

Decision for dispute CAC-UDRP-104372

Case number	CAC-UDRP-104372
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Time of filing	2022-02-23 08:50:13
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Domain names	auxifip-groupe.com
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Case administrator

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

Organization	CREDIT AGRICOLE LEASING & FACTORING S.A.
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Complainant representative

Organization	NAMESHIELD S.A.S.
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Respondent

Organization	1987
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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 has submitted evidence, which the Panel accepts, showing that it is the registered owner of the following:

- the French trademark AUXIFIP (registration n° 4722602) dated January 18, 2021.

Moreover, the Complainant is also the owner of the domain names bearing the sign "AUXIFIP" such as the domain names <AUXIFIP.COM>.

FACTUAL BACKGROUND

The Complainant, CREDIT AGRICOLE LEASING & FACTORING, is a major leasing and factoring player though France and in Europe. It employs 2,392 people and has around 215,000 customers.

The Complainant holds the trademark registration "AUXIFIP" and domain name bearing "AUXIFIP".

On August 31, 2021; the Respondent registered the disputed domain name <auxifip-groupe.com>. Although the disputed domain name was used before the filing of the complaint as seen in the provided evidence, it is currently inactive.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

1. THE DISPUTED DOMAIN NAME IS CONFUSINGLY SIMILAR

The Complainant explains that the disputed domain name is confusingly similar to the Complainant's trademark "AUXIFIP" as it bears the Complainant's "AUXIFIP" trademark as a whole with the addition of the generic term "GROUPE" (for "GROUP") and a hyphen which is not sufficient to avoid likelihood of confusion. The Complainant states that the GTLD is viewed as a standard registration requirement and as such is disregarded.

The Complainant refers to earlier panel decisions including *Dr. Ing. h.c. F. Porsche AG v. Vasiliy Terkin* WIPO Case No. D2003-0888, "a domain name that wholly incorporates a Complainant's registered trademark may be sufficient to establish confusing similarity for purposes of the UDRP", as well as, *Gardline Surveys Ltd v. Domain Finance Ltd.* Forum Case No. FA 153545, "the addition of a top-level domain is irrelevant when establishing whether or not a mark is identical or confusingly similar, because top-level domains are a required element of every domain name."

2. NO RIGHTS OR LEGITIMATE INTERESTS IN RESPECT OF THE DISPUTED DOMAIN NAME

The Complainant states that the Respondent has no rights on the disputed domain name as the Respondent is not known as the disputed domain name and as the Respondent does not hold any trademark for "AUXIFIP".

The Complainant also states that the Respondent is neither affiliated nor authorized by the Complainant in any way.

Moreover, the Complainant alleges that neither license nor authorization has been granted to the Respondent to use the Complainant's trademark "AUXIFIP".

The Complainant argues that the Respondent is not using the disputed domain name in connection with bona fide offering of goods or services or a legitimate non-commercial or fair use, as it was offering loan services in competition with the services provided by the Complainant and those covered by its trademark.

3. THE DISPUTED DOMAIN NAME WAS REGISTERED AND IS USED IN BAD FAITH

The Complainant indicates that the Respondent intentionally registered a domain name identical to Complainant's trademark in order to attract users to its website for commercial gain by using the Complainant's mark as to the source, sponsorship, affiliation or endorsement.

The Complainant argues that "AUXIFIP" trademark consists of a distinctive word without any signification and the Respondent, who is French, reasonably knows the existence of "AUXIFIP" trademark belonging to the Complainant.

The Complainant asserts that considering the distinctiveness and reputation of the Complainant's trademark, the Respondent knew about the Complainant and its rights before the registration of the disputed domain name. Besides, the Complainant states that the disputed domain name was used to redirect the users to a website providing financial services such as consumer loans, which are in competition with the services offered by the Complainant, and those covered by the trademark.

The Complainant states that the disputed domain name is not being used for any bona fide offering and this fact, not being used of the disputed domain name, alone is sufficient to prove the bad faith of the Respondent according to many Forum decisions. Accordingly, the Complainant alleges that the disputed domain name was registered and is being used in bad faith.

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

Paragraph 15 of the Rules provides that the Panel is to decide the Complaint on the basis of the statements and documents submitted and in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable. In this context, the Panel also notes that the burden of proof is on the Complainant to make out its case and past UDRP panels have consistently said that a Complainant must show that all three elements of the Policy have been made out before any order can be made to transfer a domain name.

For the Complainant to succeed it must prove, within the meaning of paragraph 4(a) of the Policy, that:

- A. the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- B. the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- C. the disputed domain name has been registered and is being used in bad faith.

The Panel will therefore deal with each of these requirements in turn.

A. IDENTICAL OR CONFUSINGLY SIMILAR

The Policy simply requires the Complainant to demonstrate that the disputed domain name is identical or confusingly similar to a trademark in which the Complainant has rights. The Panel is satisfied that the Complainant is the owner of registration of “AUXIFIP” trademark.

The Panel finds that the disputed domain name is confusingly similar to the Complainant’s “AUXIFIP” trademark and the addition of the non-distinctive word “GROUPE” along with a hyphen is not sufficient to vanish the similarity.

Moreover, the addition of the gTLD “.COM” is not enough to abolish the similarity.

The Panel is of the opinion that the Internet users will easily fall into false impression that the disputed domain name is an official domain name of the Complainant. The Panel recognizes the Complainant’s rights and concludes that the disputed domain name is confusingly similar with the Complainant’s trademark. Therefore, the Panel concludes that the requirements of paragraph 4(a) (i) of the Policy is provided.

B. NO RIGHTS OR LEGITIMATE INTERESTS

Under paragraph 4(a)(ii) of the Policy, the complainant has the burden of establishing that the respondent has no rights or legitimate interests in respect of the domain name.

It is open to a respondent to establish its rights or legitimate interests in a domain name, among other circumstances, by showing any of the following elements:

- (i) before any notice to the respondent of the dispute, the use or making 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) the respondent of the dispute (as an individual, business, or other organization) has been commonly known by the domain name, even if it has acquired no trademark or service mark rights; or
- (iii) the respondent of the dispute is making a legitimate non-commercial or fair use of the domain name, without an intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

Thus, if the respondent proves any of these elements or indeed anything else that shows that it has a right or legitimate interest in the disputed domain name, the complainant will have failed to discharge its burden of proof and the complaint will fail. The burden is on the complainant to demonstrate a prima facie case that the respondent does not have rights or legitimate interests in the disputed domain name. Once the complainant has made out a prima facie case, then the respondent may, inter alia, by showing one of the above circumstances, demonstrate rights or legitimate interests in the disputed domain name.

The Complainant contends that the Respondent has nothing to do with the Complainant and any use of the trademark “AUXIFIP” has to be authorized by the Complainant and there is no such authorization. Moreover, the disputed domain name has no relation with the Respondent and the Respondent is not commonly known as the disputed domain name.

In the absence of a response, the Panel accepts the Complainant's allegations as true that the Respondent has no authorization to use the Complainant's trademark in the disputed domain name.

Hence, as the Complainant has made out its prima facie case, and as the Respondent has not demonstrated any rights or legitimate interests as illustrated under paragraph 4(c) of the Policy, nor has the Panel found any other basis for finding any rights or legitimate interests of the Respondent in the disputed domain name, the Panel concludes that the Complainant has satisfied the requirements of paragraph 4(a)(ii) of the Policy.

C. BAD FAITH

The Panel concludes that the Complainant's "AUXIFIP" trademark is of distinctive character. Therefore, the Panel is of the opinion that due to the earlier rights of the Complainant in the "AUXIFIP" trademark, the Respondent, was aware of the Complainant and its trademark at the time of registration of the disputed domain name (see e.g., *Ebay Inc. v. Wangming*, WIPO Case No. D2006-1107). Referring to *Parfums Christian Dior v. Javier Garcia Quintas and Christiandior.net*, WIPO Case No. D2000-0226, the Panel believes that the awareness of the Complainant's trademark at the time of the registration of the disputed domain name is to be considered an inference of bad faith registration.

Moreover, although the link <auxifip-groupe.com> is currently inactive, it was put into use at least on 17.02.2022. It shows that the provided services were financial and in competition with the services covered by the Complainant's trademark and its area of activity. Therefore, the Panel concludes that the Respondent's use of the domain name is to provide services which directly in competition with the Complainant's business and which does not constitute a bona fide offering of services pursuant to paragraph 4(c)(i) of the Policy or a legitimate non-commercial or fair use pursuant to paragraph 4(c)(iii) of the Policy (see e.g., *Forum Case No. FA 1659965, General Motors LLC v. MIKE LEE*).

In addition, the Panel concludes that the Respondent's use of the disputed domain name for operating a competing website also disrupted the Complainant's business. The Panel finds that Respondent has registered and used the disputed domain names in bad faith according to paragraph 4(b)(iii) of the Policy (see e.g., *Forum Case No. FA 768859, Instron Corporation v. Andrew Kaner c/o Electromatic a/k/a Electromatic Equip't*).

Lastly, the Panel also concludes that the Respondent registered and used the domain name to attract Internet users to its website by creating confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Complainant's website to a competing website, which includes the identical trademark with the non-distinctive word GROUPE as if referring to the company, pursuant to paragraph 4(b)(iv) of the Policy. This is evidence of bad faith. (see e.g., *Forum Case No. 94864, Southern Exposure v. Southern Exposure, Inc.*).

Therefore, in light of the above-mentioned circumstances in the present case, the Panel finds that the disputed domain name has been registered and is being used in bad faith and that the Complainant has established the third element under 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. **AUXIFIP-GROUPE.COM**: Transferred

PANELLISTS

Name	Mrs Selma Ünlü
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DATE OF PANEL DECISION	2022-04-04
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Publish the Decision
