

Decision for dispute CAC-UDRP-100712

Case number	CAC-UDRP-100712
Time of filing	2013-11-27 10:34:24
Domain names	creditagricoleinter.net

Case administrator

Name	Lada Válková (Case admin)
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Complainant

Organization	CREDIT AGRICOLE SA
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Complainant representative

Organization	Nameshield (Anne Morin)
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Respondent

Name	Dhr J P Klijn
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OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

The Complainant is the owner of several CREDIT AGRICOLE per se and formative trademarks. All these trademarks and relevant details are listed in Annex 2 to the Complaint.

The Complainant is also the owner of CREDITAGRICOLE domain names. A list of these domain names has been enclosed with the Complaint under Annex 3.

FACTUAL BACKGROUND

The Complainant is the leader in retail banking in France and one of the largest banks in Europe. The Complainant assists its clients's projects in France and worldwide in all areas of banking and trades associated with it: insurance, management asset leasing and factoring, consumer credit, corporate and investment

The disputed domain name <creditagricoleinter.net> was registered on November 6, 2013.

A cease and desist letter was sent to the Respondent by e-mail on November 15, 2013 to challenge the registration of the <creditagricoleinter.net> domain name and to ask for its transfer to the Complainant.

The Respondent has not provided an answer to this letter, and therefore the Complainant has initiated this Complaint.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

The Complainant contends the following:

The disputed domain name <creditagricoleinter.net> is confusingly similar to the Complainant's earlier trademark CREDIT AGRICOLE, since it contains the Complainant's trademark in its entirety; the addition of the word "inter" and of the gTLD ".net" do not offset the confusingly similarity between the disputed domain name and the Complainant's trademark.

The Respondent does not have any rights or legitimate interest in the disputed domain name. According to WIPO Case Croatia Airlines d.d. v. Modern Empire Internet Ltd. (Case D2003-0455), 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, 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 UDRP.

According to the Complainant, the Respondent is not affiliated with, nor authorised by, CREDIT AGRICOLE S.A.

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the domain name and he is not related to the Complainant's business.

The Complainant does not carry out any activity for, nor has any business with the Respondent.

The disputed domain name displays a parking page since its registration. Moreover, following the sending of the cease and desist letter, the Respondent has not provided response about this registration.

For all reasons above, the Respondent lacks rights or interests in the disputed domain name.

As far as registration and use of the disputed domain name in bad faith the Complainant's trademark CREDIT AGRICOLE is a widely known trademark. Prior decisions have confirmed the reputation of this trademark (See in particular WIPO Cases No. D2010-1683 and No. D2012-0258).

Given the distinctiveness of the Complainant's trademark and reputation, it is reasonable to infer that the Respondent registered the disputed domain name with full knowledge of the Complainant's marks and uses it for the purpose of misleading and diverting Internet traffic.

Moreover, the disputed domain name leads to a parking page. In the opinion of the Complainant, the Respondent uses the disputed domain name for the purpose of disturbing the Complainant's business, since by keeping the domain name with parking page, the Respondent prevents the Complainant to develop its business.

See WIPO case no. D2010-1683 "Credit Agricole S.A. v. Dick Weisz"

See WIPO case no. D2012-0258 "Credit Agricole S.A. v. Wang Rongxi"

See for instance "Ferrari S.p.A v. American Entertainment Group. Inc", WIPO Case no.D2004-0673

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the 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 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 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

According to the Domain Name Registrar, the language of the Registration Agreement is Dutch. This is so, because the Domain Name has been registered with a Dutch reseller and the Domain Name Registrant is Dutch.

Under Rule 11(a) of the Rules for Uniform Domain Name Dispute Resolution Policy (the "UDRP Rules"), "[u]nless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding".

Therefore, since according to the Registrar, the language of the Registration Agreement is Dutch, then the language of this administrative proceeding should also be Dutch. The CAC informed the Complainant of this circumstance, and requested the Complainant to file a revised Complaint. The Complainant complied with the CAC's request, but asked that the language of the proceeding be changed into English for a better understanding by both parties. The Complainant supported its request by stating that the Domain Name consists of the words CREDIT, AGRICOLE and INTER, that have no specific meaning in Dutch, while CREDIT and INTER is comprehensible in English.

The Panel does not believe that the Complainant's argument may justify the change of language from Dutch to English. As a matter of fact, the change of language is permissible whenever it is proved that each party to the proceeding is able to understand the different language proposed by the other party. The fact that the disputed Domain Name consists of terms comprehensible in English and, at the same time, of terms not in the Dutch language, certainly does not prove that the Respondent understands English.

At the same time, the Panel notes that the Domain Name leads to a parking page containing a script in Dutch, and therefore also the use of the Domain Name does not prove that the Complainant is fluent, or at least understands English.

Rule 11(a) of the UDRP Rules confers to the Panel the power to determine which is the appropriate language of the administrative proceeding, having regard to the circumstances of the case.

In the Panel's view, to comply with Rule 11(a) of the UDRP Rules, the Panel may make its own investigations. The Panel has therefore visited the English section of the Registrar's website at <http://www.key-systems.net/english/homepage.html> and has noted that the Registration Agreement is displayed in English and not in Dutch. Moreover, Section 10.6 of the Registration Agreement reads as follows: "Both, the English and German versions of these terms and conditions are valid and binding. In case of doubt or conflict, however, the German version will prevail". Therefore, the English version of the Registration Agreement is binding and there is no trace on the Registrar's website of a Registration Agreement in Dutch.

In view of the fact that the Registrar's website displays a Registration Agreement in English and not in Dutch, the CAC contacted again the Registrar, to confirm the exact language of the Registration Agreement. Due to this delay, the Panel issued a Non-Standard Communication extending the delivery date of this UDRP decision by 7 days, i.e., until January 30, 2014.

The Domain Name Registrar sent a response to the CAC reiterating that the language of the Registration Agreement is Dutch because the Domain Name was sold through a Dutch Reseller to a Dutch Registrant.

Nevertheless, the Panel notes that according to the Whois for the Domain Name, the Registrar for the Domain Name is Key-Systems GmbH. The Whois does not contain any reference to the Dutch reseller, if not the indication of the Registrar's url as

<http://www.mijndomein.nl/>. However, the website corresponding to this url does not contain any reference to Key-Systems GmbH.

It appears from the above, that the Complainant correctly applied the language of the Registration Agreement as appearing on the Registrar's website and not the language of a Registration Agreement as appearing on a website that seems unrelated to the Registrar.

The Respondent could have objected to the use of English as the language of this proceeding, had it filed a Response to the Complaint. However, no Response has been filed in the instant case.

Accordingly, following the powers conferred to the Panel by Rule 11(a) of the UDRP Rules, having regard to the circumstances of the case, the Panel determines that the language of this administrative proceeding coincides with the language of the Registration Agreement as appearing on the Registrar's website, namely English or German. Since both versions of the Registration Agreement are equally valid and binding, the Panel is satisfied with the use of English as the language of this administrative proceeding.

PRINCIPAL REASONS FOR THE DECISION

1. Rights (paragraph 4(a)(i) of the Policy)

The Domain Name consists in the trademark CREDIT AGRICOLE, followed by the suffix INTER and the gTLD .net. Both these additional elements are insufficient to avoid likelihood of confusion between the Complainant's earlier marks and the Domain Name. The suffix INTER may refer to the term "international", which only serves to define the name CREDIT AGRICOLE and the geographical extent of the services provided by the Complainant and its different locations worldwide.

In addition, the gTLD .net is a compulsory part of the Domain Name and therefore lacks distinctive character.

Therefore the Panel concludes that the Domain Name is confusingly similar to the Complainant's earlier marks.

2. Rights or legitimate interests to the domain name (Paragraph 4(a)(ii))

According to the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Second Edition ("WIPO Overview 2.0"), "while the overall burden of proof rests with the complainant, panels have recognized that this could result in the often impossible task of proving a negative, requiring information that is often primarily within the knowledge of the respondent. Therefore 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, the burden of production shifts to the respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such appropriate allegations or evidence, a complainant is generally deemed to have satisfied paragraph 4(a)(ii) of the UDRP".

Pursuant to Article 4 (c) of the Policy, "[a]ny of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate [the Respondent's] rights or legitimate interests to the domain name for purposes of Paragraph 4(a)(ii):

(i) that before any notice to the respondent of the dispute, the respondent's used, or made demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or

(ii) that the respondent (as an individual, business, or other organization) has been commonly known by the domain name, even if the respondent has acquired no trademark or service mark rights; or

(iii) that the respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue".

According to the Complainant, the Complainant does not carry out any activity for, nor has any business with, the Respondent.

Moreover, the Complainant never authorised the Respondent to register and use the Domain Name.

The Complainant has proved that the Domain Name leads to a parking page. Therefore, the Domain Name is not used, nor have there been demonstrable preparations to use, the Domain Name before any notice to the Respondent.

Furthermore, according to the Complainant, the Respondent never replied to the cease and desist letter sent by the Complainant.

The Respondent did not object to the above-mentioned Complainant's assertions and the Panel takes the view that all the circumstances mentioned above are true.

In the absence of any contrary statement by the Respondent, the Panel concludes that the Complainant lacks rights and/or legitimate interests in the Domain Name.

3. Bad Faith

As established in other UDRP decisions, CREDIT AGRICOLE is a widely known trademark (See in particular WIPO Cases No. D2010-1683 and No. D2012-0258).

Therefore, it is unlikely that the Respondent was unaware of the existence of the Complainant's trademark at the time of the registration and use of the Domain Name. On the contrary, as the Complainant has correctly pointed out, it is reasonable to infer that the Respondent registered the Domain Name with full knowledge of the Complainant's marks.

The Panel further notes that the Domain Name leads to a parking page and that the Respondent did not accept to transfer the Domain Name to the Complainant after receiving the cease and desist letter on the basis of the Complainant's earlier rights.

According to the WIPO Overview 2.0, "with comparative reference to the circumstances set out in paragraph 4(b) of the UDRP deemed to establish bad faith registration and use, panels have found that the apparent lack of so-called active use (e.g., to resolve to a website) of the domain name without any active attempt to sell or to contact the trademark holder (passive holding), does not as such prevent a finding of bad faith. The panel must examine all the circumstances of the case to determine whether the respondent is acting in bad faith. Examples of what may be cumulative circumstances found to be indicative of bad faith include the complainant having a well-known trademark, no response to the complaint having been filed, and the registrant's concealment of its identity. Panels may draw inferences about whether the domain name was used in bad faith given the circumstances surrounding registration, and vice versa. Some panels have also found that the concept of passive holding may apply even in the event of sporadic use, or of the mere "parking" by a third party of a domain name (irrespective of whether the latter should also result in the generation of incidental revenue from advertising referrals)".

In the subject case, the fact that the Domain Name partially corresponds to a well-known trademark, that the Domain Name leads to a parking page, and that the Respondent did not reply to the Complainant's cease and desist letter are, in the Panel's view, all circumstances that lead to the conclusion that the Respondent acted in bad faith in the registration and use of the Domain Name .

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **CREDITAGRICOLEINTER.NET**: Transferred

PANELLISTS

Name	Angelica Lodigiani
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DATE OF PANEL DECISION 2014-01-30

Publish the Decision
