Decision for dispute CAC-UDRP-101915

Case number	CAC-UDRP-101915
Time of filing	2018-03-14 09:44:44
Domain names	arkeaservicesunion.com

Case administrator

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

Complainant

Organization	CREDIT MUTUEL ARKEA

Complainant representative

Organization	Nameshield (Laurent Becker)

Respondent

Organization	BeninWeb

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

French Trade Mark No. 3847017 ARKEA BANQUE E&I for various financial services in class 36.

FACTUAL BACKGROUND

The Complainant is a cooperative and mutual bancassurance group located in France.

It provides six mutual funds. The second largest of these six funds is provided under the trade mark "ARKEA".

The Complainant owns a number of trade mark registrations for trade marks including the word ARKEA that are dated well prior the creation date of the disputed domain name. These, include:

French Trade Mark No. 3847017 ARKEA BANQUE E&I for various financial and related services in class 36.

The Complainant also claims to own a number of domain names including the word ARKEA. The most notable of which is <arkea.com>, which it claims to have held for over 15 years since 26 July 2002. However the WHOIS extracts show the registrant name for all such domain names to be "LAURENT FR?D?RIC".

On 28 February 2018 the Respondent registered the disputed domain name <arkeaservicesunion.com>. The Respondent gave its address as being in the west african nation of Benin, which is a french speaking country.

As at the time of the Amended Complaint the domain name did not resolve to a website.

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

PROCEDURAL MATTER

On 14 March 2018 the Complainant filed an Amended Complaint together with five annexures.

The Panel reviewed the Amended Complaint and the said annexures and found that:

- There was six annexures mentioned in the Amended Complaint, not five.
- The description of the annexures referred to in the Amended Complaint did not match what actually appeared in the said annexures.
- The said annexures referred to an entirely different trade mark and entirely different parties to any mentioned in this proceeding.

It was therefore quite clear to the Panel that an administrative error had occured and the Complainant had not filed the annexures referred to in the Amended Complaint but instead filed annexures belonging to some other complaint.

In the circumstances the Panel wrote to the parties referring them to Rule 12 of the UDRP Rules which states:

"In addition to the complaint and the response, the Panel may request, in its sole discretion, further statements or documents from either of the Parties".

The Panel then decided in its sole discretion to allow the Complainant an opportunity to file the correct annexures referred to in the Amended Complaint.

In exercising this discretion the Panel took into account:

(a). The nature of the administrative error;
(b). The fairness to each party, including the fairness to the Complainant to have an opportunity to present its proper case to the Panel (UDRP Rule 10(b)); and
(c). The requirement that the proceeding be conducted with due expedition (UDRP Rule 10(c)).

In consideration of this final factor, the Panel decided to give the Complainant no longer than 7 days to rectify its error. The Panel further notified the parties that unless some exceptional circumstances are disclosed this deadline was unlikely to be extended. The reason for requiring such diligence is the Panel was of the view that the requirement for due expedition in UDRP Rule 10(c) is not one to be taken lightly.

The Complainant complied with the Panel's direction and filed the correct six annexures before the 7 day deadline. The Panel has therefore now proceeded to make its decision based on the Amended Complaint and these six correct annexures in lieu of the five original incorrect annexures, which have been ignored.

RIGHTS IN AN IDENTICAL OR CONFUSINGLY SIMILAR TRADEMARK

As mentioned above the Complainant claims registered rights over a number of trade marks. However the Panel has focused on one trade mark registration in particular, being French Trade Mark No. 3847017 ARKEA BANQUE E&I for various financial services in class 36.

It is clear that this particular registration is actually registered in the name of the Complainant.

To satisfy paragraph 4(a)(i) of the Policy it is enough that the Panel is satisfied that the Complainant has registered rights in a single trademark in a single jurisdiction that predates the registration of the disputed domain name (even if that single jurisdiction is not one in which the Respondent resides or operates) (Koninklijike KPN N.V. v. Telepathy, Inc D2001-0217 (WIPO May 7, 2001); see also WIPO Case Nos. D2012-0141 and D2011-1436).

The next question is whether the disputed domain name is confusingly similar to ARKEA BANQUE E&I.

ARKEA is a distinctive sign with no known meaning in French or English. BANQUE on the other hand translates into English as BANK and is entirely non-distinctive in relation to the services claimed in the said trade mark registration. E&I is also relatively non-distinctive appearing as a very short two letter acronym.

On the other hand the "servicesunion" element in the disputed domain name is also descriptive and non-distinctive and the only distinctive element in that domain name that conveys any possible identifier to a web user is "arkea".

The Panel is therefore satisfied that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights.

NO RIGHTS OR LEGITIMATE INTERESTS

The Respondent's name bears no resemblance to the disputed domain name. Further, the disputed domain name does not resolve to a website.

There is simply no basis to conclude that the Respondent has rights or interests in the disputed domain name.

BAD FAITH

The Complainant asserts that the holding of an inactive domain name is evidence of bad faith. The Complainant further refers to VideoLink Inc. v. Xantech Corporation (FA1503001608735) ("VideoLink") in support of this argument. The Panel notes that in VideoLink the Respondent had held the domain name for "at least fifteen years". That is certainly not the case

in the present matter were the Respondent has only held the domain name for less than three months. It is perfectly forseable that a domain name holder may take a reasonable amount of time that is more than three months to actively use a domain name. VideoLink is clearly distinguished from the present matter.

However what is also clear to the Panel is there is no forseable reason why the Respondent, residing in a French speaking country, would choose a domain name containing this unique French trade mark together with words that allude to the services for which the trade mark registration covers. On its face the composition of this domain name indicates that the Respondent knew of the said trade mark before seeking to register the domain name. Further, there is no response from the Respondent to contradict this inference that the Panel draws under Rule 14(b) and (5)(a) of the UDRP Rules.

The domain name has been registered in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **ARKEASERVICESUNION.COM**: Transferred

PANELLISTS

Name	**Mr Andrew Norman Sykes**

DATE OF PANEL DECISION 2018-04-20

Publish the Decision