Panel Decision for dispute CAC-ADREU-007857

Case number	CAC-ADREU-007857
Time of filing	2020-03-15 12:23:44
Domain names	CA-MARTINIQUE.eu

Case administrator

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

Complainant

Organization	CREDIT AGRICOLE S.A.

Respondent

Name	Fabio Jones

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

There are no other legal proceedings of which the Panel is aware that are pending or decided and that relate to the disputed domain name.

FACTUAL BACKGROUND

The Complainant in this proceeding is Credit Agricole S.A. and the submitted evidence in the case before the Panel demonstrates that the Complainant is the owner of the following registered trademarks:

- French trademark CA with registration number 1381908 and registration date November 28, 1986;
- French trademark CA with registration number 3454608 and registration date October 5, 2006;
- International trademark CA with registration number 933604 and registration date March 23, 2007;
- European trademark CA with registration number 12289071 and registration date November 7, 2013; and
- French trademark CA with registration number 4189154 and registration date June 15, 2015.

The Respondent in this proceeding is Fabio Jones. On December 5, 2019 the Respondent registered the disputed domain name <ca-martinique.eu>.

The Czech Arbitration Court (“CAC”) acknowledged receipt of the Complainant’s Complaint which was filed electronically on December 12 and in hard copy on December 16, 2019. The formal date of the commencement of the ADR proceeding was December 17, 2019. The deadline for the Respondent to submit a Response was February 17, 2020. On March 4, 2020, the Respondent submitted a late Response. The Panel has considered the Respondent’s late Response.

A. COMPLAINANT

The Complainant is the leader in retail banking in France and one of the largest banks in Europe. First financing the French economy and major European player, the Complainant assists its clients' projects in France and around the world, in all areas of banking and trades associated with it: insurance management, asset leasing and factoring, consumer credit, corporate and investment.

The Complainant’s 39 regional banks, particularly the CAISSE REGIONALE DE CREDIT AGRICOLE MUTUEL DE LA MARTINIQUE ET DE LA GUYANE, are co-operative entities and fully-fledged banks, providing a comprehensive range of financial products and services. The official website is "www.ca-martinique.fr".

The Complainant owns a number of French, European and International trademark registrations for CA. The Complainant is also the holder of several domain names containing the trademark CA, including the domain name <ca-martinique.com>, registered since July 9,

1997.

The disputed domain name <ca-martinique.eu> was registered on December 5, 2019 and is redirected to the Complainant's official regional bank website "www.ca-martinique.fr".

The Complainant states that the disputed domain name <ca-martinique.eu> is confusingly similar to the Complainant's registered trademark CA. The Complainant contends that the addition of the geographic term "Martinique" is not sufficient to escape the finding that the disputed domain name is confusingly similar to the trademark CA. 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. On the contrary, the addition of the geographic term "Martinique" worsens the likelihood of confusion between the disputed domain name and the Complainant's trademark CA. Indeed, it refers to the Complainant's regional bank CAISSE REGIONALE DE CREDIT AGRICOLE MUTUEL DE LA MARTINIQUE ET DE LA GUYANE.

It is well-established that a domain name that wholly incorporates a Complainant's registered trademark may be sufficient to establish confusing similarity. Furthermore, it is well-established that the GTLD is viewed as a standard registration requirement and as such is disregarded.

The Complainant asserts that the Respondent is not commonly known as the disputed domain name. Past panels have held that a Respondent was not commonly known by a disputed domain name if the Whois information was not similar to the disputed domain name. Thus, the Respondent is not known 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 redirects to the Complainant's regional bank official website. The Complainant's contends that the Respondent is not making a bona fide offering of goods or services by means of the disputed domain name <ca-martinique.eu>, or a legitimate non-commercial or fair use of it. Thus, in accordance with the foregoing, the Complainant contends that the Respondent has no right or legitimate interest in respect of the disputed domain name.

The letters "CA" refer to the acronym of the term "CREDIT AGRICOLE" and are used since decades as the official logo of the Complainant. Since its first use, this acronym became distinctive of the Complainant. Moreover, the disputed domain name redirects to the Complainant's official regional bank website. Thus, the Complainant contends that the Respondent has knowledge of the Complainant's rights prior to the registration of the disputed domain name, which is a hallmark of bad faith. Besides, this redirection does not constitute use in good faith as it means that the disputed domain name gives the wrongful impression that it is an official domain name of the Complainant, under the Complainant's control, when it is neither of these things.

Thus, the disputed domain name has been registered by the Respondent in an effort to take advantage of the good reputation Complainant had built up in its CA trademarks, with the sole aim to create a likelihood of confusion with the Complainant's trademarks and domain names. On these bases, the Complainant concludes that the Respondent has registered and is using the disputed domain name in bad faith.

B. RESPONDENT

The registrar of the disputed domain name in question did not notify the Respondent of the ADR proceeding until February 7, 2020. After having requesting the login details to access the ADR website to provide a response the Respondent finally received the credentials on February 26, 2020.

Before registering the disputed domain name, the Respondent did not know, or had no knowledge of the Complainant. The Respondent was not aware of the Complainant's trademark until being notified of this ADR proceeding. The Respondent is of Romanian decent and there are no such financial Institutions in Romania.

The Respondent started working for numerous California based companies that produces CBD products known as Cannabinoids. In the United States, the cannabidiol drug Epidiolex was approved by the Food and Drug Administration in 2018 for the treatment of two epilepsy disorders. Since then there has been a variety of CBD products on the market as research indicates that there are numerous health benefits that are derived from its consumption. The Respondent's latest appointment was for a company called Best CBD Oils. The Respondent brokered a deal the giving their subsidiary company the license to cultivate California Hemp in the Cayman Islands as the production costs will be 60 % cheaper. During this whole process the Respondent met a partner who helped secure the deal in

Cayman Islands. He proposed doing the same structure in Martinique and the products produced would be marketed in the West Indies Jurisdiction. After brainstorming we decided to name the brand “California Martinique”. We noted the website name will be too cumbersome so decided to abbreviate the California to CA with a hyphen followed by Martinique.

According to a Yahoo search, CA is a popular abbreviation with the most common meanings are California, Canada, Chartered Accountant and Circa. A simple search of businesses in the UK companies house that start with the acronym “CA” gives 356,854 matches. A search for “CA” in the WIPO Global Brand Database shows that there are over 8478 trademarks registered all over the world for “CA”. The Respondent has never used the disputed domain name for any infringing activity and the Respondent denies that any license or consent from the Complainant to use the disputed domain name is required considering the thousands of entities using the trademark “CA”.

The Respondent and the business partner created a pdf brochure on May 22, 2019 containing the intended business name CA-MARTINIQUE. This alone demonstrates the intended use of the disputed domain name with a bona fide offering of the CBD products which was created way before the registration of the disputed domain name. An application to grow Hemp Plants in Martinique has been made and we are waiting for the license to be granted awaiting so business can start. This was a business that was planned and being prepared without the prior knowledge of the Complainant business. Our business activities could not be further apart than one being in finance and the other being in the sale of CBD products.

The Complainant states that the disputed domain name redirects to the Complainant’s official regional bank official website. After the Respondent registered the disputed domain name, the Respondent received several emails intended for the Complainant and the Respondent attempted to notify the Complainant, but received no response. In good faith the Respondent decided to redirect the disputed domain traffic to the Complainant commercial site in case any of the Complainant’s customers strayed on to the disputed domain name in error they would be redirected accordingly. This was only temporary until the license had been obtained and we can construct our own site with a business which is clearly different from the Complainant. The disputed domain name will not be used in a manner that is intended to target the Complainant or its CA trademark. The application process to obtain the license to grow hemp in Martinique started on 20 January 2019 and is near completion. Once the license has been obtained the website will become active and we will register CA-MARTINIQUE as a trademark.

Further, the propensity for people to address emails wrongly or by guesswork does not equate, in this case, with an attempt by the Respondent to attract Internet users for commercial gain. In fact, the Respondent tried to do the complete opposite. The Respondent have not tried to sell the disputed domain to the Complainant for a profit.

DISCUSSION AND FINDINGS

The Complainant must, in accordance with Article 21.1 of Commission regulation (EC) No. 874/2004 and Paragraph B 11 (d)(1) of the ADR Rules, demonstrate that the domain name <ca-martinique.eu> is identical or confusingly similar to a name in respect of which a right (of the Complainant) is recognized or established by the national law of a member state and/or Community law and either (a) the disputed domain name has been registered by the Respondent without rights or legitimate interest in the name; or (b) the domain name has been registered or is being used in bad faith.

Identical or confusingly similar

The Complainant is, according to the submitted evidence, the owner of the trademark CA. The disputed domain name <ca-martinique.eu> contains the Complainant’s registered trademark CA in its entirety with the addition of a hyphen and the geographic location “Martinique”. The mere addition of a hyphen does little, if anything, to eliminate the confusing similarity between the Complainant’s trademark and the disputed domain name. Furthermore, the ability for generic words and geographic locations, such as “Martinique”, to distinguish the disputed domain name from the trademark of the Complainant is limited. In the present case, the Complainant’s trademark is readily recognizable in the disputed domain name.

Having the above in mind, it is the opinion of the Panel that the disputed domain name <ca-martinique.eu> is confusingly similar to the trademark of the Complainant, which is recognized within the meaning of Paragraph B 11(d)(1)(i) of the ADR Rules.

Rights or legitimate interest

The Complainant has not licensed or otherwise consented to the Respondent’s use of the trademark in connection with the disputed domain name <ca-martinique.eu>, which is confusingly similar to the Complainant’s trademark. Furthermore, the Respondent has not submitted any evidence indicating that it is the owner of any trademark rights or that the Respondent is commonly known by the disputed domain name.

Although the Respondent has argued that the disputed domain name was registered in order to sell cannabidiol related products, the Respondent has not submitted any convincing evidence in the case demonstrating that the Respondent has made preparations to use the disputed domain name in connection with a bona fide offering of goods or services prior to the dispute. On the contrary, the evidence submitted by the Complainant demonstrates that the Respondent redirected the disputed domain name <ca-martinique.eu> to the Complainant's website "www.ca-martinique.fr" on December 11, 2019, which is only six days after the disputed domain name was registered. The fact that the Respondent, shortly after registering the disputed domain name, redirected it to the Complainant's website, indicates that the Respondent has not been making a legitimate and non-commercial or fair use of the disputed domain name without intent to mislead consumers or harm the reputation of a name in which a right is recognized or established by national law and/or European Union law. The Respondent's use of the disputed domain name does not constitute a bona fide offering of goods and services nor a legitimate non-commercial or fair use.

The Respondent has failed to demonstrate any rights or legitimate interests in respect of the disputed domain name. Thus, there is no evidence in the case that successfully refutes the Complainant's submissions, and the Panel concludes, in the circumstances of this case and on the balance of probabilities, that the Complainant has also satisfied the requirement under B11(d)(1)(ii) of the ADR Rules.

Registered or used in bad faith

As the Panel has found that the Respondent lacks rights or legitimate interests in the disputed domain name for the reasons explained above, no further discussion regarding bad faith registration or use is necessary. Nevertheless, for the sake of completeness, the Panel will also address this third element. Article 21 (1)(b) of COMMISSION REGULATION (EC) No 874/2004 requires that the Complainant show that the disputed domain name has been registered or is being used in bad faith. The aforementioned regulation request only one of the requirements to be fulfilled.

The issue of whether the Respondent had knowledge of the Complainant and its CA trademark when registering and using the disputed domain name is relevant to the finding of bad faith. The Respondent claims that it had no knowledge of the Complainant's CA trademark until being notified of this ADR proceeding. However, given that the Complainant has been using the CA trademark for many years and the fact that that the Respondent, shortly after having registered the disputed domain name <ca-martinique.eu>, redirected it to the Complainant's official website "www.ca-martinique.fr" indicates that the Respondent's use was made with the Complainant's business and CA trademark in mind. The Panel finds this enough to declare that that the disputed domain name was intentionally used to attract Internet users by creating a likelihood of confusion with the Complainant's trademark, for either direct or indirect commercial gain of the Respondent.

Consequently, the Panel concludes that the Complainant has succeeded in proving that the disputed domain name was used in bad faith for the purposes of Paragraph B11(d)(1)(iii) of the Rules.

DECISION

For all the foregoing reasons, in accordance with Paragraphs B12 (b) and (c) of the Rules, the Panel orders that the domain name <CA-MARTINIQUE.EU> be transferred to the Complainant.

PANELISTS

Name	**Johan Carl Sjöbeck**

DATE OF PANEL DECISION 2020-03-07

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: CA-MARTINIQUE.EU

II. Country of the Complainant: France, country of the Respondent: Romania

III. Date of registration of the domain name: December 5, 2019

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. 1381908, for the term CA, registered on November 28, 1986 in respect of goods and services in classes 16, 35, 36, 37, 38, 39, 40 and 41.

2. Combined trademark registered in France, reg. No. 3454608, for the term CA, registered on October 5, 2006 in respect of goods and services in classes 9, 16, 35, 36, 38 and 42.
3. Combined International, reg. No. 933604, for the term CA, registered on March 23, 2007 in respect of goods and services in classes 9, 16, 35, 36, 38 and 42.
4. Figurative EUTM, reg. No. 12289071, for the term CA, registered on November 7, 2013 in respect of goods and services in classes [9, 16, 35, 36, 38 and 42.
5. Combined trademark registered in France, reg. No. 4189154, for the term CA, registered on June 15, 2015 in respect of goods and services in class 36.

V. Response submitted: Yes

VI. Domain name is identical/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:The Respondent's use of the disputed domain name does not constitute a bona fide offering of goods and services nor a legitimate non-commercial or fair use. The Respondent has failed to demonstrate any rights or legitimate interests in respect of the disputed domain name.

VIII. Bad faith of the Respondent (Art. 21 (3) Regulation (EC) No 874/2004):
1. Yes
2. Why: The disputed domain name was intentionally used to attract Internet users by creating a likelihood of confusion with the Complainant's trademark, for either direct or indirect commercial gain of the Respondent.

IX. Other substantial facts the Panel considers relevant: The Respondent redirected the disputed domain name to the Complainant's website shortly after the disputed domain name was registered.

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

XI. Procedural factors the Panel considers relevant: None

XII. Is Complainant eligible? Yes