Decision for dispute CAC-UDRP-100919

Case number	CAC-UDRP-100919
Time of filing	2015-01-27 11:22:42
Domain names	credit-mutueldebretagne.com

Case administrator

Name	Lada Válková (Case admin)

Complainant

Organization	FEDERATION DU CREDIT MUTUEL DE BRETAGNE

Complainant representative

Organization	Nameshield (Anne Morin)

Respondent

Name	CYRIL MONTEIL

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 the owner of the French trade mark CREDIT MUTUEL DE BRETAGNE, No. 1539019 registered on 30 June 1989.

FACTUAL BACKGROUND

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

CREDIT MUTUEL DE BRETAGNE is a federation of CREDIT MUTUEL. It is part of the group CREDIT MUTUEL ARKEA.

Founded in 1882, CREDIT MUTUEL is a major French bank, with headquarters in Strasbourg, in Alsace.

The Complainant is the owner of the registered trade mark CREDIT MUTUEL DE BRETAGNE.

The disputed domain name <credit-mutueldebretagne.com> was registered on 8 January 2015.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant asserts that the disputed domain name <credit-mutueldebretagne.com> is identical to its registered trademark and branded services CREDIT MUTUEL DE BRETAGNE.

The Complainant further asserts that the Respondent has no rights or legitimate interests in the disputed domain name. It submits that according to the WIPO case No. D2003-0455, Croatia Airlines d.d. v. Modern Empire Internet Ltd., the 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 Policy.

The Complainant contends that the Respondent is not affiliated with nor authorized by the Complainant 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. Further, the Complainant does not carry out any activity for, nor has any business with the Respondent.

The Complainant asserts that according to the Whois information "Registrant Name: CYRIL MONTEIL", the Respondent is not known as CREDIT MUTUEL DE BRETAGNE. 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; and NAF - FA139720 - Tercent Inc. v. Lee Yi.)

Moreover, the website in relation with the disputed domain name <credit-mutueldebretagne.com> is inactive since its registration: "address not found". The Complainant states that this information demonstrates that the Respondent has no legitimate interests in respect of the domain name. The Complainant submits that the Respondent could not have used the disputed domain name without infringing the Complainant's intellectual property rights.

The Complainant further asserts that the Respondent has registered and is using the disputed domain name in bad faith.

The Complainant states that its trade mark CREDIT MUTUEL DE BRETAGNE® is a well-known trade mark, especially in France where the Respondent is domiciled. Thus, given the distinctiveness of the Complainant's trade mark and reputation, the Complainant submits that the Respondent has registered the domain name with full knowledge of the Complainant's trade mark and uses it for the purpose of misleading and diverting Internet traffic. (See, WIPO - D2004-0673 - Ferrari S.p.A v. American Entertainment Group Inc).

The Complainant asserts that prior WIPO UDRP panels have held that the incorporation of a famous mark into a domain name, coupled with an inactive website, may be evidence of bad faith registration and use. (See WIPO - D2000-0003 - Telstra Corporation Limited v. Nuclear Marshmallows and WIPO - D2000-0400 - CBS Broadcasting, Inc. v. Dennis Toeppen). The Complainant says this use of the disputed domain name can be considered as passive retention. (See, WIPO - DAU2013-0005 - Cobb International Limited v. Cobb Australia & New Zealand (Pty) Ltd.).

The Complainant therefore requests that the disputed domain name is transferred to the Complainant.

RESPONDENT:

No administratively compliant Response was filed by the Respondent.

The Respondent has filed a non-compliant Response in which he requests the transfer of the disputed domain name to the Complainant. For completeness the substance of his response is set out here. The Respondent states:

“I have never registered this domain name myself, someone is using my identity.”

“Hereby I certify that I never registered the disputed domain name "credit-mutueldebretagne.com".
In your complaint, under the "Respondent", my name and first name are indeed associated with my physical address but the latter is only partially correct, as my hometown is not located in "Calvados". Furthermore, the telephone number and email address mentioned are not mine.

This complaint came as a totally unexpected surprise as I have no use for this domain name and as I have never registered it for any reason what so ever.

Therefore I respond that I have nothing to do with this complaint. Someone must have somehow used my identity.

Therefore I request that the disputed domain name is transferred to the Complainant.”

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

Paragraph 4(a) of the Policy requires the Complainant to prove that:
(i) domain name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights;
(ii) the Respondent has no rights or legitimate interests in the domain name; and
(iii) the Respondent has registered and is using the disputed domain name in bad faith.

A. Identical or confusingly similar

The Complainant is the owner of the registered trade mark CREDIT MUTUEL DE BRETAGNE. The disputed domain name incorporates the Complainant’s trade mark in full.

As has been decided in numerous panel decisions, the suffix “.com" can be ignored when deciding whether the domain name is the same or confusingly similar to the trade mark in which the Complainant has rights.

Further, the use of a hyphen in the domain name is not a distinguishing feature and does not detract from the overall impression that the domain name is confusingly similar to the Complainant’s registered trade mark, CREDIT MUTUEL DE BRETAGNE.

The Panel finds that the disputed domain name is confusingly similar to the Complainant's registered trade mark, CREDIT MUTUEL DE BRETAGNE.

B. No rights or legitimate interests

There is nothing to indicate any right to or any legitimate use of the domain name. The Complainant is not affiliated with nor has it authorized the Respondent, Cyril Monteil, to use its trade mark CREDIT MUTUEL DE BRETAGNE. A passive use of a domain name incorporating the Complainant's trade mark does not indicate a legitimate interest.

On the basis of the Complainant's uncontested submissions, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.

C. Registered and used in bad faith

The Respondent is defined in paragraph 1 of the Rules as "the holder of the domain-name registration against which a complaint is initiated".

The named holder of the disputed domain name is Cyril Monteil. In his non-standard response he says: "Hereby I certify that I never registered the disputed domain name "credit-mutueldebretagne.com".

He goes on to say that someone is using his identity and that: "Therefore I request that the disputed domain name is transferred to the Complainant"

If the named Respondent did not register the domain name then one can only conclude that whoever did register it was doing so in bad faith to conceal their true identity.

The Complainant's trade mark CREDIT MUTUEL DE BRETAGNE is distinctive and is incorporated in full in the disputed domain name. There appears to be no reason why a domain name incorporating the Complainant's trade mark would be registered other than to create an impression of an association with the Complainant.

Whether passive holding of a domain name could amount to bad faith use was considered in Telstra Corporation Limited v Nuclear Marshmellows (WIPO –D2000-0003). In that case it was found that a passive holding could amount to the domain being "used in bad faith" where:

(i) the Complainant's trade mark has a strong reputation and is widely known,
(ii) the Respondent has provided no evidence of any actual or contemplated good faith use by it of the domain name,
(iii) the Respondent has taken active steps to conceal its true identity; and
(iv) the Respondent has actively provided, and failed to correct, false contact details, in breach of its registration agreement.

Taking these factors into account there does not appear to be any legitimate active use of the disputed domain name by the Respondent that would not infringe the Complainant's rights.

The Panel concludes that the Respondent has registered and is using the disputed domain name 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-MUTUELDEBRETAGNE.COM**: Transferred

PANELLISTS

Name	**Mrs Veronica Bailey**

DATE OF PANEL DECISION 2015-02-25

Publish the Decision