

Decision for dispute CAC-UDRP-105286

Case number	CAC-UDRP-105286
Time of filing	2023-03-16 09:38:51
Domain names	app-web-ca-assurances.site

Case administrator

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

Organization	CREDIT AGRICOLE
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Complainant representative

Organization	NAMESHIELD S.A.S.
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Respondent

Name	Ferrer Norbert
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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

In this proceeding the Complainant relies on the following trademark registrations with the "CA" word element:

- The French trademark registration "CA" (figurative) No. 1381908, date of filing is November 28, 1986;
- The French trademark registration "CA" (figurative) No. 3454608, date of filing is October 5, 2006; and
- The International trademark registration "CA" (figurative) No. 933604, registration date is March 23, 2007 and effective inter alia in Switzerland, China, the Czech Republic, Vietnam, the European Union and the US.

The Complainant also refers to domain names owned by the Complainant that incorporate its "CA" trademark, including <ca-assurances.com> used by one of the Complainant' subsidiaries.

FACTUAL BACKGROUND

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

THE DISPUTED DOMAIN NAME IS IDENTICAL OR CONFUSINGLY SIMILAR TO A TRADEMARK OR SERVICE MARK IN WHICH THE COMPLAINANT HAS RIGHTS

The Complainant claims that it is the leader in retail banking in France and one of the largest banks in Europe. It assists its clients' projects in France and around the world, in all areas of banking and related areas: insurance management, asset leasing and factoring, consumer credit, corporate and investment.

Complainant's subsidiary CREDIT AGRICOLE ASSURANCES is the first insurance group in France with consolidated revenues of 37 billion euros in 2021.

The disputed domain name was registered on March 7, 2023 and redirects to a parking page.

The Complainant asserts that the disputed domain name is confusingly similar to its trademarks.

The Complainant contends that the addition of the generic terms "APP", "WEB" and especially "ASSURANCES" (that refers to the Complainant's activity) is not sufficient to escape the finding that the disputed domain name is confusingly similar to the trademark. It does not change the overall impression of the designation as being connected to the Complainant's trademark. It does not prevent the likelihood of confusion between the disputed domain name and the Complainant's trademark. The gTLD suffix does not play a role in assessing confusing similarity.

The Complainant also refers to previous UDRP decisions by CAC panels that confirm Complainant's rights over the term "CA": CAC Case No. 102757, CREDIT AGRICOLE S.A. v. joe terry <ca-1f.com>; CAC Case No. 102758, CREDIT AGRICOLE S.A. v. shun peter <ca-if.com>.

THE RESPONDENT HAS NO RIGHTS OR LEGITIMATE INTERESTS IN RESPECT OF THE DISPUTED DOMAIN NAME

The Complainant alleges that the Respondent is not identified in the Whois database as the disputed domain name.

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name and he is not related in any way with the Complainant. The Complainant does not carry out any activity for, nor has any business with the Respondent.

Neither license nor authorization has been granted to the Respondent to make any use of the Complainant's trademark "CA" or apply for registration of the disputed domain name by the Complainant.

The disputed domain name points to a parking page.

The Complainant contends that the Respondent did not make any use of the disputed domain name since its registration, and it confirms that the Respondent has no demonstrable plan to use the disputed domain name.

Therefore, the Complainant contends that the Respondent has no right or legitimate interest in respect of the disputed domain name.

THE DISPUTED DOMAIN NAME WAS REGISTERED AND BEING USED IN BAD FAITH

The Complainant's submissions on the bad faith element of the UDRP can be summarized as follows:

- The Complainant alleges that the "CA" term is the acronym of "CREDIT AGRICOLE" and has been used for years. Moreover, the addition of the term "ASSURANCES" to the acronym "CA" cannot be a coincidence, as it directly refers to the Complainant.
- The Complainant contends that it is inconceivable that the Respondent could have registered the disputed domain name without actual knowledge of Complainant's rights in the trademark.
- The disputed domain name resolves to a parking page. The Complainant contends that the Respondent has not demonstrated any activity in respect of the disputed domain name, and 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, such as by being a passing off, an infringement of consumer protection legislation, or an infringement of the Complainant's rights under trademark law.
- Prior UDRP panels have held, the incorporation of a famous mark into a domain name, coupled with an inactive website, may be evidence of bad faith registration and use.

Therefore, the Complainant claims the disputed domain name was registered and being used in bad faith.

PARTIES CONTENTIONS

The Complainant's contentions are summarized in the Factual Background section above.

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

A. Identical or confusingly similar

The Complainant owns a number of figurative trademarks protected in various jurisdictions throughout the world with the "CA" element.

As confirmed by the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition" ("WIPO Overview 3.0"): "Where the complainant holds a nationally or regionally registered trademark or service mark, this prima facie satisfies the threshold requirement of having trademark rights for purposes of standing to file a UDRP case" (see par. 1.2.1).

The Complainant provided proof of only figurative marks registration. As noted by WIPO Overview 3.0: "trademark registrations with design elements would prima facie satisfy the requirement that the complainant show "rights in a mark" for further assessment as to confusing similarity. However where design elements comprise the dominant portion of the relevant mark such that they effectively overtake the textual elements in prominence, or where the trademark registration entirely disclaims the textual elements, panels may find that the complainant's trademark registration is insufficient by itself to support standing under the UDRP".

The Complainant's registrations contain the "CA" word element that is represented in an original manner yet is clearly visible and the design elements do not effectively overtake the textual "CA" portion of the Complainant's marks.

Therefore, the Panel finds the Complainant has rights in the "CA" mark.

The next question is whether the disputed domain name is confusingly similar to the Complainant's "CA" marks.

The confusing similarity test for the purpose of the first element assessment is rather straightforward, namely: "whether the mark is recognizable within the disputed domain name and this test typically involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name...In specific limited instances, while not a replacement as such for the typical side-by-side comparison, where a panel would benefit from affirmation as to confusing similarity with the complainant's mark, **the broader case context may support a finding of confusing similarity...**" (see par. 1.7 of WIPO Overview 3.0).

The Complainant refers to previous decisions of UDRP panels that supported Complainant's rights in the "CA" marks.

However, when the Complainant's mark consists of only two (2) letters and the disputed domain name (second level) consists of eighteen (18) letters, the analysis is more complicated.

The 2 cases referred to by the Complaint involved much simpler analysis of confusing similarity with the "CA" marks as the disputed domain names were: <ca-1f.com> (CAC Case No. 102757) and <ca-if.com> (CAC Case No. 102758).

The other Panel in CAC Case No. 101840 denied the complaint based on the absence of confusing similarity and noted: "The Panel is comfortable to state that, two-letter marks have, in general, low distinctiveness (NB: the few exceptions that exist are confirming the rule). What is more, the abbreviation "CA" can be found on simple word searches on the web to mean many different things, such as Canada, California, Chartered Accountant, etc...".

However, this Panel notes that the present dispute is different from the CAC dispute No. 101840 since in the dispute CAC No. 101840 the Complainant seemed to have relied only on its "Credit Agricole" marks or "CA" marks coupled with the "Credit Agricole" terms, rather than just "CA" marks alone.

Moreover, the disputed domain name in the present dispute besides the "CA" mark also contains the word "assurances". The word "assurances" ("insurance" in French) indicates connection between the disputed domain name and the Complainant, its trademarks and its business, in particular, taking account the domain name <ca-assurances.com> owned by the Complainant and used by Complainant's subsidiary.

The other textual elements of the disputed domain name include the descriptive terms "app" and "web".

All the textual elements in the disputed domain name are separated by a hyphen making them distinct and separate and the disputed domain name is perceived as a combination of various terms/elements ("app+web+ca+assurances") rather than a single word.

The term "ca" is perceived on its own and in combination with the term "assurances" creates an association of being connected to the Complainant and its trademark.

The Panel believes that the present dispute, due to the composition of the disputed domain name and facts of the case, requires analysis of the broader context as provided in par. 1.7 of the Overview 3.0.

Since the "CA" term combined with the term "assurances" clearly refers to the Complainant and the addition of the two descriptive terms <app> and <web> does nothing to eliminate confusing similarity, the Panel finds the disputed domain name, taking into account all of the above, is confusingly similar to the Complainant's "CA" trademarks.

The gTLD <.site> is to be disregarded under the confusing similarity test as it does nothing to eliminate confusion.

Therefore, the Panel finds that the first requirement of the Policy has been satisfied.

B. Rights or Legitimate Interests

The general rule is the following:

- (i) a complainant is required to make out a prima facie case that the respondent lacks rights or legitimate interests; and
- (ii) once such prima facie case is made, the burden shifts to the respondent who has to demonstrate his rights or legitimate interests in respect of the domain name under paragraph 4 (c) of the Policy.

If the respondent fails to do so, the second element of the Policy is satisfied, see *Julian Barnes v. Old Barn Studios*, WIPO Case No. D2001-0121; *Belupo d.d. v. WACHEM d.o.o.*, WIPO Case No. D2004-0110.

The disputed domain name was registered on March 7, 2023. It does not resolve to any active page on the date of this decision.

The Respondent did not respond.

While failure to respond does not per se demonstrate that the Respondent does not have rights or legitimate interests, it allows the Panel to draw such inferences as it considers appropriate (see paragraph 14(b) of the Rules and CAC Case No. 101284: "A respondent is not obliged to participate in a proceeding under the Policy, but if it fails to do so, reasonable inferences may be drawn from the information provided by the complainant").

The Complainant has made a prima facie case of Respondent's lack of rights or legitimate interests.

The Respondent is not known at the disputed domain name and is identified as an individual from France with no connection to the Complainant's business or the disputed domain name.

The Complainant has not granted any license or authorization to use its trademark to the Respondent and the Complainant is not doing any business with the Respondent.

The nature of the disputed domain name is such that it creates an association with the Complainant, Complainant's group of companies and its business. Passive holding of the disputed domain name in the circumstances of this case does not create any rights or legitimate interests of the Respondent.

The Panel notes that the disputed domain name has been registered recently (March 7, 2023) and sometimes in such cases of fairly recent domain name registration it is too early to conclude that the respondent has no rights or legitimate interests as respondents simply did not have enough time to start any legitimate use of the disputed domain name, see e.g. CAC Case No. 104240 ("Complainant filed the complaint just three days after the domain name was registered. Respondent has not been given time to put the domain name to use...") and WIPO Overview 3.0 par. 2.1: "the passage of time may be relevant in assessing whether purported demonstrable preparations are bona fide or pretextual".

However, the Panel finds that any good faith use is highly unlikely in these circumstances when the disputed domain name may create a risk of implied affiliation with the Complainant and its activity: the "CA" mark plus the word "assurances" (see par. 2.5.1 of WIPO Overview 3.0: "Even where a domain name consists of a trademark plus an additional term (at the second- or top-level), UDRP

panels have largely held that such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner...”) and when the Complainant is a company providing banking, financial and insurance services and the risk of possible abuse of domain names in such business areas is higher than in some other industries.

Therefore, the Panel finds that the Complainant has satisfied the second element of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy lists non-exhaustive circumstances indicating registration and use in bad faith.

These circumstances are non-exhaustive and other factors can also be considered in deciding about the bad faith element.

It is well established that bad faith under the UDRP is broadly understood to occur where a respondent takes unfair advantage of or otherwise abuses a complainant’s mark (see par. 3.1 of WIPO Overview 3.0). Targeting is important in establishing bad faith under UDRP.

The Panel finds that the Complainant provided sufficient evidence that the disputed domain name was registered and is being used in bad faith based on the following:

1. The nature of the disputed domain name that includes both the Complainant’s “CA” mark and the term “assurances” (“insurance” in French) relating to the services of the Complainant and its group of companies and making a clear reference to one of the Complainant’s own domain names used by its subsidiary: <ca-assurances.com>. The inclusion of the 2 other descriptive terms <app> and <web> may indicate that these are the services provided via an application (“app”) online (“web”). The nature of the disputed domain name indicates that the Respondent was most likely aware of the Complainant and its trademark.
2. The timing of registration of the dispute domain name – many years after the registration of the Complainant’s “CA” marks and many years after the registration of the Complainant’s own domain name <ca-assurances.com> - registered since 2001.
3. Geographic proximity of both Parties. The Respondent is a French individual and the Complaint is a French company, and is one of the leaders on the French market in the areas of banking and insurance. It is highly unlikely that the Respondent from France registered the disputed domain name without having the Complainant in mind.
4. Passive holding of the disputed domain name in the circumstances of this case. WIPO Overview 3.0 states that “from the inception of the UDRP, panelists have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding” and the panelists “will look at the totality of the circumstances in each case” (par. 3.3). The Panel notes that passive holding per se does not indicate bad faith. However, the totality of the circumstances of this dispute indicates bad faith of the Respondent, in particular: i) strength and reputation of the mark, in particular in France – the country of the Respondent’s residence and the reputation of the Complainant’s product closely related to the disputed domain name – “Credit Agricole Assurances” – “CAA” as provided by the Complainant’s evidence (“1st personal insurance group in France, 1st personal insurer in France”), ii) failure of the Respondent to respond and take part in this proceeding and iii) the implausibility of any good faith use to which the disputed domain name may be put – the Panel does not find any circumstances under which the Respondent could legitimately use the disputed domain name that is so closely associated with the Complainant, its business and products and services. Any possible explanation of a potential legitimate use is solely within the Respondent’s knowledge and the Respondent failed to respond and provide any explanations. As noted by the Panel in WIPO Case No. D2022-1193: “The Respondent, having neglected to participate in these proceedings, did not bring any evidence to support any good faith reason; such evidence is not apparent from the record, and the Respondent has to bear the consequences of its default in that regard”.
5. The Panel finds that this is a case of targeting and an attempt to take unfair advantage of the Complainant’s trademark and reputation by the Respondent. The Panel does not see any possible rights or legitimate interests of the Respondent taking into account evidence on the record and facts of this case and the only apparent reason for registration of the disputed domain name is an intent of the Respondent to take advantage of the Complainant’s mark and business reputation.

The Panel also needs to address the passage of time of the disputed domain name registration. Indeed, some previous UDRP panels supported lack of respondent’s bad faith in cases of short time passage, see e.g. CAC Case No. 102843 (“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...”), CAC Case No. 104240 and the Forum decision in “Citadel Enterprise Americas LLC and its related entity KCG IP Holdings LLC v Kannan Murali / Digital Intelligence LLC”, Claim Number: FA1812001819680 (“While 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”).

However, this Panel believes that a short time passage is not an obstacle in finding bad faith in the circumstances of the present dispute, where both parties are from the same country, Complainant’s trademark and business enjoy strong reputation in this country and when the disputed domain name includes the term closely related to the Complainant and its business and given the nature of the Complainant’s industry (banking, financial and related services) where it makes a perfect sense to act as soon as possible taking into account high risks of fraud and fishing and possible damages to clients and Complainant’s own reputation.

Based on the above, the Panel finds that Respondent’s behavior falls within, at least, par. 4 b (iv) of UDRP and the Respondent by using the disputed domain name has intentionally attempted to attract, for commercial gain, Internet users to its web site, by creating a likelihood of confusion with the complainant’s mark as to the source, sponsorship, affiliation, or endorsement and that the Respondent takes unfair advantage of the Complainant’s mark.

The Panel holds that the third requirement of the Policy has been satisfied.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **app-web-ca-assurances.site**: Transferred

PANELLISTS

Name	Igor Motsnyi
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DATE OF PANEL DECISION 2023-04-12

Publish the Decision
