Decision for dispute CAC-UDRP-101929

Case number	CAC-UDRP-101929
Time of filing	2018-03-23 09:18:06
Domain names	ww3-macarte-credit-agricole.info

Case administrator

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

Complainant

Organization	CREDIT AGRICOLE SA

Complainant representative

Organization	Nameshield (Enora MILLOCHEAU)

Respondent

Name	Pilar Rodrigues

OTHER LEGAL PROCEEDINGS

The Complainant has stated that there are no other proceedings pending or decided relating to the disputed domain name. The Panel is also not aware of any such proceedings.

IDENTIFICATION OF RIGHTS

The Complainant's relevant trademarks include 'CREDIT AGRICOLE' (EUTM, 006456974, registered 2008; international, 1064647, registered 2011 - in classes including 9 (debit cards etc) and 36 (banking and monetary affairs)) and 'CA CREDIT AGRICOLE' (international, 441714, first registered 1978; EUTM, 005505995, first registered 2007).

FACTUAL BACKGROUND

The Complainant, Credit Agricole SA, is a large financial services enterprise with operations in banking (including retail banking), insurance, consumer credit, and the like. Its origins go to France (where it still has its seat) in the 19th century and it now has operations in multiple jurisdictions. It registered the domain name <credit-agricole.com> in 1999 and operates a website at that location.

The Respondent, Pilar Rodrigues, has an address in France. The disputed domain name <ww3-macarte-credit-agricole.info> was registered by the Respondent on 11 March 2018.

PARTIES CONTENTIONS

No administratively compliant response has been filed. Neither the written notice of the Complaint nor the advice of delivery thereof was returned to the provider. An e-mail sent to the Respondent (at WHOIS contact details) was successfully relayed. The Respondent never accessed the online platform.

The Complainant contends that the disputed domain name is confusingly similar to its trademarks CREDIT AGRICOLE, differing only in the addition of text ('WW3' and 'MACARTE') and hyphens. It adds that the Respondent is not affiliated with nor authorised by it. Finally, the Complainant argues that the Respondent has registered the disputed domain name in order to prevent it (the Complainant) from reflecting its well-known trademark in a corresponding domain name, and has registered and is using it in bad faith.

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).

The Complainant's rights are as set out above, and include the term CREDIT AGRICOLE.

Confusing similarity requires an analysis of differences between the trademark in which the Complainant has rights and the disputed domain name. There are four such differences: (i) the addition of the text WW3; (ii) the addition of the text MACARTE; (iii) the use of hyphens and (iv) the generic TLD .INFO.

The first point then concerns WW3. This string resembles the string WWW, which is a well-known part of the structure of Web addresses. The substitution of '3' for 'W' is likely to be based on the possibility of a typing error, as there is no known independent meaning of 'WW3'; more generally, adding WWW to a mark has been found to constitute confusing similarity, e.g. WIPO Case D2008-1695 Humana Inc. v. HYRO FZ-LLC (considering <WWW-HUMANA.COM>).

The second point concerns MACARTE. As the Complainant has pointed out, this French-language phrase ('ma carte') translates as 'my card'. This is therefore a situation where the addition of text concerning the activity of the Complainant points in favour of a finding of confusing similarity. It is well established that the addition of a generic or descriptive term to that term in which a Complainant has rights is often no barrier to a finding of confusing similarity; see for instance CAC Case 101555 O'Neill Brand S.à r.l v DVLPMNT Marketing, Inc. (concerning the trademark O'NEILL and the domain name <ONEILLBOARDSHORTS.COM>.

The third point concerns the use of hyphens. Hyphens are used in the disputed domain name, and indeed many others, in substitution for spaces between words (which are not supported in the current domain name system). As such, confusing similarity is again apparent.

Finally, the Panel will disregard the generic TLD, in accordance with the well established practice of UDRP Panels, for the purposes of assessing para 4(a)(i) of the UDRP.

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).

No information is available suggesting any possible rights or legitimate interests on the part of the Respondent. In addition, the Complainant has stated that the Respondent is not affiliated with nor authorised by it.

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).

The disputed domain name is, as the Complainant contends, inactive since its registration. At all times throughout these proceedings, the same has been observed.

The Panel must be satisfied that the disputed domain name has been registered and is being used in bad faith. The Complainant has submitted that the Respondent has registered the disputed domain name in order to prevent it (the Complainant) from reflecting its trademark in a corresponding domain name. This is clearly a reference to paragraph 4(b)(ii) of the UDRP. However, there is no evidence that the Complainant would wish to register the disputed domain name. Moreover, the Complainant has omitted the text 'provided that you have engaged in a pattern of such conduct', which also appears in paragraph 4(b)(ii). There is no evidence at all of such a pattern in this case, nor is such referred to by the Complainant. This submission is therefore not well founded.

On the other hand, the Complainant's citation of the 'Telstra' decision, and its emphasis upon the degree to which the trademark CREDIT AGRICOLE is well known, is a much surer basis for a finding of registration and use in bad faith. The Panel is able to find that this case is one of 'passive holding', where it is not possible to identify a situation where use would realistically be in good faith (see WIPO Jurisprudential Overview 3.0, para 3.2 including its summary of the 'Telstra' line of cases (WIPO AMC Case D2000-0003 Telstra Corporation Limited v Nuclear Marshmallows). One of the factors in the Telstra test is that the Complainant's mark 'has a strong reputation and is widely known'. The Complainant has provided sufficient evidence, including reference to previous decisions under the UDRP at this Provider and at the WIPO AMC (e.g. CAC Case 100687 Credit Agricole S.A. v. Hildegard Gruener) and Google searches for the term. The Panel agrees that the mark is distinctive, and has been in use for many years; the Respondent has provided contact details in France, where the Complainant, which has a global reputation, has its longest-established operations. Moreover, the Respondent has, through its failure to participate in these proceedings, 'provided no evidence whatsoever of any actual or contemplated good faith use by it' of the disputed domain name. The lack of an active website or any other relevant evidence means that the Panel cannot make any further assumptions about actual or contemplated good faith use. The Panel also notes the finding in WIPO Case D2008-1695 Humana Inc. v. HYRO FZ-LLC, cited above, that the use of WWW alongside a mark within a domain name indicates bad faith; the use of WW3 in this case does not detract from the applicability of this reasoning.

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.

The specific language of the registration agreement is, according to the Registrar verification, German and English. The Complaint was also in English. It is therefore appropriate for the present proceedings to be in English.

PRINCIPAL REASONS FOR THE DECISION

The reasons are as set out above. The disputed domain name is confusingly similar to the Complainant's relevant trade marks, on account of the small number of differences between the disputed domain name and the trademarks. No rights or legitimate interests on the part of the Respondent have been identified. The Panel considered the evidence provided by the Complainant regarding bad faith and finds that the disputed domain name was registered and is being used in bad faith due to the 'passive holding' of the disputed domain name by the Respondent in circumstances where the trademarks are well-known.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **WW3-MACARTE-CREDIT-AGRICOLE.INFO**: Transferred

PANELLISTS

Name	**Prof Daithi Mac Sithigh**

DATE OF PANEL DECISION 2018-04-24

Publish the Decision