Decision for dispute CAC-UDRP-101903

Case number	CAC-UDRP-101903
Time of filing	2018-02-27 09:15:29
Domain names	banquearkea.com

Case administrator

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

Complainant

Organization	CREDIT MUTUEL ARKEA

Complainant representative

Organization	Nameshield (Laurent Becker)

Respondent

Organization	Whois Privacy Corp.

OTHER LEGAL PROCEEDINGS

The Panel is unaware of other legal proceedings, pending or otherwise, which relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant is the proprietor of a trademark including the words ARKEA and BANQUE, FR 3847017 ARKEA BANQUE E&I filed on 19/07/2011.

Proprietor of this mark is the company CREDIT MUTUEL ARKEA, Société Anonyme Coopérative de crédit à capital variable.

FACTUAL BACKGROUND

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

The Complainant is a cooperative and mutual banassurance group based in France. Arkéa is one of the six mutual funds of Crédit Mutuel and the second largest fund in the Crédit Mutuel Group, after Crédit Mutuel Center Est Europe.

The Complainant owns a trademark including the wording “ARKEA BANQUE” as well as multiple domain names consisting in the wording “ARKEA” (such as <arkea.com> since July 26, 2002). It is also the proprietor of a trademark containing the words "ARKEA BANQUE" registered in 2011.

The Complainant had a long and well established reputation in connection with the provision of banking and financial services at the time of Respondent's registration. Indeed, Complainant communicates through its portal www.arkea.com.

The disputed domain name was registered on October 13, 2017 by the Respondent. The disputed domain name is being offered for sale. Therefore, the Complainant contends that the Respondent registered the disputed domain name only for the purpose of selling.

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 that 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

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According to Paragraph 4(a) of the Policy, the Complainant is required to prove each of the following three elements to obtain an order that the disputed domain name should be transferred or cancelled:

(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.

The Panel has examined the evidence available to it and has come to the following conclusion concerning the satisfaction of the three elements of paragraph 4(a) of the Policy in these proceedings:

RIGHTS

The disputed domain name is confusingly similar to the Complainant's earlier trademark, company name and domain. This finding is based on the settled practice in evaluating the existence of a likelihood of confusion of:

a) disregarding the top-level suffix in the disputed domain name (i.e. ".com"); and

b) not finding that the addition of a generic words (such as “PRIVÉE” or “E&I” for “ENTREPRISES and IMMOBILIER”) would be sufficient to distinguish a domain name from a trademark. Since both the earlier trademark and the disputed domain name contain the elements ARKEA and BANQUE, this is sufficient to create a confusing similarity.

Therefore, the Panel comes to the conclusion that the Complainant has satisfied the requirement under paragraph 4(a)(i) of the UDRP.

NO RIGHTS OR LEGITIMATE INTERESTS

The onus to make out a prima facie case that the Respondent lacks rights or legitimate interests is placed on the Complainant. However, once such prima facie case is made, the Respondent carries the burden of demonstrating rights or legitimate interests in the disputed domain name. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(a)(ii) of the UDRP (see e.g. WIPO case no. D2003-0455, Croatia Airlines d.d. v. Modern Empire Internet Ltd.).

The Complainant has put forward that the Respondent is not commonly known by the disputed domain name. Neither is the Respondent in any way related to the Complainant. Nor has the Respondent been granted an authorization or license to use the disputed domain name by the Complainant. This has not been contested by the Respondent. Instead, the Respondent failed to provide any information and evidence whatsoever that could have shown that it has relevant rights or legitimate interests in respect of the disputed domain name (within the meaning of paragraph 4(a) (ii) of the Policy).

Therefore, the Panel concludes that the Respondent did not establish any right or legitimate interest to the disputed domain name (within the meaning of paragraph 4(a)(ii) of the Policy). The Complainant has therefore also satisfied the requirement under paragraph 4(a)(ii) of the Policy.

BAD FAITH

The Panel finds that the Complainant has established that the disputed domain name was registered by the Respondent and is being used by the Respondent in bad faith. For this purpose, the Complainant has successfully put forward prima facie evidence that the Respondent has not made use, or demonstrable preparations to use, of either the disputed domain name in connection with a bona fide offering of goods or services, or of making a legitimate non-commercial or fair use of the disputed domain name. The Respondent is also in no way commonly known under the disputed domain name. This prima facie evidence was not challenged by the Respondent, not even after the cease and desist letter of the Complainant dated October 6, 2016.

While the intention to sell domain names may not per se be evidence of bad faith, registering another party’s name with the apparent sole intention of selling the same to the proprietor or a third party would certainly be an indication of bad faith if viewed together with the other elements. See e.g. the decision in Staples, Inc. v. lin yanxiao, FA1505001617686 (Forum June 4, 2015). The only apparent purpose of the domain as used by the Respondent is its sale as demonstrated by the Complainant and not contested by the Respondent.

Therefore, the Panel concludes that the Respondent has registered and is using the disputed domain name in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy). The Complainant has therefore also satisfied the requirement under paragraph 4(a)(iii) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **BANQUEARKEA.COM**: Transferred

PANELLISTS

Name	**Udo Pfleghar**

DATE OF PANEL DECISION 2018-04-18

Publish the Decision