Decision for dispute CAC-UDRP-101857

Case number	CAC-UDRP-101857
Time of filing	2018-01-29 09:58:42
Domain names	BANQUE-ENI.COM

Case administrator

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

Complainant

Organization	Eni S.p.A.

Complainant representative

Organization	desimone & partners

Respondent

Name	CISSE AWA

OTHER LEGAL PROCEEDINGS

The Complainant has filed a criminal petition before the Competent Authorities in Belgium where Banque ENI has its headquarters. This relates to the use of the disputed domain name <banque-eni.com>. Apart from this petition, the Panel is not aware of any other legal proceedings that are pending or decided which relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant owns the following word and figurative trade mark registrations for ENI in class 36:
1. EUTM, Registration Number 012554929, registered on 30 July 2014.
2. EUTM Registration Number 009093683, registered on 27 April 2010.
3. US Registration Number 2,880,622, registered on 7 September 2004.
4. US Registration Number 4,730.039, registered on 5 May 2015.
5. US Registration Number 4,730.040, registered on 5 May 2015.

FACTUAL BACKGROUND

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

The disputed domain name was registered by the Respondent on 7 September 2017.

Eni S.p.A, the Complainant, is a worldwide energy group that is active in the major markets around the world, including the

US and the EU. It has more than 40 controlled companies and hundreds of points of sale in the fuels and lubricants sector. It is active in around 70 countries with a staff of 73.000 employees. Originally, the name ENI was an acronym for Ente Nazionale Idrocarburi, which was established in 1953.

Banque Eni is a subsidiary of the Complainant. It was founded in 2006 and recently started to operate as a business.

The Complainant is the owner of numerous trade marks registrations for ENI, which predate the registration of the disputed domain name. The Complainant also owns a number of domain names incorporating its trade mark ENI, including <eni.com>, <banque-eni-sa.com>, <banque-eni-sa.eu>, <banque-eni-sa.be> and <banque-eni-sa.it>.

On 12 December 2017, the Complainant filed a criminal petition before the Competent Authorities in Belgium where Banque Eni has its headquarters.

On 24 January 2017, the Complainant's representative wrote to the Respondent notifying the Respondent of the Complainant's rights and requesting the prompt transfer of the disputed domain name to the Complainant. The Respondent did not reply to that letter.

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

Paragraph 4(a) of the Policy requires the Complainant to prove each of the following three elements:
(i) The disputed domain name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights.
(ii) The Respondent has no rights or legitimate interests in the disputed domain name.
(iii) The disputed domain name has been registered and used in bad faith.

A. Identical or confusingly similar

It is well established that the generic top level suffix ".com" may be disregarded when considering whether a disputed domain name is confusingly similar to a trade mark in which the Complainant has rights.

The Complainant owns numerous trade mark registrations for the name ENI. The distinctive part of the disputed domain

name is the word ENI. Adding the descriptive term "banque" to the ENI mark to form the disputed domain name is insufficient to avoid a finding of confusing similarity. This is particularly so when the descriptive term "banque" is associated with the Complainant's business.

The Panel finds that the disputed domain name is confusingly similar to the Complainant's trade mark ENI, and that the requirements of paragraph 4(a)(i) of the Policy have been met.

B. No rights or legitimate interests

The Complainant claims that the Respondent has no rights or legitimate interests in respect of the disputed domain name and says:
(i) The website using the disputed domain name is used for phishing and is presently active. This is not a legitimate interest.
(ii) The Respondent has no registered trade mark rights in the word ENI and there is no evidence that the Respondent is commonly known by the disputed domain name.
(iii) The Respondent has set up a website that is taking advantage of the reputation and long standing history of the trade mark ENI.

The Panel finds that the Complainant has established a prima facie case that the Respondent has no rights or legitimate interests in the disputed domain name. The burden of proof now shifts to the Respondent. The Respondent has not filed a Response, nor disputed any of the Complainant's submissions. The Respondent has made no claim to either having any relevant prior rights of its own, or to having become commonly known by the disputed domain name. There is no evidence that the Respondent has used or has been preparing to use the disputed domain name in connection with a bona fide offering of goods or services, or for a legitimate non-commercial or fair use, without intent for commercial gain.

Accordingly, the Panel finds that the Complainant has shown that the Respondent has no rights or legitimate interests in respect of the disputed domain name and that the requirements of paragraph 4(a)(ii) of the Policy have been met.

C. Registered and used in bad faith

The Complainant asserts that the disputed domain name has been registered and is being used in bad faith, and among other things says:
(i) When registering the disputed domain name, the Respondent must have been aware of the Complainant’s well-known business and widespread reputation in its ENI trade mark.
(ii) The Respondent seems to have known of improvements to the Complainant's Banque Eni project and registered the disputed domain name and created the associated website to mislead consumers and disrupt the Complainant's activities.
(iii) The Respondent has created a sort of a copycat site representing a realistic page of Banque Eni. Phishing activities, as carried out via the website connected to the disputed domain name, are a clear attempt to mislead consumers and the highest possible proof of bad faith.

The Complainant’s registration of its well-known trade mark, ENI, predates the Respondent's registration of the disputed domain name on 7 September 2017. The Panel agrees with the Complainant that by registering the disputed domain name and creating a copycat website used for phishing activities, the Respondent has registered and has used the disputed domain name in order to attract Internet users to the website for commercial gain by confusing consumers as to sponsorship of the website.

The Panel finds that these factors clearly demonstrate that the Respondent has registered and has used the disputed domain name in bad faith and that the requirements of paragraph 4(a)(iii) of the Policy have been met.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **BANQUE-ENI.COM**: Transferred

PANELLISTS

Name	**Mrs Veronica Bailey**

DATE OF PANEL DECISION 2018-03-08

Publish the Decision