Panel Decision for dispute CAC-ADREU-007280

Case number	CAC-ADREU-007280
Time of filing	2016-11-17 11:56:01
Domain names	credit-mutuels.eu, creditmutuel-verification.eu, creditmutuels.eu

Case administrator

Aneta Jelenová (Case admin)

Complainant

Organization	CONFÉDÉRATION NATIONALE DU CRÉDIT MUTUEL

Respondent

Organization	adam co.

INSERT INFORMATION ABOUT OTHER LEGAL PROCEEDINGS THE PANEL IS AWARE OF WHICH ARE PENDING OR DECIDED AND WHICH RELATE TO THE DISPUTED DOMAIN NAME

The panel is not aware of other legal proceedings, pending or decided, which relate to the disputed domain names.

FACTUAL BACKGROUND

The Complainant is the political and central body for the banking group CREDIT MUTUEL, which is the second largest French banking and insurance services group. Present in all fields of finance, the group is a major actor on the market of banking services for both individuals and businesses and is embedded in France as well as abroad. Under the domain names <creditmutuel.com> and <creditmutuel.fr> Complainant is operating a web portal and under <creditmutuel.fr> online banking services are offered.

The Complainant owns the French semi-figurative trademarks No. 1475940 and 1646012 with the wording “CREDIT MUTUEL” as well as the Union Trademark No. 9943135 and the international trademark No. 570182 in various classes incl. class 36 for banking services.

The Respondent registered the disputed domain names <credit-mutuels.eu> and <creditmutuels.eu> on December 16, 2015 and <creditmutuel-verification.eu>on December 17, 2015.

On August 8, 2016 the Czech Arbitration Court (CAC) received the Complainant`s Complaint. The Complainant requests the Panel to decide:

Transfer of the domain names<credit-mutuels.eu>, <creditmutuels.eu> and <creditmutuel-verification.eu> to Complainant`s profit. The Respondent did not file a Response to the Complaint.

A. COMPLAINANT

The Complainant asserts rights acc. to Article 21 (1), (2), and (3) of the Regulation (EC) No. 874/2004.

1. Recognition and establishment of rights by law acc. to Article 21 (1), and 10 (1) of the Regulation (EC) No. 874/2004

The Complainant has inter alia obtained a Union Trademark registration “CREDIT MUTUEL” (No. 9943135). In addition, the Complainant has trademark registrations in various member states, for example, in France (No. 1475940 and 1646012).

2. Identity or confusing similarity acc. to Article 21 (1) of the Regulation (EC) No. 874/2004

According to the Complainant the gTLD “.eu” has not to be taken into account while comparing the disputed domain names with a claimed trademark, as it is a technical and necessary part of the domain names with no distinguishing feature nor legal significance. The

Complainant states that regarding the domain names <credit-mutuels.eu>and <creditmutuels.eu> Complainant`s trademark is entirely reproduced and only the letter ‘s’ respectively a hyphen is added, which is not sufficient to avoid the likelihood of confusion in the public mind. These slight changes are irrelevant.

Regarding the third domain name <creditmutuel-verification.eu> Complainant further states that the added descriptive word “verification” could also refer to the banking rules of the Complainant and does not dispel confusion, especially because Internet users could legitimately believe that the disputed domain names would lead to one of Complainant´s websites for verifying the payment authorization of their purchase. The addition of the word “verification” within the disputed domain name will necessarily strengthen the likelihood of confusion, wrongly creating the feeling of internet users that they are entering one of the official websites of the Complainant.

3. Registration without rights or legitimate interests acc. to Article 21 (1) (a), (2) of the Regulation (EC) No. 874/2004

The Complainant states the Respondent does not have any rights or legitimate interest in the domain names, nor is he related in any way to the Complainant`s business: he is none of its agents and does not carry out any activity for, or has any business with it. Further, the Respondent is not currently and has never been known under the name “CREDIT MUTUELS” or “CREDIT MUTUEL VERIFICATION” nor has he filed any trademarks covering these names. The Complainant has given the Respondent no license or authorization to use the disputed domain names.

According to ADR Case No. 07151 ”BMW-NAVIGATION” the Complainant concludes that the circumstances as described above point to the Respondent not having any rights or legitimate interests in respect of the domain name. The Respondent has not shown any legitimate interest on the disputed domains following a cease and desist letter of the Complainant. Complainant claims that the disputed domain names have been registered to take advantage of Complainant`s reputation.

Finally the disputed domain names are currently inactive.

4. Registration or use in bad faith acc. to Article 21 (1) (b), (3) of the Regulation (EC) No. 874/2004

The Complainant`s trademarks are well known in the field of banking and financial services, particularly in Europe. The Complainant refers to a decision of a Panel in WIPO Case No. D2010-1513 Confederation Nationale du Credit Mutuel v. Philippe Marie. The Complainant argues that it seems impossible that the Respondent was not aware of the banking group and its trademark “CREDIT MUTUEL”. The Complainant assumes that the Respondent has chosen the disputed domain names in order to simulate a website of the Complainant for internet users and the Complainant`s clients on the web, when trying to access CREDIT MUTUEL´s site. Furthermore, the disputed domain names are currently inactive, which can be interpreted as passive holding and which can also constitute bad faith.

B. RESPONDENT

The Respondent has not filed a response.

DISCUSSION AND FINDINGS

A claim for the transfer of the domain names to the Complainant can only be granted in case the requirements of Article 21 (1) of the Regulation (EC) No. 874/2004 (Speculative and abusive registrations) are complied with and the Complainant is eligible to register “.eu”-names acc. to Article 4 (2) (b) of the Regulation (EC) No. 733/2002 (see also Paragraph B11 (b) ADR Rules).

I. As the Respondent has not disputed the facts provided by Complainant with the Complaint, the Panel regards the facts provided by Complainants as given acc. to Paragraph B10 ADR Rules (see also ADR cases No. 4477 “WALTHER-PRAEZISION, No. 2810 “RATIOPARTS”, No. 3976 “ABAT”).

II. Under Article 21 (1) of the Regulation (EC) No. 874/2004 in order to succeed under this dispute resolution procedure the Complainant must show that the disputed domain names are:
(i) identical or confusingly similar to a name in respect of which a right is recognized or established by national and/or Community law and:
(ii) the Domain Name has been registered by its holder without rights or legitimate interest in the name; or
(iii) has been registered or is being used in bad faith.

1. The Complainant can assert rights in the name CREDIT MUTUEL by virtue of registered trademarks. The Complainant stated and

proved that it is the owner of the Union Trademark “CREDIT MUTUEL” (No. 9943135) and has registered semi-figurative trademarks in various classes in the European Community and in a number of member states. The trademarks are rights acc. to Article 10 (1) of the Regulation (EC) no. 874/2004.

2. The domain names <credit-mutuels.eu>, <creditmutuels.eu> and <creditmutuel-verification.eu> are confusingly similar to the Complainant's trademarks.

a) The suffix “.eu” is to be disregarded in this respect (see also ADR cases No. 6442 “SWAROVSKI”, No. 4477 “WALTHER-PRAEZISION”, No. 475 “HELSINKI”, No. 387 “GNC”, No. 596 “RESTAURANT”).

b) The disputed domain name <creditmutuels.eu> consists of the mark “CREDIT MUTUEL” and the added letter ‘s’. The disputed domain name <credit-mutuels.eu> consists of the mark “CREDIT MUTUEL” and the added letter ‘s’ as well as a hyphen between both words. In accordance with WIPO Case No. D2010-1914 Crédit Industriel et Commercial S.A. v. Moniker Privacy Services / Charlie Kalopungi the mere addition of one letter to a trademark (in that case “Filbanque”vs “Filbanquel”) does not exclude the confusing similarity.

The disputed domain name <creditmutuel-verification.eu> consists of the mark CREDIT MUTUEL and the descriptive and generic term “VERIFICATION”. The Complainant owns respective trademarks, as shown above, and operates under the name CONFÉDÉRATION NATIONALE DU CRÉDIT MUTUEL and is well known in Europe and especially in France for its banking and finance services. The descriptive term “VERIFICATION” would not be seen as a differentiating term as the use of online banking often requires a “verification-step” so that the internet user would assume he is confronted with the internet presence of the Complainant. According to WIPO Case No. D2015-1699 Confederation Nationale du Credit Mutuel v. Fernand Macia / Registration Private / Domains By Proxy, LLC / DomainsByProxy.com the addition of a pre- or suffix (in that case “ebank”) which belongs to the practice area of the trademark owner's business does not exclude confusing similarity but rather enhances the risk of confusion. Furthermore, the fact that the Complainant´s trademark is wholly incorporated in the disputed domain name has been accepted as sufficient by numerous panels to establish confusing similarity (e.g. ADR Case No. 07151 ”BMW-NAVIGATION”; WIPO Case No. D2002-0615 Bayerische Motoren Werke AG v. bmwcar.com; WIPO Case No. D2013-0150 Swarovski Aktiengesellschaft v. mei xudong; WIPO Case No. D2015-1699 Confederation Nationale du Credit Mutuel v. Fernand Macia / Registration Private / Domains By Proxy, LLC / DomainsByProxy.com)

The additional elements are not sufficient to distinguish the contested domain names <credit-mutuels.eu>, <creditmutuels.eu> and <creditmutuel-verification.eu> from the Complainant’s trademarks. Confusing similarity between the aforementioned exists.

3. The Complainant has argued that the Respondent has no right or legitimate interest in the domain names <credit-mutuels.eu>, <creditmutuels.eu> and <creditmutuel-verification.eu>. The burden of proof is on Complainant’s side (see also ADR Case No. 1304 “KEMET”). However, the Complainant has presented his results of investigation with respect to the negative fact of missing rights and legitimate interests of the Respondent in the disputed domain names. The Complainant particularly stated that he is not aware of any rights or legitimate interests that the Respondent could have in respect to the disputed domain names. The disputed domain names primarily consist of the word CREDIT MUTUEL, the Complainant owns trademark rights in. Furthermore, the Complainant asserted that the Respondent is not associated with, affiliated with or licensed by the Complainant to use the CREDIT MUTUEL trademarks or name in any way nor has the Respondent been authorized by the Complainant to register the disputed domain names.

Further, the Panel itself is not aware of any proof regarding any rights or legitimate interests of the Respondent with respect to the disputed domain names.

Acc. to Paragraph B10 ADR Rules and with respect to the missing response of the Respondent the panel accepts the Complainant's contentions and accepts that the Respondent has no right or legitimate interest in the disputed domain names.

4. The facts that the Complainant and its trademarks are well known in the banking and financial service sector in France and Europe and that the Complainant is offering its services on the Internet since 1996 lead to the conclusion that the Respondent must have known the Complainant and therefore registered the disputed domain names in bad faith. This is supported by the fact that the additional term “verification” in the disputed domain name <creditmutuel-verification.eu> refers to the online-banking sector and is suitable to mislead internet users. Furthermore, the Respondent has made no statement that would justify a different result.

In accordance with ADR Case No “GLENDIMPLEX” and WIPO Case No. D2012-0813 Confédération Nationale du Crédit Mutuel v. Simo Madridoxi the Panel finds the passive holding of the disputed domain names together with the renown of the Complainant to be sufficient for the Respondent using the disputed domain names in bad faith.

IV. As the Complainant is a company registered in France, acc. to Article 4 (2) (b) (i) Regulation (EC) 733/2002 it is entitled to request the

transfer of the disputed domain names.

DECISION

For all the foregoing reasons, in accordance with Paragraphs B12 (b) and (c) of the Rules, the Panel orders that

the domain names CREDIT-MUTUELS.EU, CREDITMUTUEL-VERIFICATION.EU, CREDITMUTUELS.EU be transferred to the Complainant.

PANELISTS

Name	**Dominik Eickemeier**

DATE OF PANEL DECISION 2016-11-15

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain names: CREDIT-MUTUELS.EU, CREDITMUTUEL-VERIFICATION.EU, CREDITMUTUELS.EU

II. Country of the Complainant: France, country of the Respondent: France
III. Date of registration of the domain names: The Respondent registered the disputed domain names <credit-mutuels.eu> and <creditmutuels.eu> on December 16, 2015 and <creditmutuel-verification.eu>on December 17, 2015.

IV. Rights relied on by the Complainant (Art. 21 (1) Regulation (EC) No 874/2004) on which the Panel based its decision:
1. combined trademark registered in France, reg. No. 1475940 for the term “CREDIT MUTUEL”, filed on 8 July, 1988 in respect of goods and services in classes 35 and 36.

2. combined trademark registered in France, reg. No. 1646012 for the term “CREDIT MUTUEL”, filed on 20 November, 1990 in respect of goods and services in classes 16, 35, 36 and 38.

3. Union word trademark reg. No. 9943135 for the term “CREDIT MUTUEL”, filed on 5 May, 2011 in respect of goods and services in classes 9, 16, 35, 36, 38, 41, 42 and 45.

4. Internationally registered combined trademark, reg. No. 570182 for the term “CREDIT MUTUEL”, filed on 17 May, 1991 in respect of goods and services in classes 16, 35, 36, 38 and 42.

V. Response submitted: No

VI. Domain names are confusingly similar to the protected rights of the Complainant.

VII. Rights or legitimate interests of the Respondent (Art. 21 (2) Regulation (EC) No 874/2004):
1. No
2. Why: No evidence presented

VIII. Bad faith of the Respondent (Art. 21 (3) Regulation (EC) No 874/2004):
1. Yes
2. Why: well known trademark of Complainant, almost identical domain names, no active use of such domain names and the combination of one of the domain names with the generic term "verification", which can mislead internet users.

X. Dispute Result: Transfer of the disputed domain names.

XII. Is Complainant eligible? Yes