Decision for dispute CAC-UDRP-103183

Case number	CAC-UDRP-103183
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Domain names	financo-chrono.com

Case administrator

Name	Šárka Glasslová (Case admin)

Complainant

Organization	FINANCO

Complainant representative

Organization	Nameshield (Enora Millocheau)

Respondent

Organization	Mina

OTHER LEGAL PROCEEDINGS

There are no other legal proceedings.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of several trademark including the term “FINANCO”:

- The French trademark PREFERENCE FINANCO n°3385073 registered since October 11th, 2005, in classes 07, 09, 35, 36, 38 and 42;
- The French trademark FINANCO (fig) n°3747380 registered since June 18th, 2010, in classes 09, 16, 35, 36, 38 and 42;
- The French trademark FINANCO (fig) n°4576196 registered since August 21st, 2019, in classes 09, 16, 35, 36, 38 and 42;
- The French trademark FINANCO VOUS PRÊTER ATTENTION (fig) n°4576196 registered since August 21st, 2019, in classes 09, 16, 35, 36, 38 and 42.

The Complainant also owns domain names <financo.fr> registered and used since March 18th, 1998 and <financo.eu> registered and used since March 20th, 2006.

FACTUAL BACKGROUND

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

Founded in 1986, FINANCO is a financial company specializing in consumer credit. FINANCO is a subsidiary of a larger group: CRÉDIT MUTUEL ARKÉA. With 400 employees, FINANCO manufactures and distributes financial solutions tailored to individual projects and TPE.

The disputed domain name <financo-chrono.com> was registered on December 12th, 2019 (Annex 4) and redirects to a website written in French and offering loan and consumer credits.

I. The Complainant contends that the domain name <financo-chrono.com> is confusingly similar to its trademark and services FINANCO®. Indeed, the domain name contains the Complainant's trademark in its entirety.

The addition of the generic term "CHRONO" and a hyphen is not sufficient to escape the finding that the domain name is confusingly similar to the trademark FINANCO®.

It is well-established that "a domain name that wholly incorporates a Complainant's registered trademark may be sufficient to establish confusing similarity for purposes of the UDRP". Please see WIPO Case No. D2003-0888, Dr. Ing. h.c. F. Porsche AG v. Vasiliy Terkin.

Besides, the addition of the generic Top-Level Domain suffix ".COM" does not change the overall impression of the designation as being connected to the trademark FINANCO®. It does not prevent the likelihood of confusion between the disputed domain names and the Complainant, its trademark and its domain names associated.

Please see WIPO Case No. D2006-0451, F. Hoffmann-La Roche AG v. Macalve e-dominios S.A. ("It is also well established that the specific top level of a domain name such as ".com", ".org" or ".net" does not affect the domain name for the purpose of determining whether it is identical or confusingly similar.")

Finally, past Panel has established the Complaint's rights over the term "FINANCO". Please see:
- CAC Case No. 102589, FINANCO v. webo Master <financo-credit-investment.com>;
- CAC Case No. 102451, FINANCO v. ADOC CONPANY <financo-bk.com>;
- WIPO Case No. D2019-0152, FINANCO S.A. v. Cachetel Fiossi, Association <financo-world.com>;
- CAC Case No. 102357, FINANCO v. interfinancemennt < financo-invest.com>.

Thus, the domain name <financo-chrono.com> is confusingly similar to the Complainant's trademark FINANCO®.
II. The Respondent does not have any rights or legitimate interest in the domain name(s)

According to the WIPO Case No. D2003-0455, Croatia Airlines d.d. v. Modern Empire Internet Ltd., a 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, respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the respondent fails to do so, a complainant is deemed to have satisfied paragraph 4(a)(ii) of the UDRP.

The Complainant contends that the Respondent is not commonly known by the disputed domain name, and has not acquired any rights on this term. Indeed, 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 NAF Case No. FA 96356, Broadcom Corp. v. Intellifone Corp.: Panel stated that the Respondent has "no rights or legitimate interests because the respondent is not commonly known by the disputed domain name or using the domain name in connection with a legitimate or fair use".

The Complainant contends that the Respondent is not affiliated with nor authorized by FINANCO 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 license nor authorization has been granted to the Respondent to make any use of the trademark, or apply for registration of the disputed domain name by the Complainant.

Moreover, the website in relation with the disputed domain name <financo-chrono.com> offers loan services, which compete with the services provided by the Complainant. Past Panels have held that using a disputed domain name to offer related services to that of a complainant is not a use indicative of rights or legitimate interests.

For instance FORUM Case No. FA 1659965, General Motors LLC v. MIKE LEE ("Past panels have decided that a respondent's use of a domain to sell products and/or services that compete directly with a complainant's business does not constitute a bona fide offering of goods or services pursuant to Policy paragraph 4(c)(i) or a legitimate noncommercial or fair use pursuant to Policy paragraph 4(c)(iii).")

Accordingly, the Respondent has no rights or legitimate interests to the disputed domain name <financo-chrono.com>.
III. The domain name(s) has been registered and is being used in bad faith

The Respondent has registered the domain name <financo-chrono.com>, which is confusingly similar to Complainant's FINANCO® trademark, many years after Complainant had registered it for the first time in 2010 . Moreover, the word "FINANCO" has no meaning in any language. Finally, the Respondent uses the disputed domain name to promote competing services. Indeed, the disputed domain name redirects to a website providing financial services such as consumer loan or personal loans , which compete with the services offered by the Complainant.

Using a domain name in order to offer competing services is often been held to disrupt the business of the owner of the relevant mark is bad faith.
FORUM Case No. FA 768859, Instron Corporation v. Andrew Kaner c/o Electromatic a/k/a Electromatic Equip't ("Complainant asserts that Respondent registered and is using the disputed domain names to disrupt Complainant's business, because Respondent is using the disputed domain names to operate a competing website. The Panel finds that Respondent has registered and used the disputed domain names in bad faith according to Policy paragraph 4(b)(iii).")

Respondent's conduct in this regard fits within the circumstances articulated by Policy paragraph 4(b)(iii) and is manifest evidence of bad faith use and registration.

Thus, the Respondent could not have ignored the Complainant's trademark FINANCO® at the moment of the registration of the disputed domain name <financo-chrono.com>, which cannot be a coincidence.

By using the domain name, the Complainant contends that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website 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 the Respondent's website or location or of a product or service on the respondent's website or location, as mentioned by Policy, paragraph 4(b) (iv).

FORUM Case No. 94864, Southern Exposure v. Southern Exposure, Inc. ("The Respondent is using the domain name to attract Internet users to its website by creating confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Complainant's website. Policy paragraph 4(b)(iv). The Respondent registered and used the domain name in question to profit from the Complainant's mark by attracting Internet users to its competing website. This is evidence of bad faith.")

On these bases, the Complainant concludes that the Respondent has registered and is using the disputed domain name in bad faith.

It is well-established that "a domain name that wholly incorporates a Complainant's registered trademark may be sufficient to establish confusing similarity for purposes of the UDRP". Please see WIPO Case No. D2003-0888, Dr. Ing. h.c. F. Porsche

AG v. Vasiliy Terkin.

For instance FORUM Case No. FA 96356, Broadcom Corp. v. Intellifone Corp.: Panel stated that the Respondent has “no rights or legitimate interests because the respondent is not commonly known by the disputed domain name or using the domain name in connection with a legitimate or fair use”.

Please see for instance NAF Case No. FA 1659965, General Motors LLC v. MIKE LEE (“Past panels have decided that a respondent’s use of a domain to sell products and/or services that compete directly with a complainant’s business does not constitute a bona fide offering of goods or services pursuant to Policy paragraph 4(c)(i) or a legitimate noncommercial or fair use pursuant to Policy paragraph 4(c)(iii).”)

FORUM Case No. FA 768859, Instron Corporation v. Andrew Kaner c/o Electromatic a/k/a Electromatic Equip't ("Complainant asserts that Respondent registered and is using the disputed domain names to disrupt Complainant’s business, because Respondent is using the disputed domain names to operate a competing website. The Panel finds that Respondent has registered and used the disputed domain names in bad faith according to Policy paragraph 4(b)(iii).")

FORUM Case No. 94864, Southern Exposure v. Southern Exposure, Inc. ("The Respondent is using the domain name to attract Internet users to its website by creating confusion with the Complainant’s mark as to the source, sponsorship, affiliation, or endorsement of the Complainant’s website. Policy paragraph 4(b)(iv). The Respondent registered and used the domain name in question to profit from the Complainant’s mark by attracting Internet users to its competing website. This is evidence of bad faith.")

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 ‘FINANCO’, merely adding the generic expression "CHRONO" at the end, with a hyphen between the two words.

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 Name, 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, as proven by the Complainant, the domain name in dispute redirected to a website written in French and offering loan and consumer credits, the main activity of the Complainant, clearly trying to impersonate the Complainant. Obviously, this use cannot be considered as legitimate.

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.

The Complainant has supplied evidence of fraudulent use of the disputed domain name by the Respondent, trying to impersonate the Complainant. Actually, this Panel found that the Respondendt´s website was mentioned in some articles referred to fraudulent financial websites.

It is therefore clear that the Respondent registered the domain name for this fraudulent purpose.

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.

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 ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **FINANCO-CHRONO.COM**: Transferred

PANELLISTS

Name	**José Ignacio San Martín**

DATE OF PANEL DECISION 2020-08-21

Publish the Decision