or

(iii) [the Respondent] [is] making a legitimate noncommercial or fair use of the [Disputed] domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

This is a non-exhaustive list of circumstances in which a respondent can show rights or legitimate interests in a domain name.

The onus of proving this requirement falls on the Complainant. UDRP panels have recognized that proving that a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of “proving a negative”.

Accordingly, it is usually sufficient for a complainant to raise a prima facie case against the respondent and the burden of proof on this requirement shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name.

The Panel finds that the Complainant has made out a prima facie case that the Respondent does not have rights or legitimate interests in the Disputed domain name.

In particular, the Complainant states that:

- it does not carry out any activity for the Respondent;

- the Respondent is not affiliated to the Complainant;

- the Respondent has not been authorized by the Complainant in any way;

- the Respondent is not related in any way with the Complainant's business;

- the Respondent does not have any business with the Complainant;

- the Respondent has not been authorized to make any use of the Complainant's trademarks;

- the Respondent has not been authorized by the Complainant to register the Disputed domain name.

In the absence of a Response by the Respondent, there is no indication in the present case that the Respondent is commonly known by the Disputed domain name.

Furthermore, the Respondent has failed to demonstrate any of the other non-exclusive circumstances evidencing rights or legitimate interests under the Policy, paragraph 4(c) or other evidence of rights or legitimate interests in the Disputed domain name.

The Respondent does not appear to be commonly known by the name "CREDIT AGRICOLE" or by a similar name.

The Respondent does not appear to make any legitimate noncommercial or fair use of the Disputed domain name, nor any use in connection with a bona fide offering of goods or services.

Accordingly, the Panel finds that the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

REGISTERED AND USED IN BAD FAITH

Under the third requirement of the Policy, the Complainant must establish that the Disputed domain name has been both registered and used in bad faith by the Respondent.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, including:

(i) circumstances indicating that [the Respondent] [has] registered or [has] acquired the [Disputed] domain name primarily for the purpose of selling, renting, or otherwise transferring the [Disputed] domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of [the Respondent's] documented out-of-pocket costs directly related to the [Disputed] domain name; or

(ii) [the Respondent] [has] registered the [Disputed] domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that [the Respondent] [has] engaged in a pattern of

such conduct; or

(iii) [the Respondent] [has] registered the [Disputed] domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the [Disputed] domain name, [the Respondent] [has] intentionally attempted to attract, for commercial gain, Internet users to [the Respondent's] web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of [the Respondent's] web site or location or of a product or service on [the Respondent's] web site or location.

The Panel, on the basis of the evidence presented, agrees with the Complainant's contentions that the Disputed domain name was registered in bad faith and that it has been used in bad faith.

Even if the Panel cannot accept, in the absence of any further explanation or evidence, the asserted circumstance of the phishing activities, the Panel accepts the Complainant's unchallenged assertions that the Respondent intentionally registered the Disputed domain name with the aim of creating a likelihood of confusion with the Complainant's trademarks.

Indeed, taking into account the distinctiveness and reputation of the trademark "CREDIT AGRICOLE", it is inconceivable that the Respondent was not aware of the Complainant's rights in the trademark "CREDIT AGRICOLE" when registering the Disputed domain name. If the Respondent had legitimate purposes in registering and using the Disputed domain name it would have filed a Response in this proceeding.

Furthermore, it is well established that registration together with "inaction" or "passive holding" may constitute bad faith use (see, for example, WIPO case No. D2000-0075).

The Panel, having taken into account the distinctiveness and reputation of the Complainant's trademark, the fact that no response to the complaint has been filed, and the passive holding of the domain name considers that the Disputed domain name was registered and is being used in bad faith.

Accordingly, the Panel finds that the Disputed domain name was registered and is being used in bad faith within the meaning of paragraph 4(b)(iv) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **SERVICEG3-ENLIGNE-CREDIT-AGRICOLE.COM**: Transferred

PANELLISTS

Name	**Michele Antonini**

DATE OF PANEL DECISION 2017-11-21

Publish the Decision