

Decision for dispute CAC-UDRP-105757

Case number CAC-UDRP-105757

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Domain names arkeassign.com

Case administrator

Name Olga Dvořáková (Case admin)

Complainant

Organization CREDIT MUTUEL ARKEA

Complainant representative

Organization NAMESHIELD S.A.S.

Respondent

Organization Fundacion Comercio Electronico

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 trademark "ARKEA", including the French trademark ARKEA n° 96636222 registered since 1997, and the French trademark CREDIT MUTUEL ARKEA n° 3888981 registered since 2012.

FACTUAL BACKGROUND

The "Complainant" is a cooperative and mutual bank insurance group in France.

The Complainant was created originally in 1911 in Brittany, France. The ARKEA group comprises CREDIT MUTUEL DE BRETAGNE (CMB), CREDIT MUTUEL DU SUD-OUEST (CMSO) and nearly 40 specialised subsidiaries. With 4.9 million member-customers, ARKEA is a major player in banking and insurance in France.

The Complainant uses for its official website the domain name <arkea.com>, registered since 2002.

The disputed domain name was registered in 2023, and resolves to the login page of a competing service.

The domain name is offered for sale on several online domain name marketplaces.

The Respondent has been the subject of several adverse decisions under the UDRP for registering domain names containing the trade marks of third parties.

PARTIES CONTENTIONS

COMPLAINANT:

A. The domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights

The disputed domain name <arkeasign.com> is confusingly similar to the Complainant's trademark registration ARKEA®. The disputed domain name contains the Complainant's registered trademark ARKEA® in its entirety.

The disputed domain name only differs from the trademark ARKEA® by the addition of the term "SIGN". It is well-established that "a domain name that wholly incorporates a Complainant's registered trademark may be sufficient to establish confusing similarity for purposes of the UDRP". WIPO Case No. D2003-0888, Dr. Ing. h.c. F. Porsche AG v. Vasilij Terkin.

The addition of the gTLD ".COM" does not prevent the likelihood of confusion between the disputed domain name and the Complainant's trademark. WIPO Case No. D2006-0451, F. Hoffmann-La Roche AG v. Macalve e-dominios S.A. ("It is also well established that the specific top level of a domain name such as ".com", ".org" or ".net" does not affect the domain name for the purpose of determining whether it is identical or confusingly similar.")

Many UDRP decisions have confirmed the Complainant's rights such as:

- WIPO Case No. D2018-1770, Credit Mutuel Arkea v. Sun Xiao Cheng, <arkeabank.com>;
- WIPO Case No. D2018-0552, Crédit Mutuel Arkea v. Lang Garland, <cmb-arkea.com>;
- CAC Case No. 101903, CREDIT MUTUEL ARKEA v. Whois Privacy Corp. <banquearkea.com>.

Consequently, the disputed domain name is confusingly similar to the Complainant's trademark.

B. The Respondent has no rights or legitimate interests in respect of the disputed domain name

According to 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 a prima facie case is made out, the Respondent carries the burden of demonstrating rights or legitimate interests in the domain name in dispute. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(a) (ii) of the UDRP.

Past panels have held that a Respondent was not commonly known by a domain name if the name by which it is detailed in the Whois information is not similar to the disputed domain name. Thus, the Respondent is not commonly known by the disputed domain name.

- Forum Case No. FA 1781783, Skechers U.S.A., Inc. and Skechers U.S.A., Inc. II v. Chad Moston / Elite Media Group <bobsfromsketchers.com> ("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).")
- Forum Case No. FA 699652, The Braun Corporation v. Wayne Loney

The Respondent has no rights or legitimate interests in respect of the disputed domain name and 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.

No license or authorization has been granted by the Complainant to the Respondent to make any use of the Complainant's trademark ARKEA®, or apply for registration of the disputed domain name.

The disputed domain name resolves to the login page of an investment platform. Therefore, the disputed domain name was registered in order to create a likelihood of confusion with the Complainant and its trademark. By profiting from the fame of the Complainant's trademark in the domain name, the Respondent uses the disputed domain name to offer services in direct competition with the investment services provided by the Complainant. Using a confusingly similar domain name that resolves to a competing webpage is not a bona fide offering of goods or services. Forum Case No. FA 1654759, Upwork Global Inc. v. Shoaib Malik ("Previous panels have found such use by a respondent, whether to run a phishing scheme or to run a competing website, is neither a bona fide offering of goods or services, nor a legitimate noncommercial or fair use.")

The disputed domain name is offered for sale on more than one online domain name marketplace. This general offer to sell the disputed domain name evidences the Respondent's lack of rights or legitimate interest. Please see Forum Case No. 1562569, Enterprise Holdings, Inc. v. Webmaster & Support ("A general solicitation to sell a disputed domain name provides further evidence of a respondent's lack of rights and legitimate interests in a disputed domain name. [...] Therefore, the Panel finds that Respondent's willingness to sell the <wwenterprise.us> domain name is credible evidence that Respondent lacked rights and legitimate interests in the disputed domain name pursuant to Policy ¶ 4(a)(ii).")

Thus, in accordance with the foregoing, the Complainant contends that the Respondent has no rights or legitimate interest in the disputed domain name.

C. The domain name was registered and is being used in bad faith

The term "ARKEA" does not have any meaning, except in relation with the Complainant.

WIPO Case No. D2019-122, CREDIT MUTUEL ARKEA v. Nilice jose Abadassi ("In addition the Panel notes that the term ARKEA appears to have no common meaning and is highly distinctive and previous panels have confirmed the Complainant's rights in the term ARKEA, namely: WIPO Case No. D2018-1770, Credit Mutuel Arkea v. Sun Xiao Cheng, <arkeabank.com>; WIPO Case No. D2018-0552, Crédit Mutuel Arkea v. Lang Garland, <cmbarkea.com>.").

The addition of the term "SIGN" might make Complainant's customers think that the disputed domain name is an official one needed to sign in to the Complainant's services.

The Respondent knew or should have known about the Complainant's rights, which evidences bad faith.

Since the disputed domain name resolves to the login page of an investment platform the Respondent uses the domain name to divert Internet users searching for Complainant's website to Respondent's competing website, to create a likelihood of confusion with Complainant's mark for Respondent's commercial gain. Past panels have established that this is evidence of bad faith. Forum Case No. FA 1612750, Xylem Inc. and Xylem IP Holdings LLC v. Yens BaoHu YiKaiQi ("The Panel agrees that Respondent's use of the website to display products similar to Complainant's, imputes intent to attract Internet users for commercial gain, and finds bad faith per Policy ¶ 4(b)(iv).").

Further, the disputed domain name points to a registrar parking page where the domain name is offered for sale for 1,299 USD. The Complainant contends that the Respondent has registered the disputed domain name in order to sell it for a sum in excess of out-of-pocket costs, which evinces bad faith registration and use. NAF Case No. FA 1623939, Citigroup Inc. v. Kevin Goodman ("Respondent offered the <citi.club> domain name for sale or lease at prices well above even its alleged but unverified acquisition costs. [...] Therefore, the evidence shows that Respondent registered <citi.club> primarily for the purpose of transferring it for a profit and demonstrates Respondent's bad faith registration and use of the <citi.club> domain name pursuant to Policy ¶ 4(b)(i).").

The Respondent, "Carolina Rodrigues, Fundacion Comercio Electronico", has been involved in numerous UDRP cases for registering domain names that include third-party trademarks. See for instance WIPO Case No. D2023-2928, American Airlines, Inc. v. Carolina Rodrigues, Fundacion Comercio Electronico; WIPO Case No. D2023-2246, Bayer AG v. Carolina Rodrigues, Fundacion Comercio Electronico; WIPO Case No. D2023-1796, Pexels GmbH v. Carolina Rodrigues, Fundacion Comercio Electronico.

Thus, Complainant contends that Respondent has registered the disputed domain name and is using it 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

The disputed domain name is confusingly similar to the Complainant's trade mark ARKEA (registered, inter alia, in France for financial services since 1997) adding only the generic term 'sign' and the gTLD .com which do not prevent said confusing similarity.

The Respondent is not authorised by the Complainant or commonly known by the disputed domain name. The Respondent has not responded to this Complaint or rebutted the prima facie case evidenced by the Complainant.

The disputed domain name has been pointed to a log in screen for competing services. This is not a bona fide offering of goods and services or a non commercial legitimate fair use.

The disputed domain name has been offered generally for sale for sums well in excess of the costs of registration of the disputed domain name.

The Respondent has been the subject of numerous adverse decisions under the UDRP for registering domain names containing the trade marks of third parties.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **arkeasign.com**: Transferred

PANELLISTS

Name	Dawn Osborne
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DATE OF PANEL DECISION 2023-10-06

Publish the Decision
