Decision for dispute CAC-UDRP-103283

Case number	CAC-UDRP-103283
Time of filing	2020-09-15 09:31:04
Domain names	cmso-espace.com, mon-cmso.com

Case administrator

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

Complainant

Organization	CREDIT MUTUEL ARKEA

Complainant representative

Organization	Nameshield (Enora Millocheau)

Respondent

Name	jean pierre tripper

OTHER LEGAL PROCEEDINGS

No other legal proceedings which relate to the disputed domain names are known to the Panel.

IDENTIFICATION OF RIGHTS

The Complainant shows to be the owner of the following trademarks registered in France:

- CMSO n°4323556 with priority date since December 19, 2016;

- CMSO n°4320271 with priority date since December 6, 2016; and

- CMSO n°4320276 with priority date since December 6, 2016.

FACTUAL BACKGROUND

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

The Complainant is a French banking, finance and insurance service group set up in 1975 with historical roots from the beginning of the 20’century. Today, with 19 regional business centers and 436 points of sales, its business activities focus mainly on French banking and insurance market.

The Complainant owns French trademarks consisting of the sign “CMSO” stating for CREDIT MUTUEL DU SUD-OUEST – one of the subsidiaries of the Complainant.

The Respondent is an individual named Jean Pierre Tripper, resident of Paris in France. Any other information is known about the Respondent.

The disputed domain names <mon-cmso.com> and <cmso-espace.com> (the “Domain Names”) were registered on August 11, 2020 and August 13, 2020 respectively and currently resolve to error pages.

The Complainant states that Respondent uses the disputed Domain Names to pass of the Complainant in order to phish for personal banking information of the Complainant’s clients.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

Identical or confusingly similar

The first question that arises is whether Complainant has rights in a trademark or service mark. The next question that arises is whether the Domain Names are identical or confusingly similar to Complainant’s trademark.

The Complainant claims rights in three French trademarks, from which two of them are registered as combined marks consisting of a string of letter “CMSO” accompanied by graphical elements and one of them is a word mark.

The Complainant claims that the Domain Names and the Complainant's registered trademarks CMSO are confusingly similar. Indeed, according to the Complainant, its trademarks are fully contained within the disputed Domain Names and differ only in additional word elements “mon” (referring to “my”) and “espace” (referring to “space”) which are descriptive and do not change the overall similar impression with the Complainant's French trademarks.

No rights or legitimate interests

The Complainant argues that there is no evidence at all that the Respondent is commonly known by the Domain Names, or a name corresponding to the Domain Names (CMSO), nor that the Respondent has ever been making a bona fide offering of goods or services under such name. Moreover, the Complainant states that the Respondent has not been licensed or otherwise authorized to use any of the Complainant’s trademark nor to apply for or use any domain name incorporating such trademark.

Registered and used in bad faith

As far as bad faith registration is concerned, the Complainant states that the Respondent, located in France, could not be unaware of the Complainant rights over the name CMSO, which is well known in France and has been in used many years before the Domain Names ‘registration.

Moreover, the Complainant underlines that the Domain Names were used in a phishing scheme, as the Responded attempted to pass off as the Complainant in order to get the Complainant’s clients logged in a web page identical to the Complainant’s subsidiary customer access web page.

RESPONDENT:

The Respondent did not respond to the Complaint.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed Domain Names are identical or confusingly similar to trademarks 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 Names (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 Names have been registered 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

1. Paragraph 15 of the Rules states that the Panel shall decide a Complaint on the basis of the statements and documents submitted and in accordance with the Policy, the Rules and any rules and principles of law deemed applicable.

In the case of default by a Party, Rule 14 states that if a Party, in the absence of exceptional circumstances, does not comply with a provision of, or requirement under the Rules, the Panel shall draw such inferences therefrom as appropriate.

In the present case, the Respondent has not submitted any Response and consequently has not contested any of the contentions made by the Complainant.

The Panel proceeds therefore to decide only on the basis of the Complainant’s factual statements and the documentary evidences provided in support of them.

The Complainant is owner of three trademarks whose common distinctive element is a particle “CMSO”, which does not have any known meaning and rather refer to the acronym of the Complainant subsidiary CREDIT MUTUEL DU SUD-OUEST.

Since the Complainant’s trademark “CMSO” is fully comprised within the disputed Domain Names the trademarks and the disputed Domain Names are similar to the extent that the most distinctive elements of the prior trademarks are reproduced.

The Panel accordingly concludes that paragraph 4(a)(i) of the Policy is satisfied.

2. The Respondent is not in anyway related to the Complainant's business, and is not the agent of the Complainant. The Respondent is not currently known and has never been known as “CMSO”, or any combination of this name.

Finally the website at the Domain Names are currently inactive and there is no evidence of it having ever been actively associated with any goods or services.

Therefore, and in the absence of a Response, the Panel finds that the Complainant has made a prima facie case that the Respondent has no rights or legitimate interest in the disputed Domain names.

3. As to the bad faith, the Complainant argues that Respondent registered the Domain Names with actual knowledge of Complainant’s trademarks. Actual knowledge of a Complainant’s rights in a trademark may be proven through a totality of circumstances surrounding the registration of the disputed Domain Names, in particular taking into consideration the following factors:

- The Respondent is located in France, where the Complainant's business activities take place and where the Complainant's trademark has been used; and

- When searching in Google the word "CMSO", only results related to the Complainant appear.

Secondly, the Complainant point out that Respondent intended to use the Domain Names for commercial gain, by creating a likelihood of confusion with the Complainant's services. In fact, the domain name <cmso- espace.com> was redirecting to a login page identical to the Complainant's customer access web page.

Given the long term presence of the Complainant in French market and the way how the Respondent was using the domain name <cmso- espace.com>, which is confusingly similar to the Complainant's registered trademarks, the Panel finds that, in absence of the contra-arguments, the Respondent was attempting to free ride on the Complainant' goodwill in an attempt to exploit, for commercial gain, Internet users destined for Complainant.

In other words, in the absence of sufficient evidence to the contrary and rebuttal from Respondent, the Panelist infers that by choosing to register the Domain Names which are similar to Complainant's trademarks and by intending to exploit, for commercial gain, Internet users destined for Complainant, the Respondent's activity is indicative of registration and use of the Domain Names in bad faith.

Consequently the Complainant has satisfied paragraph 4(a)(iii) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **CMSO-ESPACE.COM**: Transferred
2. **MON-CMSO.COM**: Transferred

PANELLISTS

Name	**JUDr. Hana Číslerová, LL.M.**

DATE OF PANEL DECISION 2020-10-28

Publish the Decision