Decision for dispute CAC-UDRP-102081

Case number	CAC-UDRP-102081
Time of filing	2018-07-10 09:52:04
Domain names	creditagricole.ooo

Case administrator

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

Complainant

Organization	CREDIT AGRICOLE S.A.

Complainant representative

Organization	Nameshield (Enora Millocheau)

Respondent

Organization	Ratnam Smart Business LLP

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

The Complainant relies on its extensive portfolio of trade marks and its two international registrations, for the marks: CA CREDIT AGRICOLE, No. 441714 registered in 1978 (figurative), and CREDIT AGRICOLE No. 1064647 registered in 2011 (word), both for classes 16,35,36,42. These marks are registered in numerous countries internationally. The Complainant relies on its domain name at <creditagricole.com > and its extensive use in trade and its international reputation, enforceable in common law jurisdictions in passing-off, and says it is a famous or well-known mark.

FACTUAL BACKGROUND

The Complainant is a leader in retail banking in France and one of the largest banks in Europe. It assists its clients' in France and around the world, in all areas of banking and financial services including insurance, asset management, asset leasing, factoring, consumer credit, corporate and investment banking.

The disputed domain name <creditagricole.ooo> was registered on 14 June 2018 by the Respondent, Ratnam Smart Business LLP, of Mumbai, India, and resolved to a parking page with links related to the Complainant on 28 June 2018.

When visited by the Panel on 7 August 2018, there was a notice or disclaimer on the parking page that says: “This domain

name has expired and is pending renewal or deletion." It is not clear if this is automated or was generated deliberately by the Respondent. The links there, when clicked, seemed to generate other links to sites such as www.info.com and that in turn had another list of links to genuine sites/results by and about the Complainant.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

CREDIT AGRICOLE S.A. is the leader in retail banking in France and one of the largest banks in Europe. First financing the French economy and major European player, CREDIT AGRICOLE S.A. assists its clients' projects in France and around the world, in all areas of banking and trades associated with it: insurance management asset leasing and factoring, consumer credit, corporate and investment. The Complainant owns several trademarks including the distinctive wording "CREDIT AGRICOLE", such as the followings registrations: International registration CA CREDIT AGRICOLE® no. 441714 registered since 1978-10-25 and International registration CREDIT AGRICOLE® no. 1064647 registered since 2011-01-04. CREDIT AGRICOLE S.A. is also the owner of domain names, including the same distinctive wording CREDIT AGRICOLE®, such as <creditagricole.com> registered since 2001-06-11. The disputed domain name <creditagricole.ooo> was registered on June 14th 2018. The domain name resolves to a parking page with commercial links related to the Complainant.

The Legal Grounds are that the disputed domain name is identical and the Respondent does not have any rights or legitimate interest in the domain name(s) and is domain parking.

According to the WIPO Case no. D2003-0455, Croatia Airlines d.d. v. Modern Empire Internet Ltd., the Complainant is required to make out a prima facie case that the Respondent lacks rights or legitimate interests. Once such prima facie case is made, the Respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(a) (ii) of the UDRP.

The Respondent is not known as "CREDIT AGRICOLE", but as "RATNAM SMART BUSINESS LLP", and has not acquired trademarks mark rights on this term. Past panels have held that a Respondent was not commonly known by a disputed domain name if the WHOIS information was not similar to the disputed domain name. Please see for instance: FORUM Case No. FA 1781783, Skechers U.S.A., Inc. and Skechers U.S.A., Inc. II v. Chad Moston / Elite Media Group <bobsfromsketchers.com> ("Here, the WHOIS information of record identifies Respondent as "Chad Moston / Elite Media Group." The Panel therefore finds under Policy ¶ 4(c)(ii) that Respondent is not commonly known by the disputed domain name under Policy ¶ 4(c)(ii)." See also FORUM Case No. FA 699652, The Braun Corporation v. Wayne Loney.
The Complainant contends that the Respondent is not affiliated with nor authorized by CREDIT AGRICOLE S.A. in any way. The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant does not carry out any activity for, nor has any business with the Respondent. Neither licence nor authorization has been granted to the Respondent to make any use of the Complainant's trademarks CREDIT AGRICOLE®, or apply for registration of the disputed domain name by the Complainant.

Furthermore, the disputed domain name points to a parking page with commercial links ("PPC") related to the Complainant. Past panels have found it is not a bona fide offering of goods or services or legitimate non-commercial or fair use. See FORUM case No. FA 970871, Vance Int'l, Inc. v. Abend (concluding that the operation of a pay-per-click website at a confusingly similar domain name does not represent a bona fide offering of goods or services or a legitimate noncommercial or fair use, regardless of whether or not the links resolve to competing or unrelated websites or if the respondent is itself commercially profiting from the click-through fees). Therefore, the Respondent has no rights or legitimate interests on the disputed domain name.

The domain name(s) has been registered and is being used in bad faith by the Registration of a well-known/famous trade

mark attracting internet users for commercial gain by creating a likelihood of confusion with the Complainant. The Complainant's trademarks CREDIT AGRICOLE® are widely known. Past panels have confirmed the notoriety of the trademarks CREDIT AGRICOLE®. See for instance, CAC Case No. 101964, CREDIT AGRICOLE SA v. alexadra jean paris ("The Complainant is a well-known bank with global presence which is also present in Mexico where the Respondent allegedly resides. The Panel has no doubt that Complainant's Trademarks are well known around the world"). Given the distinctiveness of the Complainant's trademarks and reputation, it is reasonable to infer that the Respondent has registered the domain name with full knowledge of the Complainant's trademarks. Please see for instance WIPO - D2004-0673 - Ferrari S.p.A v. American Entertainment Group Inc. The term CREDIT AGRICOLE ® is worldwide known only in relation with the Complainant, in particular, in India, the Respondent's country. A Google search on the expression CREDIT AGRICOLE® displays several results, all of them being related to the Complainant and its banking activity. Furthermore, past Panels stated that the Complainant's trademark "has a long history, a strong reputation, is highly distinctive, particularly in countries where the primary language is not French, and is widely known". See CAC Case No. 101281 CREDIT AGRICOLE S.A. v. JOSEPH Kavanagh.

Furthermore, the disputed domain name <creditagricole.ooo> resolves to a parking page with commercial links ("PPC") related to the Complainant. The Complainant contends the Respondent has attempt to attract Internet users for commercial gain to his own website thanks to the Complainant's trademarks, which is an evidence of bad faith. Please see FORUM Case No. FA 1650460, Capital One Financial Corp. v. KIM MINSUNG ("The use of a domain name similar to a mark in which a complaining party has rights to host various commercial links related to the complainant's business is not a bona fide offering of goods or services or a legitimate noncommercial or fair use. […] The Panel finds that Respondent's use does not fall within Policy ¶ 4(c)(i) or 4(c)(iii).") On these grounds, the Complainant concludes that the Respondent has registered and is using the disputed domain name in bad faith. Please see for instance WIPO Case No. D2017-1039, Compagnie Générale des Etablissements Michelin v. dfdfddan wei, Mi Mi Xiao Wang ("It is the consensus practice of past UDRP panels that TLDs, in this case ".xyz", should be disregarded when comparing domain names with trademarks.") Finally, many UDRP decisions have confirmed the Complainant's rights such as: WIPO Case No. D2015-1187, Credit Agricole S.A. v. Shao Hu <creditagricole.top> and WIPO Case No. D2012-0258, Credit Agricole S.A. v. Wang Rongxi <creditagricole.mobi>. Past panels have held that a Respondent was not commonly known by a disputed domain name if the WHOIS information was not similar to the disputed domain name. Please see for instance: FORUM Case No. FA 1781783, Skechers U.S.A., Inc. and Skechers U.S.A., Inc. II v. Chad Moston / Elite Media Group <bobsfromsketchers.com> ("Here, the WHOIS information of record identifies Respondent as "Chad Moston / Elite Media Group." The Panel therefore finds under Policy ¶ 4(c)(ii) that Respondent is not commonly known by the disputed domain name under Policy ¶ 4(c)(ii).") See also NAF Case No. FA 699652, The Braun Corporation v. Wayne Loney and see FORUM case No. FA 970871, Vance Int'l, Inc. v. Abend (concluding that the operation of a pay-per-click website at a confusingly similar domain name does not represent a bona fide offering of goods or services or a legitimate noncommercial or fair use, regardless of whether or not the links resolve to competing or unrelated websites or if the respondent is itself commercially profiting from the click-through fees) and CAC Case No. 101964, CREDIT AGRICOLE SA v. alexadra jean paris ("The Complainant is a well-known bank with global presence which is also present in Mexico where the Respondent allegedly resides. The Panel has no doubt that Complainant's Trademarks are well known around the world"). Please see CAC Case No. 101281 CREDIT AGRICOLE S.A. v. JOSEPH Kavanagh ("the Complainant's trademark has a long history, a strong reputation, is highly distinctive (particularly in countries where the primary language is not French) and is widely known"). See FORUM Case No. FA 1650460, Capital One Financial Corp. v. KIM MINSUNG ("The use of a domain name similar to a mark in which a complaining party has rights to host various commercial links related to the complainant's business is not a bona fide offering of goods or services or a legitimate noncommercial or fair use. […] The Panel finds that Respondent's use does not fall within Policy ¶ 4(c)(i) or 4(c)(iii)").

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. In particular, it is satisfied that service was duly effected under the UDRP.

PRINCIPAL REASONS FOR THE DECISION

Discussion

Rights
The Panel accepts the Complainant has rights in a name and mark identical to the domain name. It also accepts that the Complainant's name and marks are famous or well known.

Other panels have made these findings also, see WIPO Case No. D2015-1187, Credit Agricole S.A. v. Shao Hu <creditagricole.top> and WIPO Case No. D2012-0258, Credit Agricole S.A. v. Wang Rongxi <creditagricole.mobi> and see CAC Case No. 101964, Credit Agricole SA v. Alexandra Jean Paris ("Complainant is a well-known bank with global presence … The Panel has no doubt that Complainant's Trademarks are well known around the world") and CAC Case No. 101281, Credit Agricole SA v. Joseph Kavanagh ("the Complainant's trademark has a long history, a strong reputation, is highly distinctive (particularly in countries where the primary language is not French) and is widely known").

The suffix is disregarded so the mark and the disputed domain name are therefore identical. The suffix can be relevant to the second and third limbs of the UDRP and is so in this case, and considered below.

Legitimate Interests

The Complainant must make out a prima facie case under this limb of the UDRP that there are no such rights or interests and then the evidential burden shifts to the Respondent to rebut this, see WIPO Case no. D2003-0455, Croatia Airlines d.d. v. Modern Empire Internet Ltd.

However, this is not a default judgment procedure and we must still consider whether on the face of it, the Respondent might be making legitimate or fair non-commercial use. We may conduct limited investigation from online sources to do so, see CAC Cases Vanity Fair Inc, Les Dooley v Taylor Wessing LLP Case 6754 (vanityfairlingerie.eu) and JD Sports Fashion Plc, Price v Gabler Case 7224 (chausports.eu).

The Complainant says, and we accept, that the Respondent is not known by the domain name and has no showing of bona fide use and none of the other fair use factors (fan or criticism site or resales or descriptive use) are apposite. The issue is that the disputed domain name points to a parking page with commercial links ("PPC") related to the Complainant. The Complainant says past panels have found it is not a bona fide offering of goods or services or legitimate non-commercial or fair use if those links free-ride or leverage its reputation and it cites FORUM case No. FA 970871, Vance Int'l, Inc. v. Abend (concluding that the operation of a pay-per-click website at a confusingly similar domain name does not represent a bona fide offering of goods or services or a legitimate non-commercial or fair use, regardless of whether or not the links resolve to competing or unrelated websites or if the respondent is itself commercially profiting from the click-through fees). This does remain the general rule according to the WIPO overview 3.0.

However, some minimal monetization will not render any use commercial and there is a greater focus now on a contextual analysis, indeed, the CAC Handbook version 2 puts the position: “Use of a domain name to post parking pages or mere pay per click links does not of itself confer rights or legitimate interests, especially if the links lead to the websites of the right holder’s competitors”.

It is relevant to note here that the abbreviation <.ooo> is defined by online dictionary sources as online slang or having a colloquial meaning of either “out of office” or “openoffice”. So it may have an informational value to indicate that it is not an official site and is open source in some way. This combined with the disclaimer and the onward links to genuine websites about the Complainant means that legitimate fair use must be considered.

In some ways, this situation is similar to the fan and criticism sites in the sense that they are examples of descriptive or nominative fair uses, where a name is used to say something about or discuss the named person or entity. Trade mark and therefore domain name law cannot and does not reach this sort of use – otherwise you could never talk about a trade mark owner in the media or online. Yet that kind of discussion is in the media an editorial use and is protected by freedom of expression and is not commercial speech as such (despite the presence of advertising).

However, the situation is not quite so simple here as while that appears to be the position in relation to one of the onward links – the www.info.com, the Respondent was an intermediary to that site and may be what is known as a “navigation” site. Navigation for revenue is much closer to an advertising use than an editorial or discussion use – and so has much less of a claim to be making fair and legitimate descriptive or nominative use. It is a use that capitalizes on the value of the traffic and therefore the name, see CAC case Tobias Grau GmbH v Mandarin & Pacific Services Ltd, Case 4829, (<tobiasgrau.eu>).

Therefore we find the Complainant has discharged its burden and the Respondent has not come forward to rebut the evidence and so we find there is no legitimate or fair use.

Bad Faith

We accept the submission of the Complainant and find that the Respondent registered and used the disputed domain name with full knowledge of the famous mark and in order to profit from it and therefore, the reputation and goodwill of the Complainant. This is paradigm bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **CREDITAGRICOLE.OOO**: Transferred

PANELLISTS

Name	**Victoria McEvedy**

DATE OF PANEL DECISION 2018-08-07

Publish the Decision