Decision for dispute CAC-UDRP-103497

Case number	CAC-UDRP-103497
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Domain names	credit-agricole.digital

Case administrator

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

Complainant

Organization	CREDIT AGRICOLE S.A.

Complainant representative

Organization	Nameshield (Enora Millocheau)

Respondent

Organization	SCI DU RONCIER

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

EU TM Registration No. 006456974 CREDIT AGRICOLE for various goods and services in classes 9, 16, 35, 36, 38 and 42.

FACTUAL BACKGROUND

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

The Complainant conducts a retail banking business. It is based in France and is part of the Credit Agricole Group, which has approximately 11,000 branches and 142,000 employees worldwide. It is one of the largest banks in Europe and it provides services around the world in all areas of banking, insurance management, asset leasing and financing, consumer credit and investment. It offers its services digitally and has approximately 3.5 million users of its mobile application.

The Complainant owns several trademarks containing or consisting of the words "CREDIT AGRICOLE" including the EU TM Registration referred to above which has been registered since 13 November 2007. It is also the owner of several domain names containing "CREDIT AGRICOLE", such as <creditagricole.com> (registered since 11 June 2001) and <credit-agricole.com> (registered since 31 December 1999).

The disputed domain name was registered on 30 December 2020, which is five days before the Complainant issued this ADR proceeding. It does not resolve to an active page. The Registrant was recorded as "SCI DU ROCIER" with an address in France.

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

Paragraph (4)(a) of the Policy lists three elements that the Complainant must prove to merit a finding that the disputed domain name registered by the Respondent be transferred to the Complainant:

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

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

3) the disputed domain name has been registered and is being used in bad faith.

The Panel is satisfied that the Complainant has satisfied all three elements for the principal reasons set out below.

RIGHTS IN AN IDENTICAL OR CONFUSINGLY SIMILAR TRADEMARK

As mentioned above the Complainant claims registered rights over a number of trademarks. However, the Panel has focused on one trade mark registration in particular, EU TM Registration No. 006456974 CREDIT AGRICOLE registered for various goods and services in classes 9, 16, 35, 36, 38 and 42 since 13 November 2007.

This registration pre-dates the registration of the disputed domain name by over a decade.

To satisfy paragraph 4(a)(i) of the Policy it is enough that the Panel is satisfied that the Complainant has registered rights in a single trademark in a single jurisdiction that predates the registration of the disputed domain names (even if that single jurisdiction is not one in which the Respondent resides or operates) (Koninklijike KPN N.V. v. Telepathy, Inc D2001-0217 (WIPO May 7, 2001); see also WIPO Case Nos. D2012-0141 and D2011-1436).

Prior registered rights in CREDIT AGRICOLE are clearly established here. And in addition, although not required, they are established in the resident jurisdiction of the Respondent.

Turning now to whether the disputed domain name is confusingly similar to CREDIT AGRICOLE.

CREDIT AGRICOLE is a distinctive sign both in French and English. It does translate to English as "Agricultural Credit" which may be said to allude to credit services for the agricultural sector but it is not a directly descriptive or well known generic phrase in itself.

In the disputed domain name, the positioning of a hyphen in lieu of the space between CREDIT and AGRICOLE does nothing to distinguish <credit-agricole.digital> from CREDIT AGRICOLE. In fact, in the context of usage of characters in a domain name the hyphen often performs the same purpose as a space by simply indicating separation between two words. It is common for persons registering domain names to include hyphens in place of spaces where it is not possible to use the latter. In fact, the Complainant has done preciously that with its further registration of <credit-agricole.com>.

Further, the addition of the .digital gTLD suffix does not assist the Respondent. If anything, its inclusion only adds to confusion as it indicates that the domain name may be used to direct users to a digital service or method of delivery offered by the Complainant.

The Panel is therefore satisfied that <credit-agricole.digital> is confusingly similar to a trademark in which the Complainant has rights.

NO RIGHTS OR LEGITIMATE INTERESTS

The Respondent's name bears no resemblance to the disputed domain name. Further, the disputed domain name does not resolve to a website.

There is simply no basis to conclude that the Respondent has rights or interests in the disputed domain name.

BAD FAITH

The Complainant asserts that it is reasonable to infer that the Respondent registered the disputed domain name with full knowledge of its trademarks and it is not possible to conceive of any plausible legitimate use that could be made of this presently inactive disputed domain name by the Respondent.

The Panel accepts both these arguments for reasons set out below. However, as a preliminary matter the Panel seeks to make clear that it does not find that passive holding enough suffices in this matter to support a finding of bad faith.

It is true that the passive holding of a domain name may, in appropriate circumstances, be indicative of bad faith. It will be so indicative when all the circumstances of the Respondent's behaviour indicates he or she is acting in bad faith (Telstra Corporation Ltd v. Nuclear Marshmallows D2000-0003 (WIPO February 18, 2000).

However, in the present proceeding the fact that the disputed domain name is presently inactive (in that it does not resolve to an active web page) adds nothing to an allegation of bad faith. The passivity itself is of no concern to the Panel whatsoever. The domain was only registered five days before the ADR proceeding was commenced by the Complainant.

In the Panel's view one ought not be harshly judging a registrant's mere passive holding of a domain name over such a short period of time. It is prudent to consider what a reasonably minded bona fide registrant may intend by the same behaviour. And it is entirely possible that such a hypothetical person may first register a domain name they wish to use and then take

weeks or even months to develop a web page for which they wish to use it. It is equally possible that such a hypothetical person may use the domain name for an e-mail service only. These legitimate foreseeable possibilities must be considered when determining if an allegation of passive holding amounts to, or contributes to, a finding of bad faith.

What is of concern to the Panel in this present proceeding is that:

(a). CREDIT AGRICOLE is a well known and distinctive trademark, especially in the Respondent's resident jurisdiction being France;

(b). As discussed above, there is almost no distinction to be drawn between this mark and the disputed domain name; and

(c). the use of the gTLD suffix .digital is likely to indicate to web-users that the disputed domain name is likely to be used to direct the web-user to digital services operated by the Complainant. Such a likelihood is heightened by the fact the Complainant is significantly involved with the provision of such digital service as evidenced by the popularity of its mobile application.

This is of particular concern given the Complainant is well known in the financial services industry which is an obvious target market for unscrupulous individuals engaging in phishing for fraudulent purposes.

These facts indicate that the Respondent knew of the said trade mark before seeking to register the disputed domain name. Further, there is no response from the Respondent to contradict this inference that the Panel draws under Rule 14(b) and (5)(a) of the UDRP Rules.

As the Panel has found the Respondent had such prior knowledge of the CREDIT AGRICOLE trade mark at the time of registering the disputed domain name it can only follow that its purpose in registering the disputed domain name was to opportunistically profit from such confusing similarity. The Respondent targeted the Complainant's well-known name for this purpose and the use of .digital gTLD only heightens concern as for how the Respondent was going to opportunistically profit. Such opportunism has been recognised as bad faith by numerous panels, the Panel refers to the commentary of the learned Gerald M Levine, Domain Name Arbitration, Legal Corner Press, 1st ed. 2015, pp. 258 to 259.

Therefore, in consideration of all the circumstances the disputed domain name has been registered and is being 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. **CREDIT-AGRICOLE.DIGITAL**: Transferred

PANELLISTS

Name	**Mr Andrew Norman Sykes**

DATE OF PANEL DECISION 2021-02-05

Publish the Decision