Decision for dispute CAC-UDRP-102085

Case number	CAC-UDRP-102085
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Domain names	unicreditonline.com

Case administrator

Name	Sandra Lanczová (Case admin)

Complainant

Organization	UNICREDIT S.p.A.

Complainant representative

Organization	Convey srl

Respondent

Organization	Highview Ventures LLC

OTHER LEGAL PROCEEDINGS

The panel is not aware of any other legal proceedings related to the Disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of the following trademark registrations:

• EUTM reg. no. 002911105 UNICREDIT (fig), filed on 28 October 2002, in force for products/services in classes 9, 16, 35, 36, 38, 39, 41, 42;
• International Trademark no. 799384 UNICREDIT BANCA (fig), filed on 10 December 2002, in force for products/services in classes 09,16,35,36,38,39,41,42;
• International Trademark no. 1046723 UNICREDIT Corporate & Investment Banking (fig), filed on 10 December 2002, in force for services in classes 35, 36, 41, designating also U.S.A.;
• Italian Trademark reg. no. 0001138942 UNICREDIT PASS, filed on 28 October 2002, in force for products/services in classes 9, 36;
• Italian Trademark reg. no. 0001011970 UNICREDIT, filed on 9 May 2006, in force for services in class 36.

FACTUAL BACKGROUND

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

According to the disclosure of Enom Inc. on July 25, 2018, all information known to the Complainant regarding how to contact the Respondent is as follows:

Domain Name: unicreditonline.com
Contact Type: Registrant
Organization Name: Highview Ventures LLC
First Name: Domain
Last Name: Administrator
Address 1: 12700 Chalon Road
Address 2:
City: Los Angeles
StateProvince: CA
Postal Code: 90049
Country:
Phone: +1.3109196344
Fax:
Email Address: emily@tvtime.com
status: registrar-lock
created-date: 2010-08-09 13:54:56.000
registration-expiration-date: 2019-08-09 13:54:56.000

The searches on Highview Ventures LLC highlighted that the company is prima facie active in the banking and finance sector. On the Linkedin account of Bob Cahoon, Highview Ventures LLC's CEO, the following information is indicated:

"Leveraging expertise in executive leadership, commercial banking & finance, to provide strategic consulting and advisory services to small-midsize businesses."

Therefore, it is ascertained that Ventures LLC works in the same sector where the Complaint has been operating since many years and, thus, could not ignore the existence of the trademark UNICREDIT and of the Complaint when the Domain Name was registered.

The Complainant is UNICREDIT S.p.A., is an Italian global banking and financial services company and is the third largest banking group in Europe, its network spans 50 markets in 18 countries, with more than 8,500 branches and over 147,000 employees. Its strategic position in Western and Eastern Europe gives the group one of the region's highest market shares. The company is a component of the FTSE MIB.
The Complainant is the owner of the trademark UNICREDIT, with several international and national trademark registrations worldwide.
The undersigned represents UNICREDIT S.p.A., a well-known international banking and financial services company having its registered offices at Via Alessandro Specchi, 16 I-00186 ROMA, which is the owner of numerous community and international Trademark registrations which either consist of or contain the denomination "UniCredit", comprising:
• EU Trademark no. 002911105 – "UNICREDIT " – Nice Classification: 9, 16, 35, 36, 38, 39, 41, 42;
• INT. Trademark no. 799384 – "UNICREDIT BANCA " – Nice Classification: 09,16,35,36,38,39,41,42;
• INT. Trademark no. 1046723 – "UNICREDIT Corporate & Investment Banking" – Nice Classification: 35, 36, 41 designating also U.S.A.;
• IT. Trademark no. 0001138942 – "UNICREDIT" – Nice Classification: 9, 36;
• IT. Trademark no. 0001011970 – "UNICREDIT" – Nice Classification: 36;

The core bank upon which UniCredit Group was built began its activity in 1870, when Banca di Genova - later renamed Credito Italiano - was founded. However, some of the banks that subsequently joined our Group trace their origins much further back in time, such as Rolo Banca, which was founded in 1473.
UniCredit Group was the outcome of the 1998 merger of several Italian banking groups, of which the major ones were Unicredito and Credito Italiano, hence the name Unicredito Italiano. Credito Italiano issued about 38.46% new shares to the

owners of Unicredito and renamed itself to Unicredito Italiano. Other banks such as Banca dell'Umbria, Cassa di Risparmio di Carpi, Cassa di Risparmio di Trento e Rovereto (Caritro) and Cassa di Risparmio di Trieste also joined the group in 1998–2000.
In 1999, UniCredito Italiano, as it was then known, began its expansion in Eastern Europe with the acquisition of the Polish company Bank Pekao. On June 30, 2002, with the merger of Rolo Banca, Banca CRT, Cariverona Banca, Cassamarca, Cassa di Risparmio di Trento e Rovereto and Cassa di Risparmio di Trieste into Credito Italiano, the company was renamed into UniCredit Banca. UniCredit Private Banking and UniCredit Banca d'Impresa have been spun off from it in 2003.
In 2005, UniCredit merged with the German group HVB and Bank Austria Creditanstalt.
In 2014, UniCredit Group celebrates its 15th anniversary by inaugurating its new headquarters in Milan, the UniCredit Tower, helping reduce the Group's CO2 emissions by more than 40 percent and save nearly €25 million in costs.

Since 2009 UniCredit has launched various campaigns connected with the sponsorships in all of its primary markets, in order to increase customer and employee engagement. The Complainant has been the Official Bank of the UEFA Champions League since 2009 and the fan page of the UniCredit Champions Facebook account (https://www.facebook.com/ has engaged over 170.000 fans by offering exclusive content such as stories and impressions posted by bloggers during the Trophy Tour or riddles, apps and other initiatives developed exclusively for social media users. Videos of UEFA Champions League action and the UniCredit sponsorship are hosted on the UniCredit Champions YouTube channel (www.youtube.com/unicreditchampions).
UniCredit is the main sponsor of the Turin Marathon in Italy, ATP Open of Umago in Germany and Pekao Open Tournament in Poland.

The Complainant cooperates with leading museums and institutes and has either partnered with, sponsored or loaned artworks from corporate collection to: the Castello di Rivoli Museum of Contemporary Art Turin), the MACRO M Museum of Contemporary Art (Rome), the MAMbo - Museum of Modern Art of Bologna, the MART - Museum of Contemporary Art of Trento and Rovereto, Artissima and Turin international contemporary art fair.

As major partner, the Complainant has supported the Arena di Verona Foundation since 1994 for the Arena Opera Festival, one of the best-known musical events in the world and the Filarmonica della Scala since 2000. Unicredit is one of the main sponsor also for the Bach Festival, the Wiener Philarmoniker, the Richard Wagner Festival, Musikverein Wien and the Bavarian State Opera.

As soon as the Complainant became aware of the Respondent’s registration and use of the Domain Name, confusing similar to its registered and well-known trademark UNICREDIT, it instructed its representative to address to the owner of the domain name a cease and desist letter in order to notify it of the infringement of the Complainant’s trademark rights, requesting the immediate cease of any use of the Domain Name and the transfer of the same to the Complainant. At that time the domain name was redirected to a parking page displaying various sponsored links related to bank sector.

A cease and desist letter was therefore sent, on 04/07/2017, by email to the domain name owner’s known email addresses indicated at that time in the WhoIs record, but the domain name owner did not deem appropriate to answer.

A reminder was sent on 07/07/2017 and, on the same day, the Legal Department of Enom, to which Complainant’s message was redirected, replied as follows:

“It appears that you or your client may have a trademark claim related to a domain name registered through Enom.

Enom adds no value as an intermediary in such disputes, neither are we typically in a position to adequately investigate such claims and pass judgment on the relative merits involved.

The Uniform Dispute Resolution Process (the "UDRP") has been created to address most of such circumstances. Information regarding the UDRP is available at:
http://www.enom.com/ or at: http://www.icann.org/

While the UDRP is more commonly used because most trademark holders believe it to be faster and less expensive, some claimants also avail themselves of judicial processes. Enom regularly cooperates with both judicial and UDRP proceedings. If you are or are going to pursue a claim against the registrant and you need to know Enom's location for purposes of 15 USC 1125(d)(2)(A), we are located in King County, Washington State.

Please contact us again as appropriate during your pursuit of a UDRP and/or court proceeding."

On July 13, 2017, the Legal Representative requested to the Registrar to forward the cease and desist letter to the Domain Name's owner or to provide its data. On the same day, the Registrar confirmed that the cease and desist letter was forwarded to the Domain Name's owner advising it that a failure to reply within 48 hours could enable the registrar to disclose the underlying whois record to the Complainant.

Notwithstanding this, the Respondent did not deem appropriate to reply and the registrar did not provide the Registrant's data, irrespective of the following reminders on July 18, 2017 and on April 30, 2018.

In light of the absence of a reply and the failure to comply with the request for transfer of the Domain Name, the Complainant instructed its representative to file the present Complaint in order to obtain the transfer of the Domain Name under its ownership and control.

LEGAL GROUNDS
PART I
The domain name(s) is(are) identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
(Policy, Paragraph 4(a)(i); Rules, Paragraphs 3(b)(viii), (b)(ix)(1))

The disputed domain name is confusingly similar to the trademark UNICREDIT in which the Complainant has rights, as highlighted by the copies of the trademark registration certificates and printouts of the trademark records published on the online database of the relevant Trademark Offices.

First, it is well established that the addition of generic words to a trademark in domain names is insufficient in itself to negate confusing similarity between a trademark and a domain name. Amongst others, the Panel in Britannia Building Society v. Britannia Fraud Prevention, WIPO Case No. D2001-0505, "the incorporation of a trademark in its entirety is sufficient to establish that a domain name is identical or confusingly similar to the Complainant's registered mark". See also GA Modefine S.A. v. Mark O'Flynn Case No. D2000-1424 "It is indeed obvious that although the Respondent's Domain Name is composed out of the word "armani" and the (descriptive) word "boutique", the first of these terms is incontestably the principal part of the Domain Name. In this view, the Administrative Panel finds that the Domain Name is confusingly similar to the Complainant's trademarks." Red Bull GmbH v. PREGIO Co., Ltd., WIPO Case No. D2006-0909 "the trademark RED BULL is clearly the most prominent element in this combination, and that may cause the public to think that the domain name <redbull-jp.net> is somehow connected with the owner of RED BULL trademark".

In this case, the addition of the generic term "online" to the trademark UNICREDIT in the disputed domain name is particularly problematic insofar as it could refer to the sector of the online banking where the Complainant provides also services to its clients. Therefore, the combination of the trademark UNICREDIT with the term "online" in the disputed domain name improperly suggests to consumers that the disputed domain name and corresponding web site might be operated by the Complainant or with the Complainant's authorization.

See, e.g., Dansko, LLC v. Wenhong Chen Case No. D2012-0583, (concerning <danskooutletonline.com>), in which the Panel found that "the addition of the descriptive words "outlet" and "online" does not provide sufficient distinction from the Complainant. On the contrary, the Panel finds that the disputed domain name is confusingly similar to the Complainant's distinctive mark DANSKO. This has the effect of strengthening the likelihood of confusion created as consumers may be led

to believe that there is a connection between the disputed domain name and the Complainant, its domain names and its mark DANSKO".

Furthermore, the top level ".com" is merely instrumental to the use in Internet - as found in The Forward Association, Inc., v. Enterprises Unlimited (NAF case FA0008000095491, October 3, 2000) and numerous others - and not able to affect the confusing similarity of the Domain Name <unicreditonline.com> to the Complainant's trademark.
In light of the foregoing, the Complainant concludes that the Domain Name is confusingly similar to the prior registered trademark in which the Complainant has rights in satisfaction of paragraph 4(a)(i) of the Policy.

LEGAL GROUNDS
PART II
The Respondent has no rights or legitimate interests in respect of the domain name (s);
(Policy, Paragraph 4(a)(ii); Rules, Paragraph 3(b)(ix)(2))

As a preliminary note, along the lines set forth in Pharmacia & Upjohn Company v. Moreonline, WIPO Case No. D2000-0134 and National Football League Properties, Inc. and Chargers Football Company v. One Sex Entertainment Co., a/k/a chargergirls.net, WIPO Case No. D2000-0118, the mere registration of a domain name does not establish rights or legitimate interests in a disputed domain name.

The Respondent is not a licensee or authorized dealer of the Complainant nor has been authorized by the Complainant to use the trademark UNICREDIT in the disputed domain name or in any other manner.

The Complainant is not in possession of, nor aware of the existence of, any evidence demonstrating that the Respondent, whose name is prima facie WHOIS PRIVACY PROTECTION SERVICE INC., might be commonly known by the Domain Name or a name corresponding to the disputed Domain Name as an individual, business, or other organization.

The Respondent has not provided the Complainant with any evidence of its use of, or demonstrable preparations to use, the disputed domain name in connection with a bona fide offering of goods or services before any notice of the dispute.
The above-described use of the disputed domain name suggests that the Respondent intended to trade upon the Complainant's trademarks by intentionally attempting to attract to its website users looking for the Complainant, its products and services, by misleading them as to the source or affiliation of its web site.

Moreover, the Respondent uses the web site corresponding to the Domain Name either redirecting the users to a parking page with pay-per-click links, including links related to competing services, where the disputed domain name is offered for sale, or to promote, inter alia, cryptocurrencies by inducing the users to believe that Respondent has been authorized by the Complainant. Both the circumstances cannot be considered fair use or legitimate interests.

For instance, on the web sites related to the services of investment on cryptocurrency, it is requested to the users to provide their personal data (i.e. name, surname, e-mail and telephone number) in order to start trading Bitcoins or other cryptocurrencies via the various platforms. Therefore, the respondent's use of the domain name could not be considered "fair" because it falsely suggests affiliation with the Complainant.

Such unauthorized use of the disputed domain name cannot be qualified as a bona fide offering of goods or services nor as a legitimate noncommercial or fair use, as highlighted in Carlos Alberto Vives Restrepo v. WSJ Trade / Wilman Villegas WIPO Case No. D2015-0919: "the Panel is also satisfied that the pointing of the disputed domain name, confusingly similar to the Complainant's trademark, to a parking page with pay-per-click links for competing services, where the disputed domain name is also offered for sale, does not constitute a bona fide offering of goods or services or a legitimate noncommercial or fair use". Also, in Richemont International SA v. Turvill Consultants WIPO Case No. D2014-0862 "The Respondent is using the disputed domain names as pay-per-click advertisement websites that include a search engine and advertise links to the products of the Complainant's competitors and/or allegedly counterfeit products, which is not a bona fide or legitimate use. According to the above mentioned, the Panel finds that the Respondent does not have any rights or legitimate interests in the disputed domain names and the Complainant has therefore met the requirement under paragraph 4(a)(ii) of the Policy".

Moreover, on the web sites corresponding to the disputed domain name there is no disclaimer informing the users as to the Respondents' lack of relationship with the Complainant.

As a final remark on the issue of rights or legitimate interest, it is a consolidated principle that the burden of proof lies on Complainant. However, satisfying the burden of proving a lack of Respondent's rights or legitimate interests in respect of the domain name is quite onerous, since proving a negative circumstance is always more difficult than establishing a positive one. Accordingly, it is sufficient that Complainant shows a prima facie evidence in order to shift the burden of production on the Respondent (see i.a. Anti Flirt S.A. and Mr. Jacques Amsellem v. WCVC, WIPO Case No. D2000-1553, Audi AG v. Dr. Alireza Fahimipour WIPO Case No. DIR2006-0003).

For all of the foregoing reasons, the Complainant concludes that the Respondent has no rights or legitimate interests in respect of the Domain Name pursuant to paragraph 4(a)(ii) of the Policy.

LEGAL GROUNDS
PART III
The domain name(s) was/were registered and is/are being used in bad faith.
(Policy, paragraphs 4(a)(iii), 4(b); Rules, paragraph 3(b)(ix)(3))

According to the Complainant, in registering and using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location.

Indeed, the registered trademark UNICREDIT has been used extensively and exclusively by the Complainant since 2002 and through long established and widespread use in several countries of the world, the aforesaid trade mark of the Complainant enjoys worldwide reputation in the sector of banking and financial services, as also highlighted in the WIPO case UniCredit S.p.A. v. Registration Private / Guido Eugenio Ramella Case No. D2014-1933 as to the domain name yunikreditbank.com "the Panel finds that, in light of the Complainant's prior registration and use of the trademarks UNICREDIT and UNICREDIT BANK and of the well-known characters of the marks, especially in Italy, where the Respondent is based, the Respondent was or ought to have been aware of the Complainant's marks at the time of the registration of the disputed domain name".

The disputed domain name was registered in August 2010, years after the Complainant obtained its trademark registrations.

Therefore, by virtue of its extensive worldwide use (the Complainant is the third largest banking group in Europe), UNICREDIT has become a well-known trade mark in the sector of finance and banking. As noted in Ferrari S.p.A. v. Allen Ginsberg, WIPO Case No. D2002-0033, "Respondent has registered the domain name <maserati.org> corresponding to the well-known or even famous trademark MASERATI which he must have been aware of". Considering the trademark's distinctiveness and well-known character, it is inconceivable that the Respondent was unaware of the existence of the Complainant's registered trademark at the time of the registration of the Domain Name, with which it is confusingly similar.

Being the trademark UNICREDIT an invented word, it is also unlikely that the Domain Name, including that word, was chosen by the Respondent without having in mind the trademark of the Complainant. Rather, such trademark distinctiveness, together with the generic term "online", creates a domain name confusingly similar to Complainant's trademarks and it is Complainant's contention that Respondent has exploited this similarity for its own commercial gain.
Furthermore, the actual knowledge of the UNICREDIT trademark by Respondent at the time of the registration of the Domain Name is demonstrated by the facts that the Respondent is prima facie active in the sector where the Complainant operates, indeed the Domain Name redirects, inter alia, to web sites that promote investments on cryptocurrencies.

It is clear that the Respondent was well aware of the trademark UNICREDIT and registered the disputed Domain Name with the intention to refer to the Complainant and its trademark.

With reference to the above, the Complainant highlights that it has been stated in various decisions that the registration of a domain name with the knowledge of the complainant's trademark is an evidence of bad faith, i.a. Dansko, LLC v. Wenhong Chen WIPO Case No. D2012-0583: "one important consideration in the Panel's assessment of whether the Respondent has registered and used the disputed domain name in bad faith is prior knowledge on the part of the Respondent of the Complainant's rights in the trade mark concerned. In this regard, the Panel finds that the Complainant and its DANSKO mark enjoy a considerable reputation in the retail sector particularly with regard to shoes and clogs in the United States. The Complainant has also established that it has considerable exposure and presence in the Internet through its official website at the following domain names: <danskooutlet.com>, <dansko.com> and <danskoshoes.com>. In this day and age of the Internet and advancement in information technology, the reputation of brands and trademarks can transcend national borders. A simple search on the Internet would reveal the presence of the Complainant's trademark and domain names. Therefore, the Panel finds that it is not conceivable that the Respondent would not have had actual notice of the Complainant's trademark rights at the time of the registration of the disputed domain name. Consequently, it would have been pertinent for the Respondent to provide an explanation of its choice in the disputed domain name, failing which the Panel draws the conclusion that the disputed domain name was registered in bad faith with intent to create an impression of association with the Complainant and its products".

Therefore, it is inconceivable that the Respondent was not well aware of Complainant's trademark rights at the time of the registration of the disputed domain name.

By a search on the historical screenshots of the web site, it has been highlighted that on July 19, 2013 a redirection had been set up to a web site where the disputed domain name was offered for sale and the users were invited to send an email for inquiries. Therefore, the Respondent was aware of the value of the trademark UNICREDIT at the time of the registration and registered the disputed domain name to prevent Complainant from reflecting its mark.

As highlighted in the decision Mobile Communication Service Inc. v. WebReg, RN WIPO Case No. D2005-1304 "the Domain Name in this case, MOBILCOM, is not a dictionary word, and even a cursory search on search engines like Yahoo! and Google would have shown that MOBILCOM is a trademark. The Panel thus concludes that Respondent has registered this Domain Name to prevent Complainant from reflecting its mark in the corresponding .com Domain Name".
Currently, the disputed domain name is redirected either to a parking page where it is offered for sale on the platform Sedo or to various web sites promoting services of trading online based on cryptocurrency.

In the latter case, where the disputed domain name is redirected to various web sites promoting services of trading online based on cryptocurrency, the personal details of the users are requested, without any disclaimer that could inform the users as to the Respondents' lack of relationship with the Complainant. Therefore, the users who type the Domain Name into their Internet browsers are diverted by Respondent to various websites which contained information about Bitcoins.
Obviously, the sector of investment is where the Complainant is active and thus the users are induced to believe that the Respondent has been authorized by the Complainant to use the Domain Name for the web site where investments in cryptocurrencies are promoted.

Furthermore, from the use of the Domain Name without the authorization, approval or license of the Complainant, the Respondent prima facie obtains significant revenues based on the users that subscribe the services offered by the web site corresponding to the disputed domain name.

Therefore, the Respondent's purpose is to capitalize on the reputation of the Complainant's trademark by diverting Internet users seeking UNICREDIT services to its own website for financial gain, by intentionally creating a likelihood of confusion with the Complainant's trademarks as to the source, sponsorship, affiliation, or endorsement of its web sites and/or the goods offered or promoted through said web sites, according to paragraph 4(b)(iv) of the Policy.
As highlighted also in the decision Microsoft Corporation v. StepWeb WIPO Case No. D2000-1500: "the Sole Panelist finds based upon the evidence before him that Respondent has used the <microsofthome.com> Domain Name to divert Internet traffic away from Microsoft and to its own website by pointing the website address www.microsofthome.com to StepWeb's website at www.stepweb.com. Respondent most likely engaged in this activity in order to profit from the enormous level of Internet traffic from Internet users seeking official Microsoft websites".

Diverting traffic from the web site of the Complainant to the one of the Respondent, or to a web site prima facie related to the Respondent, has been considered apt to disrupt Complainant's business in many decisions, as in the Tuxedos By Rose v. Hector Nunez, National Arbitration Forum, Case No. FA0095248: “Respondent is using the domain names to attract Complainant’s customers and other online users to its website, which advertises its tuxedo sales and rental business. Respondent has violated Policy ¶ 4.b(iv) by registering and using the said domain names to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant’s mark as to the source, sponsorship, affiliation, or endorsement of its website”.

Moreover, the Respondent has registered the domain name also for the purpose of disrupting the business of a competitor. Indeed, the Domain Name is redirected, inter alia, to various web sites also dedicated to trading online and investment in cryptocurrency and, for instance, according to the searches on the whois databases, the corresponding domain name alvexo.it is registered in the name of VPR Safe Financial, prima facie a financial company based in Cyprus. Therefore, the Respondent, for the time being concealed by a whois privacy shield, is acting in opposition to the Complainant for some means of commercial gain, direct or otherwise.

In this respect, several Panels have defined “competitor” as “one who acts in opposition to another”, see Mohawk Canoe Club, Inc. v. Mohawk Computer Company, Inc. c/o George Fluck NAF Case No. FA0411000371790, ruling that “Respondent is a competitor of Complainant because Respondent wants to weaken Complainant in favor of other, similar canoeing organizations where Respondent still is persona grata. This comports with the definition of competitor prevailing in Policy decisions as “one who acts in opposition to another”, see also The Toronto-Dominion Bank v. Boris Karpachev, WIPO Case No. D2000-1571, holding “respondent’s opposition to the practices of the broker [a subsidiary of Complainant], which he criticizes, is sufficient to qualify him for the description of "competitor"”. Complainant argues that Respondent is clearly falling within the definition of “competitor” as provided for by the Policy, paragraph 4(b)(iii) as well as by the above mentioned rulings.

Furthermore, notwithstanding the receipt of a cease and desist letter, the Respondent still offers for sale the Domain Name on the platform Sedo, as displayed also in the parking page where the Domain Name, inter alia, is redirected. This circumstance constitutes a further evidence of bad faith registration and use of the Domain Name, as stated in several decisions, inter alia Formula One Licensing BV v. HyeongJeon, Gim WIPO Case No. D2004-0210 “based on the evidence submitted, the Panel finds that the Respondent primarily acquired the disputed domain name for the purposes of selling, renting or otherwise transferring the domain name registration to the Complainant or any third person. Thus, the e-mail transmitted to the Complainant offering, for an out-of-pocket cost, the disputed domain name allows this Panel to find that <formula-1.net> has been registered in bad faith for the purpose of the Policy”.

Finally, in cases where a domain name is identical or similar to a trademark registered in the name of banks or other financial institutions, there is also risks connected to the use of the domain name for phishing or scam. Sending communications from e-mail accounts based on this type of domain names is particularly deceptive for the users receiving the e-mail because of the presumption of legitimacy of the message deriving mainly from the use of such domain names in the address of the senders. In the case in exam, it cannot therefore be excluded that the disputed domain name was used by the Respondent to carry out similar activities, such an abusive activity could be deemed a further circumstance proving the bad faith of the Respondent.

In light of the above, the Complainant respectfully submits that the Domain Name was registered and is being used in bad faith in full satisfaction of paragraphs 4(a)(iii) and 4(b) of the Policy.

- The doctrine of laches is not applicable in the present case.
Should Respondent request the Panel to apply the equitable doctrine of laches in the case at hand in order to prevent Complainant from filing under the UDRP, Complainant argues that such doctrine is not applicable as a general principle under the provisions of the Policy. Since, according to the Policy, the remedies provided are injunctive rather than compensatory in nature, and its purpose is to avoid future confusion as to the source of communications, goods, or services, the Policy does not contemplate such defense, see [Tax Analysts v. eCorp, WIPO Case No. D2007-0040]. In any

event, it is recognized that in equitable jurisdictions “Laches is established when two conditions are fulfilled. There must first be unreasonable delay in the commencement of proceedings; second, in all the circumstances the consequences of delay must render the grant of relief unjust” [The Hebrew University of Jerusalem v. Alberta Hot Rods, WIPO Case No. D2002-0616]. Also, US courts have found that in order for the doctrine of laches to be applicable, good faith conduct on the part of the junior user (i.e. Respondent in the present case) must be evidenced, see e.g. [New York Racing Assoc., Inc. v. Perlmutter Publishing, Inc., 1996 U.S. Dist. LEXIS 11764 (N.D.N.Y. July, 1996)]. In the case at hand, Complainant argues that Respondent acted in bad faith [See sections above], and there is no evidence that defendant be prejudiced by the delay, rather it has long profited from the redirection of the domain name at issue. Thus, Complainant argues that the doctrine of laches be non-applicable in the present case.

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

I. RIGHTS

The disputed domain name is confusingly similar to the Complainant’s registered trademarks since it reproduces the Complainant’s mark ‘UNICREDIT’, merely adding the generic expression "ONLINE"at the end.

II. NO RIGHTS OR LEGITIMATE INTERESTS

The Respondent has not submitted any response. Therefore, it has submitted no information on possible rights or legitimate interests it might hold. On its part, the Complainant has submitted information and arguments which allow it to be reasonably assumed that the Respondent has no rights or legitimate interest in the domain name in dispute.

As the WIPO Arbitration and Mediation Center pointed out in UDRP case No. D20020856:

“As mentioned [in the decision], the Respondent has not filed a Response and is therefore in default. In those circumstances when the Respondent has no obvious connection with the disputed Domain Names, the prima facie showing by the Complainant that the Respondent has no right or legitimate interest is sufficient to shift the burden of proof to the Respondent to demonstrate that such a right or legitimate interest exists.“ WIPO Case No. D20020273 <sachsenanhalt>; WIPO Case No. D20020521 <volvovehicles.com>.

Furthermore, apparently the Respondent did not reply to the C&D letters sent by the Complainant.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.

III. BAD FAITH

The Respondent has, as a result of his default, not invoked any circumstances which could invalidate the Complainant´s allegations and evidence with regard to the Respondent´s registration and use of the disputed domain name in bad faith.

Paragraph 4(b) (iiii) of the Policy provides that the following circumstances are deemed to be evidence that the Respondent has registered and is using the disputed domain name in bad faith:

(iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation or endorsement of its website or location or of a product or service on its website or location.

The Complainant's UNICREDIT trademark is well-known for financial services, well before the registration of the disputed domain name. The Respondent's registration of the disputed domain name wholly incorporating a well-known third-party mark is, in the Panel´s view, indicative of bad faith, since the Respondent´s website is offering financial services. Therefore, the Complainant´s trade mark and company name are unfairly exploited for the Respondent’s commercial interest.

As mentioned in Andrey Ternovskiy dba Chatroulette v. Alexander Ochki, WIPO Case No. D2017-0334:

"It is clear in the Panel's view that in the mind of an Internet user, the disputed domain names could be directly associated with the Complainant's trademark, which is likely to be confusing to the public as suggesting either an operation of the Complainant or one associated with or endorsed by it (see AT&T Corp. v. Amjad Kausar, WIPO Case No. D2003-0327)."

It has, therefore, been satisfactorily demonstrated to the Panel that the disputed domain name has been registered and used in bad faith.

For the reasons stated above, it is the decision of this Panel that the Complainant has satisfied all three elements of paragraph 4(a) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **UNICREDITONLINE.COM**: Transferred

PANELLISTS

Name	**José Ignacio San Martín**

DATE OF PANEL DECISION 2018-08-20

Publish the Decision