Decision for dispute CAC-UDRP-101938

Case number	CAC-UDRP-101938
Time of filing	2018-03-23 09:15:25
Domain names	serv3-creditagricole-paylib.info

Case administrator

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

Complainant

Organization	CREDIT AGRICOLE SA

Complainant representative

Organization	Nameshield (Enora Millocheau)

Respondent

Name	Samir Chabbar

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

The Complainant adduced evidence of its following trademarks:

- International registration CREDIT AGRICOLE No. 1064647, registered since 4 January 2011 under Classes 9, 16, 35, 36, 38 and 42 in the Nice Classification System
- International registration CA CREDIT AGRICOLE No. 441714, registered since 25 October 1978
- European registration CA CREDIT AGRICOLE No. 005505995, registered since 20 December 2007.

There are further registrations to these, in particular underlying EU trademarks. Some marks are figurative. The case file discloses that recognition of protection has been withheld with respect to some of the classes claimed, but this is the exception. Even then, the coverage claimed was accepted for insurance, financial and monetary affairs and real estate matters (class 36), which are the core business areas of the Complainant.

The Complainant also adduced proof of its extensive registration of domain names incorporating the CREDIT AGRICOLE trademark, with and without a hyphen. Its domain name registrations include .com, .net and .fr TLD names.

FACTUAL BACKGROUND

The Complainant is a French bank whose market presence is expanding internationally. It is the leader in retail banking in France and one of the largest banks in Europe. Its portfolio of financial services includes insurance, asset leasing and factoring, consumer credit, and corporate and investment banking.

Based on details provided to the Case Administrator by the registrar of the disputed domain name, the Respondent is a resident in Pontcharra, France.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

Numerous UDRP decisions have recognized that the addition of a generic term to a trademark does not create a new or different right to the mark or diminish confusing similarity with the mark, notably CAC Case No. 101402 CREDIT AGRICOLE SA v. William Philippe. It was found in that case that “the addition of the term <SMS> is only a minor variation and therefore not sufficient to distinguish the disputed domain names <smscreditagricole.com> and <credit-agricole-sms.net> from the Complainant’s trademark CREDIT AGRICOLE; the Complainant’s trademark CREDIT AGRICOLE constitutes the dominant component of the disputed domain names".

The Respondent is not known as “CREDIT AGRICOLE”, but as “SAMIR CHABBAR”, and has not acquired trademarks or mark rights to use this name. The Complainant refers to the decisions of past panels which have concluded that a Respondent is not commonly known by a disputed domain name if the WHOIS information was not similar to the disputed domain name, for instance NAF Case No. FA 96356 - Broadcom Corp. v. Intellifone Corp.: Panel stated that the Respondent has “no rights or legitimate interests because the respondent is not commonly known by the disputed domain name or using the domain name in connection with a legitimate or fair use”.

Furthermore, the Complainant adduces evidence that the disputed domain name has since registration pointed to an inactive website, permitting the inference that the Respondent's inactivity shows that he has no demonstrable plan to use the disputed domain name and thus lacks a legitimate interest in the disputed domain name. The Complainant supports this reasoning by reference to WIPO case No. D2000-1164, Boeing Co. v. Bressi, in which the Panel stated that the “Respondent has advanced no basis [to] conclude that it has a right or legitimate interest in the domain names”;

Given the distinctiveness of the Complainant's trademarks and reputation, the Complainant argues that it is reasonable to infer that the Respondent has registered the domain name with full knowledge of the Complainant's trademarks. It cites for this proposition WIPO - D2004-0673 - Ferrari S.p.A v. American Entertainment Group Inc. and the decisions of prior WIPO UDRP panels as regards the incorporation of a famous mark into a domain name, coupled with an inactive website, such as the decision in WIPO - D2000-0003 - Telstra Corporation Limited v. Nuclear Marshmallows.

RESPONDENT: 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

1. Introduction

As indicated in the Complaint, this is one in a series of cases involving different Respondents but the same Complainant, where variants of the Complainant bank's brand name, Crédit Agricole, have been employed in conjunction with generic terms in the stem of the domain names concerned.

The Complainant notes in the present case the absence of a website which has been established by or with the involvement of the Respondent that resolves to the disputed domain name. This case at first sight thus seems to be an instance of passive holding.

However, the Panel remarks that, from the verification report submitted by the registrar of the disputed domain name, there is an active DNS server associated with the name and it might thus be used for transmitting e-mails.

Further, while referring the Panel to the Complainant's website in the evidence it submitted, the Complainant did not refer to the significance of "paylib" in the disputed domain name. It transpires that Paylib is a service offered through the Complainant and other banks. This is clearly a pertinent fact and should have been disclosed explicitly to the Panel in the Complaint itself.

2. The Complainant's rights

The Complainant has adduced convincing proof of the notoriety of its brand name and of its registration of trademarks protecting the brand together with registrations of corresponding domain names.

3. Identicality or confusing similarity with the Complainant's trademark(s)

There is no question that the Complainant's trademark is included in its entirety in the stem of the disputed domain name. The TLD designator ".info", as Panels over many years have decided consistently, does not influence a finding based on identicality or confusing similarity in the stem part of a disputed domain name.

In addition, the disputed domain name contains the prefix "serv3", which a user would reasonably assume is a server indicator internal to Crédit Agricole; the prefix can thus be disregarded for this part of the UDRP test. As to the remaining term, the suffix "paylib", addition by the Respondent of this denominator associated with one of Crédit Agricole's services (and of other banks') will reinforce a fortiori confusing similarity in the eyes of above all the consumer who is the user of that service or, as in CAC Case n° 101402 CREDIT AGRICOLE SA v. William Philippe in respect of inclusion of the term "sms", can be disregarded.

The Panel holds that, having analysed the combination of all terms in the disputed domain name, the presence of the dominant term is sufficient to determine this part of the UDRP test in the Complainant's favour.

4. Lack of rights or legitimate interest on the Respondent's part

The Complainant bases part of its argumentation under this heading on the questionable premise that only a passive holding is involved (see 1. Introduction, above). This is, however, not determinant for this part of the UDRP test. The major argument relates instead to whether there is any other connection between the disputed domain and the Respondent, such as if the Respondent is commonly known by the words included in the Complainant's brand.

There is plainly no such connection in the present case.

5. Bad faith

This Panel is somewhat puzzled by the (alleged) non-use of the disputed domain name -- and not the potential mischief to which it might be put vis-à-vis consumers -- being the sole ground upon which bad faith is contended in this case.

Yet, from the formulation of the disputed domain name alone, it is clear to the Panel that the combination of 1) a technical indicator ("serv3") with 2) the name of the retail banking market leader in France plus 3) the name of a digital service it actually provides to consumers and, to top it all, 4) the generic TLD ".info" all places a heavy, perhaps insuperable, burden of explanation upon the Respondent. And in this case no explanation at all has been forthcoming.

In addition, the Panel accepts the Complainant's contention that "it is reasonable to infer that the Respondent has registered the domain name with full knowledge of the Complainant's trademarks". And it finds it difficult to avoid reaching in this case exactly the same conclusion as the WIPO Panel arrived at in the Telstra Corporation Limited v. Nuclear Marshmallows Case, namely that: "taking into account all of the above, it is not possible to conceive of any plausible actual or contemplated active use of the domain name by the Respondent that would not be illegitimate".

The Panel finds that the presence of bad faith is abundantly shown.

6. Conclusion

All three elements of the UDRP test have been met and thus the Complaint is accepted.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **SERV3-CREDITAGRICOLE-PAYLIB.INFO**:

PANELLISTS

Name	**Kevin J. Madders**

DATE OF PANEL DECISION 2018-05-09

Publish the Decision