Decision for dispute CAC-UDRP-102843

Case number	CAC-UDRP-102843
Time of filing	2020-01-02 09:41:29
Domain names	creditagricolepodcast.com

Case administrator

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

Complainant

Organization	CREDIT AGRICOLE S.A.

Complainant representative

Organization	Nameshield (Enora Millocheau)

Respondent

Organization	Negotiation Matters Inc.

OTHER LEGAL PROCEEDINGS

The Panel is not aware of other legal proceedings related to the disputed domain name.

IDENTIFICATION OF RIGHTS

Complainant is the owner of the following trademark registrations:

- European registration CREDIT AGRICOLE® no. 006456974 registered since November 13, 2007;

- International registration CREDIT AGRICOLE® no. 1064647 registered since January 4, 2011.

FACTUAL BACKGROUND

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

The Complaint in the present case was submitted on December 27, 2019. The Complainant states that it is the leader in retail banking in France and one of the largest banks in Europe.

The Complainant is the owner of the trademarks CREDIT AGRICOLE and this mark has become very widely known around the world over a number of decades. It is also the owner of certain domain names that incorporate its trademark including <credit-agricole.com> which was created on December 31, 1999.

On December 20, 2019, the Respondent registered the domain name <creditagricolepodcast.com>.

The Complainant states that the disputed domain name redirects to the website https://www.negotiationmatters.com/ which displays the message “404 PAGE INTROUVABLE” (which means “404 PAGE NON FOUND”).

The disputed domain name is confusingly similar to the Complainant’s trademarks as it incorporates the entirety of the CREDIT AGRICOLE name and merely adds the descriptive term „podcast“ plus the .com TLD. Further, there is no website that resolves from the disputed domain name, the Respondent has no rights or legitimate interests in the disputed domain name as it is not authorized to use the Complainant’s trademark, it is not commonly known by the name, and it is not making a bona fide or fair use of the domain name. Further, as there is no resolving website from the disputed domain name and the Complainant’s trademark enjoys a strong reputation, it is not possible to conceive of any plausible actual or contemplated active use of the disputed domain name by the Respondent that would not be illegitimate.

PARTIES CONTENTIONS

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 not shown, 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

Trademark Rights and Identity or Confusing Similarity:

Sufficient evidence has been submitted by the Complainant of its trademark rights in the phrase CREDIT AGRICOLE for various goods and services including banking and other financial services. Further, the Complainant is the owner of the <creditagricole.com> domain name that incorporate its trademark. All of the above were created and registered prior to the December 20, 2019 creation date of the disputed domain name. As such, the Panel finds that the Complainant possesses rights in its CREDIT AGRICOLE trademark.

Next, UDRP panels have consistently held that where the asserted trademark is recognizable within a disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) does not prevent a finding of confusing similarity under paragraph 4(a)(i) of the Policy. See, e.g., LEGO Juris A/S v. DBA David Inc/ DomainsByProxy.com, Case No. D2011-1290 (WIPO, September 20, 2011) („the mere addition of the words ‚Ninjago‘ and ‚Kai‘ is not sufficient to exclude the likelihood of confusion between the disputed domain name and the Complainant’s trademark.“).

In the present case, the disputed domain name consists of the CREDIT AGRICOLE trademark plus the term „podcast“. The

use of this descriptive term does not, in this case, reduce the confusing similarity between the disputed domain name and the Complainant's trademark. Bloomberg Finance L.P. v Timothy Cherep, Clalim No. FA 1599840 (FORUM, February 16, 2015) („the Panel finds that the <bloombergpodcasts.com> domain name is confusingly similar to Complainant's BLOOMBERG mark.").

In light of the above, the Panel concludes that the Complainant possesses rights to the CREDIT AGRICOLE trademark and that the disputed domain name is confusingly similar to such mark under Paragraph 4(a)(i) of the Policy.

Rights or Legitimate Interests:

Paragraph 4(a)(ii) of the Policy directs an examination of the facts to determine whether a respondent has rights or legitimate interest in the disputed domain name. Paragraph 4(c) lists a number of ways in which a respondent may demonstrate that it does have such rights or interests.

The first example, under Paragraph 4(c)(i), is where "before any notice to you of the dispute, your use of, or 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". The lack of any website content or other use cannot, by definition, constitute a bona fide offering of goods or services and, thus, cannot support a claim of any rights or legitimate interests in a domain name. Guess IP Holder L.P. and Guess, Inc. v. xi long chen, FA 1786533 (FORUM June 15, 2018) ("The disputed domain name resolves to a parked [inactive] page with the message, ‚website coming soon!' The Panel finds that this use does not amount to a bona fide offering or good or services or a legitimate noncommercial or fair use per paragraph 4(c)(i) & (iii) of the Policy and Respondent does not have rights or legitimate interests with respect of the domain name.") Here, the disputed domain name does not resolve to any substantive website content as shown by the screenshot submitted into evidence by the Complainant. This Panel finds that there is no evidence of record to indicate that the Respondent is using the disputed domain name in connection with the making of a bona fide offering of goods or services.

The second example, under Paragraph 4(c)(ii), is a scenario in which a respondent is commonly known by the disputed domain name. See, Skechers U.S.A., Inc. and Skechers U.S.A., Inc. II v. Chad Moston / Elite Media Group, Case No. FA 1781783 (FORUM, May 11, 201) ("Here, the WHOIS information of record identifies Respondent as ‚Chad Moston / Elite Media Group.' The Panel therefore finds under Policy 4(c)(ii) that Respondent is not commonly known by the disputed domain name under Policy 4(c)(ii).") Complainant has made an unrebutted prima facie case showing that the name used by the Respondent for the disputed domain name, as revealed by the concerned registrar, is „Negotiation Matters Inc." This name does not bear any similarity to the words CREDIT AGRICOLE. There is no other evidence in the record to suggest that the Respondent is commonly known by the disputed domain name, that it is licensed or otherwise authorized to use the Complainant's trademark, or that it has acquired any trademark rights relevant thereto. As such, this sub-section of the Policy is of no help to the Respondent.

As to the third example, under Paragraph 4(c)(iii) of the Policy, there is no evidence that the Respondent is making a legitimate non-commercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the CREDIT AGRICOLE trademark. A domain name that does not resolve to any website content typically is not being used in a manner that fits within Paragraph 4(c)(iii). See, Ashley Furniture Industries, Inc. v. Joannet Macket / JM Consultants, Case No. FA 1773444 (FORUM, March 23, 2018) ("The Panel finds that Respondent's lack of content at the disputed domain shows the lack of a bona fide offering of goods or services or a legitimate noncommercial or fair use per Policy 4(c)(i) and (iii).") As the disputed domain name in this case does not resolve to any substantive website content, this does not rebut the assertion that its use is not fair as the lack of any substantive content at its website does not fit in to any accepted category of fair use such as news reporting, commentary, political speech, education, nominative or generic use, etc.

In light of the above analysis, and with no Response or other submission in this case to rebut the Complainant's assertions, this Panel finds that the facts of this case do not demonstrate that the Respondent has any rights or legitimate interest in any of the disputed domain name under Paragraph 4(a)(ii) of the Policy.

Bad Faith:

Finally, the Complainant must prove, by a preponderance of the evidence, that the disputed domain name has been registered and used in bad faith under paragraph 4(a)(iii) of the Policy. Hallmark Licensing, LLC v. EWebMall, Inc., Case No. D2015-2202 (WIPO, February 12, 2016) ("The standard of proof under the Policy is often expressed as the ‚balance of the probabilities' or ‚preponderance of the evidence' standard. Under this standard, an asserting party needs to establish that it is more likely than not that the claimed fact is true.")

The Complainant first asserts that the Respondent was on actual notice of the CREDIT AGRICOLE trademark at the time it registered the disputed domain name because of the strong reputation of the mark. The Complainant provides some evidence of its claimed reputation including a screenshot of a page from its <www.credit-agricole.com> website, printouts for its above-mentioned trademark registrations, and screenshots of a Google search for the words „credit agricole", the results of which all refer to the Complainant and its banking aktivity. The Panel further notes that the mark has been found to be well-known by a prior Panel. See CREDIT AGRICOLE SA v. alexadra jean paris, Case No. 101964 (CAC, May 22, 2018) ("The Complainant is a well-known bank with global presence […]. The Panel has no doubt that Complainant's Trademarks are well known around the world"). The trademark is also rather distinctive and, with no explanation or submission from the Respondent, this Panel concludes that it is more likely than not that the words CREDIT AGRICOLE are used in the disputed domain name with knowledge of the Complainant's trademark rights.

Next, in support of its claim that the Respondent registered and uses the disputed domain name in bad faith, the Complaint asserts that „the disputed domain name redirects to the website https://www.negotiationmatters.com/ which displays the message ‚404 PAGE INTROUVABLE' (which means ‚404 PAGE NON FOUND')". The Complainant contends that the Respondent has not demonstrated any activity in respect of the disputed domain name, and specifically asserts that „it is not possible to conceive of any plausible actual or contemplated active use of the domain name by the Respondent that would not be illegitimate, such as by being a passing off, an infringement of consumer protection legislation, or an infringement of the Complainant's rights under trademark law."

Complainant cites the seminal case of Telstra Corp Ltd v. Nuclear Marshmallows, Case No. D2000-0003 (WIPO, February 18, 2000) and points out that, in a case where no use has been made of a disputed domain name, relevant circumstances were held to include: the strong reputation of Complainant's trademark and its use internationally; and the Respondent's failure to provide evidence of any actual or contemplated good faith use by it of the domain name." While these circumstances do exist here, this Panel is not satisfied that they conclude the investigation in the present case.

A further factor considered by prior Panel is the length of time that has passed between the registration of a disputed domain name and the filing of a complaint. Prior panels have found that the passage of only a short period of time may counsel against a finding of bad faith when all of the other circumstances of the situation are taken into account. For example, in a case where the disputed domain name redirected users to a parking page and the name had been registered for a short period of time, one Panel noted that "[s]uch facts alone do not indicate bad faith." Intesa Sanpaolo S.p.A. v. Xavier Dylan, 102599 (CAC, September 10, 2019). That decision went on to hold that "[i]t is not, in the Panel's opinion, indicative of bad faith for a domain name registrant to fail to immediately direct the disputed domain name to an active page within a few months of registration." Id. See also, Lagardere SCA v. Jie Ke, Case No. D2018-2182 (WIPO, November 1, 2018) ("A three-month period of passive holding, in and of itself, may generally be too short to constitute bad faith use."); Citadel Enterprise Americas LLC and its related entity KCG IP Holdings LLC v Kannan Murali / Digital Intelligence LLC, Claim No. FA 1819680 (FORUM, December 31, 2018) (where the disputed domain name was registered within a few months of the complaint, the Panel stated that "[w]hile there is no specific minimum time period required to support an inference of bad faith based upon passive holding, a longer period of inactivity would provide stronger support for such an inference.")

Even the two cases cited by Complainant in support of its position involved significant spans of time during which a disputed domain name was not used. Telstra Corporation Limited v. Nuclear Marshmallows, supra., (over 13 months of non-use); Compaq Computer Corporation v. Boris Beric, Case No. D2000-0042 (WIPO, March 30, 2000) (approximately 12-18

months of non-use of the two disputed domain names).

As noted above, the disputed domain name was registered on December 20, 2019. The present Complaint was filed on December 27, 2019 – a mere seven days later.* This is quite premature under the circumstances of this case. No other evidence is submitted here to support the Respondent's bad faith such as an effort to sell the disputed domain name, use of a typographical variation on the Complainant's mark, a pattern of past cybersquatting activity, providing false Whois contact information, etc. As such, the Panel is not prepared to find that Complainant's burden of proving bad faith by a preponderance of the evidence had been met solely upon a showing that no use has been made of the disputed domain name for seven days.

In light of the above analysis, this Panel declines to find, at present, that the Respondent has registered and uses the disputed domain name in bad faith. It does, however, make this determination without prejudice to the Complainant filing a new complaint at some time in the future if the facts of this matter should then support a conclusion that the Respondent did act in bad faith.

For all the reasons stated above, the Complaint is denied WITHOUT PREJUDICE.

* The Panel further notes that the Complainant made no attempt to communicate with the Respondent and informally asserts its claim prior to filing the present Complaint. While this is certainly not required in order to succeed in a UDRP complaint, it is often a sound practice and the Respondent's phone number and e-mail address are plainly visible on the https://www.negotiationmatters.com/ page which was viewed by Panel on its own initiative.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Rejected

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

1. **CREDITAGRICOLEPODCAST.COM**: Remaining with the Respondent

PANELLISTS

Name	**Steven M. Levy, Esq.**

DATE OF PANEL DECISION 2020-01-30

Publish the Decision