Decision for dispute CAC-UDRP-100730

Case number	CAC-UDRP-100730
Time of filing	2014-01-13 11:42:30
Domain names	FORTUNEOBANQUE.COM

Case administrator

Name	Lada Válková (Case admin)

Complainant

Organization	FORTUNEO

Complainant representative

Organization	Namebay

Respondent

Organization	WHOIS PRIVACY

OTHER LEGAL PROCEEDINGS

The Panel is not aware of other pending or decided legal proceedings.

IDENTIFICATION OF RIGHTS

The Complainant owns several trademarks including the wording FORTUNEO - either consisting only of the wording FORTUNEO or in addition to a device - for example the registered IR trademark no. 1107662 - FORTUNEO BANQUE or the EU-Community trademark no. 004268843 - FORTUNEO DIRECT FINANCE.

FACTUAL BACKGROUND

The Complainant FORTUNEO is a affiliated company of the Crédit Mutuel ARKEA.

The Complainant contents:

A. The domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; (Policy, Paragraph 4(a)(i); Rules, Paragraphs 3(b)(viii), (b)(ix)(1))

The Complainant states that the disputed domain name < fortuneobanque.com > is identical to its trademarks FORTUNEO BANQUE.

B. The Respondent has no rights or legitimate interests in respect of the domain name; (Policy, Paragraph 4(a)(ii); Rules, Paragraph 3(b)(ix)(2))

The Complainant contends that the Respondent is not affiliated with nor authorized by FORTUNEO in any way.

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

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

The Respondent is not commonly known by the domain name <fortuneobanque.com> and has no legitimate interests over the wording FORTUNEO BANQUE.

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.

See:
NAF - FA699652 - Braun Corp. v. Loney
NAF - FA139720 - Tercent Inc. v. Lee Yi

Further, Respondent's only use of the Domain Name is that it is used for a parked site displaying commercial links related to the field of bank products and services of the Complainant and its competitors.

The Complainant contends that the Respondent has not legitimate rights in respect of the domain name and has registered the domain name only to attract and to divert the customers to commercial links.

See
Mpire Corporation v. Michael Frey, WIPO Case No. D2009-0258

Finally, the Complainant contends that the Respondent uses a privacy or proxy registration service that acts as an iron curtain between the Domain Holder and the outside world.

C. The domain name was registered and is being used in bad faith. (Policy, paragraphs 4(a)(iii), 4(b); Rules, paragraph 3(b)(ix)(3))

The Complainant contends that the Respondent is aware of the Complainant and has registered the domain name coupled with French word "BANQUE" only to make reference to the Complainant and its activity. The Complainant considers that it is reasonable to infer that the Respondent has registered the domain name with full knowledge of the Complainant's marks and uses it for the purpose of diverting the Complaint's customers.

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

On these bases, the Complainant concludes that the evidence indicates that the Respondent has used the disputed domain name to attract, or to attempt to attract, for commercial gain, Internet users to various websites by creating confusion with the Complainant's trademark.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

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

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.
There can be no question but that the domain name <FORTUNEOBANQUE.COM> is identical to Complainant's <FORTUNEO BANQUE> trademark.

2.
The Respondent does not have a legitimate interest in the domain name and used and registered the domain name in bad faith as the domain name only makes reference to the Complainant and its activity. It is reasonable to infer that the Respondent has registered the domain name with full knowledge of the Complainant's marks and uses it for the purpose of diverting the Complaint’s customers.

3.
The Panel accepts the Complainant's submissions and finds, in the absence of any evidence to the contrary, that the Respondent has to transfer the disputed domain name to the Complainant.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **FORTUNEOBANQUE.COM**: Transferred

PANELLISTS

Name	**Prof. Dr. Lambert Grosskopf, LL.M.Eur.**

DATE OF PANEL DECISION 2014-02-24

Publish the Decision