Decision for dispute CAC-UDRP-103109

Case number	CAC-UDRP-103109
Time of filing	2020-06-12 09:10:00
Domain names	mabanque-arkea.com

Case administrator

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

Complainant

Organization	CREDIT MUTUEL ARKEA

Complainant representative

Organization	Nameshield (Enora Millocheau)

Respondent

Organization	Secure

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

The Complainant owns the word mark “ARKEA”, under trademark number n° 96636222 registered in France since July 26, 1996, and the French trademark “CREDIT MUTUEL ARKEA”, registered since May 11, 2012 under n° 3888981.

FACTUAL BACKGROUND

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

The Complainant is the cooperative and mutual bank insurance group in France.

The Complainant was created originally in 1911 in Brittany (France), the Central Office succeeded in federating all the mutualist, cooperative and social works of the department before meeting the multiple needs of farmers in the fields of credit, insurance, and vocational training. In 2002, the federations of Crédit Mutuel de Bretagne (CMB) and Crédit Mutuel du Sud-Ouest (CMSO) and the twenty or so specialized subsidiaries formed a group that took the name CREDIT MUTUEL ARKEA. As a manufacturer and distributor, the Complainant covers all areas of banking, insurance, and finance.

The Complainant also used for its official website the domain name <arkea.com>, registered since July 26, 2002.

The disputed domain name was registered on May 28, 2020, and points to a page without any substantial content.

PARTIES CONTENTIONS

COMPLAINANT

A. THE DISPUTED DOMAIN NAME IS IDENTICAL OR CONFUSINGLY SIMILAR

The Complainant states that the disputed domain name is confusingly similar to its previous trademark registration on the term “ARKEA” and its domain names associated.

Indeed, the disputed domain name contains the Complainant’s registered trademark ARKEA in its entirety.

The Complainant contends that the disputed domain name only differs from the trademark ARKEA by the addition of the generic words "MA BANQUE" (which means "MY BANK" in French, about the Complainant's activities) and the addition of a hyphen.

Moreover, the Complainant contends that the addition of the gTLD “.COM" does not change the overall impression of the designation as being connected to the trademark ARKEA. It does not prevent the likelihood of confusion between the disputed domain names and the Complainant, its trademark, and its domain names associated.

So the disputed domain name is confusingly similar to Complainant’s trademark ARKEA.

B. RESPONDENT HAS NO RIGHTS OR LEGITIMATE INTEREST IN RESPECT OF 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 Policy.

The Complainant asserts that the Respondent is not known as the disputed domain name. 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. Thus, the Respondent is not known as the disputed domain name.

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed 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 parked page without any substantial content. The Complainant contends that Respondent did not make any use of disputed domain name since its registration, and it confirms that Respondent has no demonstrable plan to use the disputed domain name. It demonstrates a lack of legitimate interests in respect of the disputed domain name.

Thus, per the foregoing, the Complainant contends that the Respondent has no right or legitimate interest in respect of the disputed domain name.

C. THE DISPUTED DOMAIN NAME WAS REGISTERED AND IS BEING USED IN BAD FAITH

The disputed domain name is confusingly similar 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 trademark. Besides, the Complainant contends that the term "ARKEA" does not have any signification, except concerning the Complainant. The addition of the terms "MABANQUE" to the Complainant's trademark ARKEA cannot be coincidental, as it directly refers to the Complainant activities.

Therefore, the Respondent knew or should have known about the Complainant's rights, which evidences bad faith.

Moreover, the disputed domain name resolves to a parked page without any substantial content. The Complainant contends that the Respondent has not demonstrated any activity in respect of the disputed domain name, and that failure to make active use of the disputed domain name is evidence of bad faith. Consequently, the Complainant contends that the Respondent attempts to attract internet users by creating a likelihood of confusion with the Complainant's trademark for its commercial gain. Past panels have held that this is evidence of bad faith registration and use.

Thus, Complainant contends that Respondent has registered the disputed domain name and is using it in bad faith.

RESPONDENT

No administratively compliant Response has been filed.

RIGHTS

To the satisfaction of the Panel, the Complainant has shown that the disputed domain name is identical or confusingly similar to the trademark in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

To the satisfaction of the Panel, the Complainant has 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

To the satisfaction of the Panel, the Complainant has 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

As per paragraph 4(a) of the Policy, for this Complaint to succeed concerning the disputed domain name the Complainant must prove the following:

(i) The disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and

(ii) The Respondent has no rights or legitimate interests in respect of the disputed domain name; and

(iii) The disputed domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

Concerning the initial aspect under the first element, and as per evidence on record, the Panel is satisfied that the Complainant has shown it owns rights in the ARKEA trademark.

Once having sorted out the initial aspect under the first element, and now turning to the second aspect under this element, namely, assessing the confusing similarity between the disputed domain name and the trademark, the Panel notes that the disputed domain name reproduces the trademark ARKEA letter-for-letter, with the addition of the following letters "MABANQUE", separated from the reproduction of the trademark by a hyphen. The additional words are likely meant to be the generic words “MA BANQUE”, which means “MY BANK” in French. French, being the official language of the country the Complainant is based in. Additionally, the generic words allude to the Complainant’s activities.

All in all, the additional elements of generic words do not dispel a finding of confusing similarity between the disputed domain name and the trademark. The generic words enhance the appearance of confusing similarity, since these additional words allude directly to the main business activity of the Complainant. Further analysis of the implications of this will be discussed below.

Based on the above, the Panel finds the disputed domain name to be confusingly similar to the Complainant’s trademark. As a result, the Panel determines that the Complaint has satisfied the first element set under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Regarding the second element, and going through the analysis, it is first worth noting that the Respondent failed to produce allegations or evidence necessary to demonstrate its rights or legitimate interests in the disputed domain name.

Based on the evidence on record, the uncontested facts indicate that a) the Respondent is not commonly known as the disputed domain name; b) the Respondent is not affiliated with the Complainant; c) it is not authorized to carry out any activity for the Complainant; d) has no business dealings with the Complainant and e) the Respondent has no license or authorization to use the trademark.

In the view of the Panel, these assertions are enough to establish a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name (see 2.1 of WIPO 3.0 Overview).

The Respondent is failing to respond to the Complainant's contentions has not rebutted the prima facie case, as above-mentioned. Additionally, there is no other available evidence on record that would otherwise allow the Panel to find any rights or legitimate interests for the Respondent in the disputed domain name.

The Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name and therefore the Complainant has fulfilled the second requirement set under paragraph 4(a) of the Policy.

C. Registered and Used in Bad Faith

The Panel finds, as per the evidence on record, that the Respondent was likely aware of the Complainant and targeted the Complainant's trademark when registering the disputed domain name. This conclusion is reinforced by the fact that the Respondent seems to evoke a connection to the Complainant's trademark through the inclusion of the trademark in its entirety plus the addition of generic terms that directly allude to the main business activity of the Complainant. This fact in connection with the lack of response in these proceedings leaves the Panel no other option than to conclude that that the most likely intention of the Respondent about the disputed domain name was to intentionally attempted to attract, for commercial gain, Internet users to its website/Domain Name, by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website and/or Domain Name (see

3.1 of WIPO 3.0 Overview).

Accordingly, the Panel finds that the Complainant has satisfied the requirements set forth under paragraph 4(a)(iii) of the Policy.

D. Decision

For the preceding reasons and in conformity with the provisions contained under Paragraph 4(i) of the Policy and Paragraph 15 of the Rules, the Panel orders the transfer of the disputed domain name to the Complainant.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **MABANQUE-ARKEA.COM**: Transferred

PANELLISTS

Name	**Rodolfo Carlos Rivas Rea**

DATE OF PANEL DECISION 2020-07-08

Publish the Decision