Decision for dispute CAC-UDRP-102677

Case number	**CAC-UDRP-102677**
Time of filing	**2019-09-18 11:56:46**
Domain names	**unicreditfinanceonline.com**

Case administrator

Name	**Šárka Glasslová (Case admin)**

Complainant

Organization	**UNICREDIT S.p.A.**

Complainant representative

Organization	**Convey srl**

Respondent

Name	**Avimadje Godens**

OTHER LEGAL PROCEEDINGS

The Panel is not aware of other legal proceedings which are pending or decided and which relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of several registered trademarks "UNICREDIT" as word and figurative trademarks in many territories all over the world, including :

• EU Trademark no. 002911105 – UNICREDIT (figurative mark) – Nice Classification: 9, 16, 35, 36, 38, 39, 41, 42;
• INT. Trademark no. 799384 – UNICREDIT BANCA (figurative mark) – Nice Classification: 09,16,35,36,38,39,41,42;
• INT. Trademark no. 897567 – UNICREDIT (word mark) – Nice Classification: 36;
• INT. Trademark no. 766244 – UNICREDIT (figurative mark) – Nice Classification: 9, 16, 35, 36;
• INT. Trademark no. 0001138942 – UNICREDIT – Nice Classification: 9, 36;
• INT. Trademark no. 0001011970 – UNICREDIT – Nice Classification: 36.

The Complainant asserts that it enjoys a high degree of reputation around the world in the sector of banking and financial services, as the third largest banking group in Europe. Due to extensive use of his "UNICREDIT" trademarks, those marks have become well-known trademarks for financial services.

FACTUAL BACKGROUND

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The Complainant is an Italian global banking and financial services company and 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.

The Complainant realized that the Respondent's registration and use of the disputed domain name unicreditfinanceonline.com, is confusingly similar to its registered and well-known UNICREDIT trademarks.

The Complainant sent two cease-and-desist letters to the Respondent asking him to cease the use of the disputed domain name and to transfer the disputed domain name to the Complainant. The Respondent did not react to this letter, leading the Complainant to file this Complaint in order to obtain the transfer of the disputed domain name.

PARTIES CONTENTIONS

No administratively compliant response has been filed by the Respondent.

RIGHTS

In order to determine whether the trademark UNICREDIT and the disputed domain name are confusingly similar in the sense of paragraph 4(a)(I) of the Policy, a comparison has to be made and the likelihood of the Internet user confusion should be determined. It should be taken into account that UNICREDIT is a distinctive and well-known trademark.

In this context, it is generally found that when a trademark constitutes the dominant or principal component of the domain name, the addition of a descriptive or other word to it is generally insufficient to avoid confusing similarity in the sense of paragraph 4(a)(I) of the Policy.

In the present case, the Respondent has added the generic terms "finance" and "online" to the well-known trademark UNICREDIT, which could refer to the sector of the online banking where the Complainant provides services to its clients. Therefore the combination of the trademark UNICREDIT with the generic terms creates a domain name confusingly similar to the Complainant's trademark, because the public may believe that the disputed domain name is being operated by the Complainant or with its authorization (Dansko, LLC V. Wenhong Chen Case, WIPO D2012-0583).

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name to be 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

In order to determine whether the Respondent has rights or legitimate interests 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 burden of proof shifts to the Respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the disputed domain name (Anti Flirt S.A. and Mr. Jacques Amsellem v. WCVC, WIPO D2000-1553; Audi AG v. Dr. Alireza Fahimipour WIPO DIR2006-0003).

The Complainant argues that the Respondent is not a licensee or authorized dealer nor authorized by him to use the trademark UNICREDIT in the disputed domain name in any way. In addition, the Complainant notes that the disputed domain name has been used by the Respondent to trade upon the UNICREDIT trademark 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 website. Based on these findings, it appears that the Respondent lacks rights or legitimate interests, which has not been disputed by the Respondent.

Paragraph 4(c) of the Policy provides that the following circumstances can demonstrate rights or legitimate interests in the domain name for the purpose of paragraph 4(a)(ii):
(i) before any notice to you of the dispute, your use of, or demonstrable preparations to use, the domain name or a name

corresponding to the domain name in connection with a bona fide offering of goods or services; or
(ii) you (as an individual, business, or other organisation) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or
(iii) you are making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or tarnish the trademark or service mark at issue.

The Panel is of the opinion that these conditions have not been met in the present case.

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

1. THE DISPUTED DOMAIN NAME WAS REGISTERED IN BAD FAITH
The Respondent has never been authorized by the Complainant to use the trademark UNICREDIT in the disputed domain name or in any other manner. The Respondent seems to have registered the disputed domain name in the sole purpose of intentionally attempting to attract, for commercial gain, more people to its website by creating a likelihood of confusion.

2. THE DISPUTED DOMAIN NAME IS BEING USED IN BAD FAITH
Firstly, the disputed domain name has been redirected to a website providing financial services to internet users passing off as the Complainant. The disputed domain name has also been used to create an e-mail address contact@unicreditfinanceonline.com and info@unicreditfinanceonline.com, which has been used by the Respondent to carry out phishing or scam activities. It appears that the Respondent has selected the well-known trademark UNICREDIT, to obtain significant revenues based on the users who would otherwise not have visited the website. The Respondent even uses the distinctive logo, distinctive colors and the address of the Complainant, which is likely an effort to create the false impression among internet users that this is an official or authorized agent of the Complainant.

The Respondent also used the disputed domain name in order to potentially receive communications and personal data from internet users that are interested in the Complainant's business, through filling the online form.

Secondly, the Complainant tried to contact the Respondent on July 08, 2019 through a cease-and-desist letter. A reminder was sent on August 27, 2019, but the Respondent disregarded all communications from the Complainant. It has been mentioned in earlier cases that the failure of a respondent to respond to a cease-and-desist letter, or a similar attempt at contact, can be relevant in a finding of bad faith.

Finally, the Respondent has been using a privacy shield to hide his identity in the "Whois".

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 its complaint the Complainant requested the language of the proceedings to be English, even though the language of the registration agreement is French. The Complainant requested the proceedings to be in English since the Respondent has knowledge of the English language and understands English. The website under the disputed domain name is in English and refers to an address of the Respondent in the United Kingdom. In order to avoid additional expenses and delay if the Complaint must be translated into French, the Complainant requests the continue the proceedings in English.

For the reasons stated above and because the Respondent did not object, the panel finds that pursuant to paragraph 11(a) of the Rules the language of this proceeding shall be English. No injustice will be caused to the Respondent if this dispute is

being decided in English.

PRINCIPAL REASONS FOR THE DECISION

For the above mentioned reasons, it appears to the Panel that the disputed domain name is confusingly similar to the Complainant's trademarks, that the Respondent has no rights or legitimate interests in the disputed domain name and that the disputed domain name was registered and used in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **UNICREDITFINANCEONLINE.COM**: Transferred

PANELLISTS

Name	**Tom Joris Heremans**

DATE OF PANEL DECISION 2019-11-08

Publish the Decision