Decision for dispute CAC-UDRP-101404

Case number	CAC-UDRP-101404
Time of filing	2017-01-05 09:09:27
Domain names	credit-agricole.email, 5-credit-agricole.com, 4-credit-agricole.com, 3-credit-agricole.com, 2-credit-agricole.com, 1-credit-agricole.com, credit-agricole-mail.info

Case administrator

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

Complainant

Organization	CREDIT AGRICOLE S.A.

Complainant representative

Organization	Nameshield (Maxime Benoist)

Respondent

Name	William Phillippe

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any pending or decided proceeding related to the Disputed domain names.

IDENTIFICATION OF RIGHTS

The Complainant has proven to be the owner of the renowned CREDIT AGRICOLE mark which enjoys protection through many registrations worldwide.

The Complainant is, inter alia, the owner of:

Mark CREDIT AGRICOLE (word) International Registration n. 1064647 registered on January 4, 2011 ;

Mark CREDIT AGRICOLE (device) International Registration n. 525634 registered on July 13, 1988;

Mark CREDIT AGRICOLE (device) International Registration n. 441714 registered on October 25, 1978;

Mark CREDIT AGRICOLE (word) European Union Registration n. 006456974 registered on October 23, 2008;

The Complainant is also the owner of the following domain names, amongst others: <credit-agricole.com> registered on

December 31, 1999; <creditagricole.com> registered on June 11, 2001; <credit-agricole.fr> registered on July 7, 1995; <creditagricole.fr> registered on September 22, 2000; <creditagricole.net> registered on January 7, 2002.

FACTUAL BACKGROUND

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

CREDIT AGRICOLE S.A. (hereinafter the Complainant) is a leader in the retail banking field in France and one of the largest banks in Europe.

The Disputed domain names <5-credit-agricole.com>, <4-credit-agricole.com>, <3-credit-agricole.com>, <2-credit-agricole.com>, <1-credit-agricole.com>, <credit-agricole-mail.info>, and <credit-agricole.email> (the Disputed domain names) were all registered on 2016-12-31 with the Registrar Tucows Domains.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant claims that:

1. The Disputed domain names are confusingly similar to the Complainant's trademarks

The Disputed domain names <5-credit-agricole.com>, <4-credit-agricole.com>, <3-credit-agricole.com>, <2-credit-agricole.com>, <1-credit-agricole.com> are used to display a link which redirects to an URL associated with the Disputed domain name <credit-agricole.email> with the URL “http://credit-agricole.email/”. This URL displays a copy of the official home page of the Complainant and a false online authentication account. It constitutes an important risk of phishing. For its part, the Disputed domain name <credit-agricole-mail.info> is currently inactive.

The Complainant further states that the Disputed domain names <5-credit-agricole.com>, <4-credit-agricole.com>, <3-credit-agricole.com>, <2-credit-agricole.com>, <1-credit-agricole.com>, and <credit-agricole-mail.info> are confusingly similar to the Complainant’s CREDIT AGRICOLE trademarks and associated domain names. Also, the Disputed domain name <credit-agricole.email> is identical to the CREDIT AGRICOLE trademarks and associated domain names.

The Complainant contends that the addition at the beginning of the Disputed domain names of the numbers 1, 2, 3, 4, or 5 separated from the trademark by a hyphen, with the use of the gTLD “.com”, or using the word “mail” at the end of the Disputed domain name for <credit-agricole-mail.info> with the gTLD “.info”, are not sufficient elements to escape the conclusion that the Disputed domain names are confusingly similar to the Complainant's trademarks and are linked to the Complainant.

In support of this thesis the Complainant asserts and documents that numerous UDRP decisions have recognized that the addition of a generic term to a trademark does not create a new or different right to the mark or diminish confusing similarity.

Regarding the Disputed domain name <credit-agricole.email>, the identical reproduction of the trademark CREDIT AGRICOLE and the use of the gTLD “.email” does not change the overall impression of the designation as being connected to the CREDIT AGRICOLE trademark.

The Complainant further assert s that it is well established that gTLDs may typically be disregarded in the assessment under paragraph 4(a)(i) of the Policy when comparing disputed domain names and trademarks.

2. The Respondent does not have any rights or legitimate interest in the Disputed domain names

The Complainant contends that the Respondent is not affiliated with or authorized by CREDIT AGRICOLE S.A. in any way. The Complainant contends that the Respondent has no rights or legitimate interests in respect of the Disputed domain names, 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 dealings with, the Respondent.

Neither license nor authorization has been granted to the Respondent to make any use of the Complainant's CREDIT AGRICOLE trademarks, or to apply for registration of the Disputed domain names in the name of the Complainant.

Furthermore, the website associated with the Disputed domain name <credit-agricole.email> displays a content highly similar to the official website of the Complainant. Indeed, the Respondent displays the Complainant's figurative trademarks and graphical identity guidelines. The website also displays a false account service connection page.

For their part, the Disputed domain names <5-credit-agricole.com>, <4-credit-agricole.com>, <3-credit-agricole.com>, <2-credit-agricole.com>, and <1-credit-agricole.com> display an index page with a link named "404.shtml" which redirects to the URL "http://credit-agricole.email/ which is associated with the Disputed domain name <credit-agricole.email>. These Disputed domain names were used for phishing activities.

For its part, <credit-agricole-mail.info> is currently inactive.

Panels have also found that an intention to divert or deceive Internet users by using the marks of others does not constitute a bona fide offering of goods and services or a legitimate noncommercial or fair use.

The registration of the Disputed domain names and the redirection is a clear case of phishing. It is agreed that acts of phishing do not constitute a bona fide offering of goods and services or a legitimate noncommercial or fair use.

Thus, the Complainant contends that the Respondent has no rights or legitimate interest on the Disputed domain name. Indeed, the Respondent has registered the Disputed domain name only in order to create a likelihood of confusion and for commercial gain.

Finally, past panels have held that using a domain name in a fraudulent scheme to deceive internet users into providing personal information is not a bona fide offering of goods and services nor a legitimate noncommercial or fair use.

Given the content of the website, it is clear that the Respondent was well aware of the Complainant's rights therein at the time it registered the Disputed domain name, and the Respondent registered it with the aim of creating such phishing website.

Therefore, the Complainant contends that the Respondent has no rights or legitimate interests in respect of the Disputed domain names.

3. The Disputed domain names have been registered and are being used in bad faith

Given the distinctiveness of the Complainant's trademarks and reputation, it is reasonable to infer that the Respondent has registered the Disputed domain names with full knowledge of the Complainant's trademarks. The Complainant also contends that the Respondent registered the Disputed domain names with the intention of taking advantage of the Complainant's trademarks.

The Disputed domain names have also been registered by the Respondent in an effort to take advantage of the goodwill the Complainant has built up in its CREDIT AGRICOLE trademarks, and to unduly benefit from creating a diversion of the internet users of the Complainant by pretending to be the official website of the Complainant.

The Complainant contends that the Respondent is attempting to pass itself off as the Complainant by using its CREDIT AGRICOLE registered trademarks in violation of the Policy. Panels have found such passing off to violate the Policy.

The Complainant therefore finds that the Respondent has registered the Disputed domain name in bad faith and has used the Disputed domain names to attract Internet users to its website by creating a likelihood of confusion with the Complainant's trademarks as to source, affiliation or endorsement, in the meaning of paragraph 4(b)(iv) of the Policy, and thus has acted in bad faith.

RESPONDENT:

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

Indeed, the Respondent's sole response consists of two emails, dated January 26, 2017 and January 30, 2017 respectively.

In these emails the wife of Mr. Phillippe, on his behalf, affirmed that neither she nor her husband have registered the Disputed domain names, and has unequivocally claimed they were not involved with the registration of the Disputed domain names.

In addition she affirmed they have received two letters from the Czech Arbitration Court (one was concerning case 101402) where her husband was indicated as the Respondent, and thus asked to be assured that it was not a scam considering they (she and her husband) did not own the Disputed domain names. In the second email, she stated: "… omissis … Neither he [the husband] nor I have any connection to or knowledge of the domain names listed in the complaints. On the advice of our lawyer, he will not be creating an account on the website listed in the letters as it is our opinion that these letters have been sent to him either in error or bad faith. … omissis …"

No further response followed.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the Disputed domain names are 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 names (within the meaning of paragraph 4(a)(ii)of the Policy).

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown the the Disputed domain names have been registered and are being used in bad faith (within the meaning of paragraph 4(a)(iii)of the Policy).

PROCEDURAL FACTORS

There are a number of procedural complications in this case. They are as follows:

(i) The Complainant filed the Complaint against William Phillippe;

(ii) William Phillippe (through his wife) claims he did not register the Disputed domain names;

(iii) The response to the complaint is not administratively compliant;

(iv) The Panel decided that an additional fee was due from the Complainant.

The Complaint was filed against "William Phillippe, 235 West 108th St #22, New York", i.e. the registrant listed in the WHOIS

database. Therefore, prima facie evidence suggests that "William Phillippe residing 235 West108th St #22, New York", registered the Disputed domain names.

Nevertheless, in the emails sent to the CAC on January 26 and 30, 2017 the wife of Mr. Phillippe, on his behalf, affirmed that neither her husband nor she has registered the Disputed domain names.

Indeed, she firmly and unequivocally claimed they were not involved with the registration of the Disputed domain names.

Owing to the above contrasting assertions and evidence the Panel, on the balance of probability, believes that the Registrant of the Disputed domain names may have registered them using the name and address of Mr. William Phillippe illegally.

As a result, the Panel will refer to the Respondent as the Registrant of the Disputed domain names and not to Mr. Phillippe, and will proceed to a decision accordingly. The Panel has in fact reached this conclusion on the premises that while the result of the proceeding will not be influenced by this decision, on the contrary, the name of Mr. Phillippe (who apparently is also a victim of the Registrant) could be affected.

Formal Deficiencies of the Response

There is no provision regulating the consequences for responses that do not meet the formal requirements comparable to paragraph 4(b) of the UDRP Rules for complaints. Whether and under what conditions responses are to be taken into account if they do not satisfy the formal requirements of paragraph 5 of the UDRP Rules has been determined differently by different panels. The majority of the panelists assume that they are entitled at their discretion to determine whether to consider responses which are formally incorrect (Young Genius Software AB v. MWD, James Vargas, WIPO Case No. D2000-0591 - <younggenius.com>).

A response has been taken into account if, inter alia:

- The respondent wrongly submitted the response to the complainant and ICANN, and not to the dispute resolution provider (See Oberoi Hotels Pvt. Ltd. v. Arun Jose, WIPO Case No. D2000-0263 - <tridenthotels.com>);

- The response was on time but was submitted in handwriting (See Cable News Network LP, LLP v. Manchester Trading, National Arbitration Forum Case No. FA 93634 - <cnnheadlinenews.com>);

- The response exceeded the limit on the number of words imposed by the Supplemental Rules (See Süd-Chemie AG v. tonsil.com, WIPO Case No. D2000-0376 – <tonsil.com>);

- The response was submitted by fax (See Veritas DGC Inc. v. The Collectors Source, National Arbitration Forum Case No. FA 94425 - <veritasdgc.org>).

Account was not taken of a response that was merely submitted by email (See William Hill Organisation Limited v. Seven Oaks Motoring Centre, WIPO Case No. D2000 – 0824 - <williamhill.org>).

In this case, the Panel finds that the fact that the Respondent’s response was submitted solely via email does not prejudice the Complainant and therefore, at its discretion, accepts the Response.

Indeed, the Panel, having regard to the information available and the circumstances of the case, finds that it is fair to give the named Respondent the chance to present his case and, as will be shown in the following section, this is not detrimental to the Complainant’s case. On the contrary, the assertions made by the wife of Mr. Phillippe reinforce the Complainant’s claims regarding bad faith registration of the Disputed domain names.

The Panel’s decision that an additional fee was due from the Complainant is principally motivated by the fact that it is this Panel’s opinion that cases that present circumstances such as those at issue cannot be treated in a simplified decision.

In view of all of the above, 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

Discussion and findings
Paragraph 15(a) of the Rules instructs the Panel as to the principles the Panel is to use in determining the dispute: “A Panel shall decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable.”
Paragraph 4(a) of the Policy lists three elements that Complainant must prove to merit a finding that the domain name registered by the Respondent be transferred to the Complainant:

1) the 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 domain name; and

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

A. Identical or Confusingly Similar

The Complainant has established rights in the CREDIT AGRICOLE trademark.

The Complainant contends that the addition at the beginning of the Disputed domain names of the numbers 1, 2, 3, 4, or 5 separated from the trademark by a hyphen, with the use of the gTLD “.com”, or using the word “mail” at the end of the Disputed domain name for <credit-agricole-mail.info> with the gTLD “.info”, are not sufficient elements to escape the conclusion that the Disputed domain names are confusingly similar to the Complainant's trademarks .

This Panel is of the opinion that the addition in the Disputed domain names of generic terms and/or numbers does not diminish the confusing similarity with the Complainant’s trademark.

The Panel finds all the Disputed domain names to be confusingly similar to the CREDIT AGRICOLE trademark in which the Complainant has rights.

Accordingly, the Complainant has, to the satisfaction of the Panel, shown that the Disputed domain names are identical and/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).

B. Rights or Legitimate Interests

Complainant must show that Respondent has no rights or legitimate interests in respect of the Disputed domain names.

Respondent in a UDRP proceeding does not assume the burden of proof, but may establish a right or legitimate interest in a Disputed domain name by demonstrating in accordance with paragraph 4(c) of the Policy:

a) that before any notice to the Respondent of the dispute, he or she used or made 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;

b) that the respondent is commonly known by the domain name, even if he or she has not acquired any trademark rights; or

c) that the respondent is making a legitimate, non-commercial or fair use of the domain name without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark.

This Panel finds that the Complainant has made a prima facie case that the Respondent does not have rights or legitimate interests in the Disputed domain names. The Respondent has no connection or affiliation with the Complainant, and the Complainant has not licensed or otherwise authorized the Respondent to use or register any domain name incorporating the Complainant's trademark. The Respondent does not appear to engage in any legitimate noncommercial or fair use of the Disputed domain names, nor any use in connection with a bona fide offering of goods or services. In addition, the Respondent does not appear to be commonly known by the Disputed domain names or by a similar name. Moreover, the Respondent has not replied to the Complainant's contentions, claiming any rights or legitimate interests in the Disputed domain names.

Finally, it is this Panel's opinion that the Complainant and its CREDIT AGRICOLE marks enjoy a widespread reputation and high degree of recognition in their field of activity. Consequently, in the absence of contrary evidence from the Respondent, the CREDIT AGRICOLE marks are not ones that traders could legitimately adopt other than for the purpose of creating an impression of an association with the Complainant.

This is especially true considering that the Respondent has been using six of the Disputed domain names to redirect to the Disputed domain name <credit-agricole.email> which displays content highly similar to that of the official website of the Complainant, including the Complainant's figurative trademarks and graphical identity guidelines. The Website also displays a false account service connection page.

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 names (within the meaning of paragraph 4(a)(ii)of the Policy).

C. Registered and Used in Bad Faith

For the purpose of paragraph 4(a)(iii) of the Policy, the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

i) circumstances indicating that the holder has registered or has acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant who is the owner of the trademark or service mark or to a competitor of that Complainant, for valuable consideration in excess of the holder's documented out-of-pocket costs directly related to the domain name; or

ii) the holder has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the holder has engaged in a pattern of such conduct; or

iii) the holder has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
iv) by using the domain name, the holder has intentionally attempted to attract, for commercial gain, Internet users to the holder's web site or other online location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the holder's web site or location or of a product or service on the holder's web site or location.

Accordingly, for a Complainant to succeed, the Panel must be satisfied that the domain name has been registered and is being used in bad faith.

Based on the evidence put forward by the Complainant, the Panel is of the opinion that the Respondent was aware of the Complainant's trademark registrations and rights to the CREDIT AGRICOLE mark when it registered the Disputed domain names.

The Respondent's knowledge of the CREDIT AGRICOLE mark is particularly obvious, given the renown it has acquired in its own field of activity and the Respondent's attempt to pass itself off as the Complainant.

In fact it appears that the Respondent intentionally attempted to attract Internet users to his own website by misleading them into believing the website www.credit-agricole.email was operated by, authorized by and/or connected to the Complainant. By so deflecting Internet users, the Respondent has shown bad faith registration and use of the Disputed domain names that clearly falls within the example given in paragraph 4(b)(iv) of the Policy.

The contents of the above website are moreover clear evidence that Respondent was aware of the Complainant's rights and activity when he registered the Disputed domain names and corresponding website.

In view of the above, the Panel, in accordance with previous decisions issued under the UDRP, finds that the Respondent knew of the Complainant's marks and intentionally intended to create an association with the Complainant and its business at the time of registration of the Disputed domain names.

Moreover the Panel notes the following:

The Disputed domain names were registered through Contact Privacy Inc., a company offering a privacy registration service. As established in many previous decisions, the use of a privacy registration service is not per se an indication of bad faith. However, the manner in which such a service is used can in certain circumstances constitute a factor indicating bad faith. It is this Panel's opinion that when it is combined with other elements such as the registration of a domain name corresponding to and/or containing a renowned third-party trademark, the use of a privacy shield is, on the balance of probability, to be considered an inference of bad faith registration and use of the Disputed domain name.

The Respondent also appears to have registered other domain names incorporating the Complainant's trademark, thus deliberately targeting the Complainant. This pattern of conduct clearly demonstrates bad faith on the part of the Respondent.

The Panel finds the Respondent's use of the Disputed domain names for phishing and to pass itself off as the Complainant are further evidence of bad faith registration and use under paragraph 4(b)(iv) of the Policy.

Finally, it appears that the Respondent, when registering the Disputed domain names, provided false contact details, i.e. the name and address of Mr. Phillippe. This is another element from which bad faith registration and use of the Disputed domain names can be inferred.

The Complainant has, to the satisfaction of the Panel, shown the Disputed domain names have been registered and are being used in bad faith (within the meaning of 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. **CREDIT-AGRICOLE.EMAIL**: Transferred
2. **5-CREDIT-AGRICOLE.COM**: Transferred
3. **4-CREDIT-AGRICOLE.COM**: Transferred
4. **3-CREDIT-AGRICOLE.COM**: Transferred
5. **2-CREDIT-AGRICOLE.COM**: Transferred
6. **1-CREDIT-AGRICOLE.COM**: Transferred
7. **CREDIT-AGRICOLE-MAIL.INFO**: Transferred

PANELLISTS

Name	**Dr. Fabrizio Bedarida**

DATE OF PANEL DECISION 2017-02-16

Publish the Decision