

Decision for dispute CAC-UDRP-104106

Case number CAC-UDRP-104106

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Domain names arkea-financial.com

Case administrator

Organization Denisa Bilík (CAC) (Case admin)

Complainant

Organization CREDIT MUTUEL ARKEA

Complainant representative

Organization NAMESHIELD S.A.S.

Respondent

Name IRINA NORA

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

The Complainant is owner of the following trademarks:

- the French trademark no. 96636222 "ARKEA", registered since 26 July 1996 in classes 35, 36, 42, and 45; and
- the French trademark no. 3888981 "CREDIT MUTUEL ARKEA", registered since 11 May 2012 in class 36.

The Complainant is also owner of the domain name <ARKEA.COM>, registered since 26 July 2002, that is used to resolve to the official website of the Complainant.

The above-mentioned trademarks and domain name are hereinafter collectively referred to as the ARKEA Trademark.

FACTUAL BACKGROUND

The Complainant is a French cooperative and mutual banking and insurance group.

Created originally in 1911 in Brittany, the Central Office of the Complainant 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 forty or so specialised subsidiaries formed a group that took the name CREDIT MUTUEL ARKEA.

The Complainant owns trademarks and domain names, all of them characterised by the presence of the distinctive terms "ARKEA" and "CREDIT MUTUEL ARKEA".

The disputed domain name was registered on 17 October 2021, well after the registration of the Complainant's ARKEA Trademark, by Irina Nora, an individual located in Benin.

The disputed domain name resolves to a website offering financial services such as consumer or personal loans, that compete with the services offered by the Complainant.

The facts asserted by the Complainant are not contested by the Respondent.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant contends that the disputed domain name is confusingly similar to the Complainant's trademark, because it reproduces the term "ARKEA" with the mere addition of the generic term "FINANCIAL" and a hyphen.

The Complainant contends that the Respondent has nothing to do with the Complainant, nor has been authorised or licensed to use the ARKEA Trademark or to register or use the disputed domain name. The disputed domain name does not correspond to the Respondent's name, nor is this latter commonly known by the disputed domain name. Since the disputed domain name resolves to a website promoting financial services and, thus, competing with the services offered by the Complainant, there is no fair or non-commercial use of the disputed domain name.

Finally, the Complainant contends that, given the distinctiveness and reputation of the ARKEA Trademark, it is unlikely that the Respondent had no knowledge of the Complainant's trademark when he had registered the disputed domain name. The Complainant has submitted the results of a Google search and alleges that the term "ARKEA" does not have any signification, except in relation with the Complainant. The addition of the generic term "FINANCIAL" to the Complainant's mark cannot be coincidental, as it directly refers to the Complainant's activities. Hence, according to the Complainant, it is most likely that the Respondent registered the disputed domain name having in mind the Complainant and the ARKEA Trademark and with the clear intention to take advantage of the reputation of the same by creating a likelihood of confusion between such mark and the disputed domain name. The Complainant also contends that the use of the disputed domain name which resolves to a website related to financial services competing with the services offered by the Complainant, is not to be considered a good faith use under the Policy and the UDRP case law.

The Complainant, therefore, requests the transfer of the disputed domain name.

RESPONDENT:

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

Under paragraph 4(a) of the Policy, the Complainant is required to prove each of the following three elements to succeed in the administrative proceeding:

- (i) the disputed domain name is identical or confusingly similar to a trade mark 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 by the Respondent in bad faith.

1. THE COMPLAINANT'S RIGHTS AND CONFUSING SIMILARITY OF THE DISPUTED DOMAIN NAME TO THE COMPLAINANT'S TRADEMARK

The Complainant has established that it has rights in the ARKEA Trademark since 1996.

In UDRP cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognisable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of the first element (see 1.7 WIPO Overview 3.0). Panels also agree that the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) and/or punctuation marks (e.g., hyphen) does not prevent a finding of confusing similarity under the first element (see 1.8 WIPO Overview 3.0).

The Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark, since it incorporates the entirety or at least the distinctive part of the ARKEA Trademark, and differs from such mark by merely adding the generic and descriptive term "FINANCIAL", a hyphen, and the TLD .COM. The addition of such term and the hyphen neither affects the attractive power of the ARKEA Trademark, nor is sufficient to distinguish the disputed domain name from the Complainant's mark. On the contrary, the addition of a term related to the Complainant's business even increases the likelihood of confusion between the disputed domain name and the Complainant's trademark. The TLD is to be ignored for the purpose of determination of identity or confusing similarity between the disputed domain name and the Complainant's trademark, as it is a technical requirement of registration (see 1.11.1 WIPO Overview 3.0).

Hence, this Panel finds that the Complainant has proven the first element of the paragraph 4(a) of the Policy and the disputed domain name is confusingly similar to the Complainant's mark.

2. THE RESPONDENT'S LACK OF RIGHTS OR LEGITIMATE INTERESTS TO THE DISPUTED DOMAIN NAME

It is a consensus view of UDRP panels that the Complainant shall establish a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name to shift the burden of proof to the Respondent (see paragraph 2.1 of the WIPO Overview 3.0: "where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element").

The Respondent has never received any approval of the Complainant, expressed or implied, to use the Complainant's

trademark or to register and use the disputed domain name, nor is affiliated to the Complainant in any form.

The disputed domain name was registered on 17 October 2021 by Irina Nora, an individual located in Benin. There is no evidence that the Respondent has been commonly known by the disputed domain name.

Moreover, the disputed domain name resolves to a website related to financial services competing with the services offered by the Complainant. Such use of the domain name is clearly not a legitimate non-commercial or fair use, without intent for commercial gain to misleadingly divert consumers or to tarnish the Complainant's mark.

While the Complainant has established its prima facie case, the Respondent has not submitted a Response and, thus, has failed to invoke any of the circumstances that could demonstrate any rights or legitimate interests in the disputed domain name.

Therefore, the Panel is satisfied that the Complainant has met the second requirement of the paragraph 4(a) of the Policy and finds that the Respondent lacks rights or legitimate interests to the disputed domain name.

3. BAD FAITH REGISTRATION AND USE OF THE DISPUTED DOMAIN NAME

The Complainant has sufficiently demonstrated to be owner of the ARKEA Trademark, registered prior to the registration of the disputed domain name.

The disputed domain name is confusingly similar to the ARKEA Trademark, since it incorporates the entirety or at least the distinctive part of such mark and differs from the latter by merely adding the generic and descriptive term "FINANCIAL", the hyphen, and the TLD ".COM" that are insufficient elements to escape the finding of confusing similarity between the disputed domain name and the Complainant's trademark.

Given the distinctiveness of the Complainant's prior mark (the Complainant has submitted the results of a Google search carried out regarding the term "ARKEA", all of them related to the Complainant, and has also demonstrated that the ARKEA Trademark has been subject of cybersquatting cases), the Respondent's choice to add the generic and descriptive term "FINANCIAL" to the ARKEA Trademark could not have been for a mere chance without actual knowledge of the Complainant's rights in such mark and the intention to exploit its reputation by diverting traffic away from the Complainant's website.

Since the disputed domain name resolves to a website promoting financial services that compete with the Complainant's services, the Panel finds that, by registering and using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to his website, by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of his website or a product or service on his website (paragraph 4(b)(iv) of the Policy).

The Respondent has not submitted a Response in this administrative proceeding to provide any evidence of actual or contemplated good faith use.

Taken into account all circumstances of this case, the Panel finds that the Complainant has discharged the burden of proof to show that the disputed domain name has been registered and is being used in bad faith (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. ARKEA-FINANCIAL.COM: Transferred

PANELLISTS

Name **Avv. Ivett Paulovics**

DATE OF PANEL DECISION **2021-11-19**

Publish the Decision
