Decision for dispute CAC-UDRP-102345

Case number	**CAC-UDRP-102345**
Time of filing	**2019-02-08 09:31:51**
Domain names	**arkea.net**

Case administrator

Name	**Lenka Náhlovská (Case admin)**

Complainant

Organization	**CREDIT MUTUEL ARKEA**

Complainant representative

Organization	**Nameshield (Enora Millocheau)**

Respondent

Organization	**Domain Administration**

OTHER LEGAL PROCEEDINGS

There are no other proceedings the Panel is aware of.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of a large portfolio of registered trade marks including for the word mark “ARKEA”, being the French trade mark, ARKEA, number 96636222 registered since 1996 in classes 35,36,42,45. It also has a French logo mark CREDIT MUTUEL ARKEA, number 3888981 registered since 2012 which is a figurative mark with the last word, ARKEA, in red with the rest of the words in blue, and with a little red box device. This appears to be main logo mark in use online and is a well known mark. The Complainant's official website is at the domain name <arkea.com>, registered since 2002.

FACTUAL BACKGROUND

CREDIT MUTUEL ARKEA (the “Complainant”) is a cooperative, mutual bank and insurance group based in France.

The Complainant was created originally in 1911 in Brittany, France, and unified and federated various mutual cooperatives supporting farmers with credit, insurance and vocational training.

In 2002, various regional federations, including Crédit Mutuel de Bretagne (CMB), Crédit Mutuel du Sud-Ouest (CM) Crédit Mutuel du Sud-Ouest (CMSO) and Crédit Mutuel Massif Central (CMMC) and related subsidiaries, formed a new group that took the name CREDIT MUTUEL ARKEA. That group is the Complainant which now covers all areas of banking, insurance

and finance and is a well known French financial institution.

The disputed domain name <arkea.net> was registered on 29 January 2019 and resolves to a parking page with commercial links, and the message “Acheter ce domaine”, which means “Buy this domain”).

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.
PARTIES' CONTENTIONS:
COMPLAINANT:
The Disputed Domain Name is identical. This is self-evident.

The Respondent does not have any rights or legitimate interest in the disputed domain name.

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. See WIPO Case No. D2003-0455 Croatia Airlines d. d. v. Modern Empire Internet Ltd.

The Complainant asserts that the Respondent is not known by the disputed domain name. Past panels have held that a Respondent not commonly known by a disputed domain name if the WHOIS information is not similar to that for the disputed domain name. Thus, the Respondent is not known as the disputed domain name. See also, 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> and see FORUM Case No. FA 699652, The Braun Corporation v. Wayne Loney.

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the domain name and he is not related in any way with the Complainant. The Complainant does not carry out any activity for, nor has any business with the Respondent. Neither license nor authorization has been granted to the Respondent to make any use of the Complainant’s trademark ARKEA or apply for registration of the disputed domain name by the Complainant.

The disputed domain name redirects to a parking page with commercial links. Past panels have found it is not a bona fide offering of goods or services or legitimate non-commercial or fair use. See WIPO Case No. D2007- 1695, Mayflower Transit LLC v. Domains by Proxy Inc./Yariv Moshe ("Respondent’s use of a domain name confusingly similar to Complainant’s trade mark for the purpose of offering sponsored links does not of itself qualify as a bona fide use"). Moreover, the website displays the message “Acheter ce domain”, which means “Buy this domain.” The Complainant contends that this message evidences the Respondent’s willingness to sell the disputed domain name, and therefore, suggests a lack of right or legitimate interest. See also FORUM Case No. 937704, Williams-Sonoma, Inc. v. Kurt Fees c/o K Fees ("The Panel finds that Respondent’s willingness to sell the disputed domain name registration suggests that it has no rights or legitimate interests pursuant to Policy paragraph 4(a)(ii)."). Thus, in accordance with the foregoing, the Complainant contends that the Respondent has no right or legitimate interest in respect of the disputed domain name.

The domain name has been registered and is being used in bad faith.

The Complainant relies on the Respondent’s constructive knowledge/prior knowledge of its rights and the passive holding of the disputed domain name for purposes of selling, licensing or renting based on the offer to public, as well as attracting internet users for commercial gain by creating a likelihood of confusion with the Complainant.

The disputed domain name <arkea.net> is identical to the Complainant’s trademark ARKEA. The Respondent has registered the disputed domain name several years after the registration of the trademark ARKEA by the Complainant, which has established a strong reputation while using this trade mark. The Complainant contends that the term “ARKEA” does not have any signification, except in relation with the Complainant. Therefore, the Respondent knew or should have known about the Complainant’s rights, which evidences bad faith.

Moreover, the disputed domain name redirects to parking page with commercial links. The Complainant contends that the Respondent attempts to attract internet users by creating a likelihood of confusion with the Complainant's trade mark for its commercial gain. Past Panels have held that this is an evidence of bad faith registration and use. See WIPO Case No. D2018-0564, Dubizzle Limited BVI v. Syed Waqas Baqir ("By allowing the use of payper-click links on a website having a confusingly similar domain name to the Complainant's marks, the Respondent must have intended to use the disputed domain name to attract Internet users to its website for commercial gain and such intentional use constitutes bad faith under UDRP paragraph 4(b).") and see WIPO Case No. D2018-0497, StudioCanal v. Registration Private, Domains By Proxy, LLC / Sudjam Admin, Sudjam LLC ("In that circumstance, whether the commercial gain from misled Internet users is gained by the Respondent or by the Registrar (or by another third party), it remains that the Respondent controls and cannot (absent some special circumstance) disclaim responsibility for, the content appearing on the website to which the disputed domain name resolve […]so the Panel presumes that the Respondent has allowed the disputed domain name to be used with the intent to attract Internet users for commercial gain, by creating a likelihood of confusion with the Complainant's trademark as to the source, affiliation, or endorsement of the Respondent's website to which the disputed domain name resolves. Accordingly, the Panel finds that the disputed domain name was registered and is being used in bad faith.").

See 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 paragraph 4(c)(ii) that Respondent is not commonly known by the disputed domain name under Policy paragraph 4(c)(ii)."). See also, FORUM Case No. FA 699652, The Braun Corporation v. Wayne Loney and WIPO Case No. D2007-1695, Mayflower Transit LLC v. Domains by Proxy Inc./Yariv Moshe ("Respondent's use of a domain name confusingly similar to Complainant's trademark for the purpose of offering sponsored links does not of itself qualify as a bona fide use.").

Further, the parking page at the website bears the message "Acheter ce domaine", which means "Buy this domain". Therefore, the Complainant contends that this obvious solicitation by the Respondent to sale the disputed domain names evidences bad faith registration and use. See FORUM Case No. FA 1769400, Robert Half International Inc. v. Domain Registries Foundation ("Offering a confusingly similar domain name for sale can evince bad faith registration under Policy paragraph 4(b)(i). […] As noted above, Respondent displays a link stating "Buy this domain" on the resolving webpage."). Thus, Complainant contends that Respondent has registered the disputed domain name and is using it in bad faith.

See for instance FORUM Case No. 937704, Williams-Sonoma, Inc. v. Kurt Fees c/o K Fees ("The Panel finds that Respondent's willingness to sell the disputed domain name registration suggests that it has no rights or legitimate interests pursuant to Policy paragraph 4(a)(ii)."). See also WIPO Case No. D2018-0564, Dubizzle Limited BVI v. Syed Waqas Baqir (above) and WIPO Case No. D2018-0497, StudioCanal v. Registration Private, Domains By Proxy, LLC / Sudjam Admin, Sudjam LLC (above). and FORUM Case No. FA 1769400, Robert Half International Inc. v. Domain Registries Foundation ("Offering a confusingly similar domain name for sale can evince bad faith registration under Policy paragraph 4(b)(i). […] As noted above, Respondent displays a link stating "Buy this domain" on the resolving webpage.").

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

The suffix is ignored for similarity. The applicable Top Level Domain (“TLD”) in a domain name (e.g. “.com”) is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test, see CANAL + FRANCE v. Franck Letourneau, WIPO Case No. DTV2010-0012, <canalsat.tv>.

The Panel notes that as well as (alone) comprising the Complainant's word mark and domain name, the word ARKEA, is highlighted in red in its logo mark, and is therefore the distinctive and dominant element of that mark. The disputed domain name is therefore identical and confusingly similar to a name or mark in which the Complainant has rights. That name and mark is well known and famous in France and its dependent territories.

While use of a domain name to host a page comprising pay-per-click links is consistent with legitimate rights or interests where the domain name consists of a common or dictionary word or phrase and is used to host pay-per-click links genuinely related to the dictionary meaning of the same, this is not applicable here as the Complainant's reputation is leveraged.

The word ARKEA is a made-up word. The Wikipedia page of the Complainant (visited by the Panel on 13 March 2019) says "The name Arkéa was created by the company Bessis; the name suggests an arch linking territories and men, but also architecture." The Complainant selected it as the distinctive and dominant element of the unified group's name in 2002 and the word and mark has become distinctive of the Complainant's well known services. It references the Complainant's services as a badge of origin. There is no fair or other legitimate use on the face of it and the Complainant has made out its prima facie case on this and the Respondent has not come forward to answer.

While parking is not always bad faith use -hosting a parked page comprising pay-per-click links does not represent a bona fide offering where such links compete with or capitalize on the reputation and goodwill of the complainant’s mark or otherwise mislead Internet users.

See WIPO Case No. D2018-0564, Dubizzle Limited BVI v. Syed Waqas Baqir and WIPO Case No. D2018-0497, StudioCanal v. Registration Private, Domains By Proxy, LLC / Sudjam Admin, Sudjam LLC.

Here the parking page submitted into evidence included a link to car insurance. The Respondent is responsible even if these are “automatically” generated pay-per-click links and the Respondent has not directly profited. While a respondent’s efforts to suppress PPC advertising related to the complainant’s trade mark (through “negative keywords”) can mitigate against an inference of targeting, there is no evidence of that in this case. Insurance is a core service offered by the Complainant.

It is the view of this panel in all the circumstances, that the use in this case is bad faith use and free-riding for diversion of traffic for gain. The offer of sale to the world is also an additional ground of bad faith.

The burden of proof was discharged by the Complainant on all three limbs of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **ARKEA.NET**: Transferred

PANELLISTS

Name	Victoria McEvedy

DATE OF PANEL DECISION 2019-03-14

Publish the Decision