

ADMINISTRATIVE PANEL DECISION

Confédération Nationale du Crédit Mutuel-CNCM v. Whois Privacy,
Private by Design, LLC / Eric Madden, Marlie LLC
Case No. D2022-2820

1. The Parties

The Complainant is Confédération Nationale du Crédit Mutuel-CNCM, France, represented by MEYER & Partenaires, France.

The Respondent is Whois Privacy, Private by Design, LLC, United States of America (“United States”) / Eric Madden, Marlie LLC, United States.

2. The Domain Name and Registrar

The disputed domain name <creditmutuel.business> is registered with Porkbun LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 1, 2022. On August 1, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 1, 2022, the Registrar transmitted by email to the Center its verification response, disclosing registrant and contact information for the disputed domain name which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on August 5, 2022 providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on August 8, 2022.

The Center verified that the Complaint, together with the amended Complaint, satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on August 10, 2022. In accordance with the Rules, paragraph 5, the due date for Response was August 30, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 7, 2022.

The Center appointed Johan Sjöbeck as the sole panelist in this matter on September 19, 2022. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

4. Factual Background

The Complainant has submitted evidence that it is the owner of a number of trademark registrations including the following:

CREDIT MUTUEL, European Union trademark number 18130616 filed on September 30, 2019, in classes 7, 9, 16, 35, 36, 38, 41, and 45 of 1957 Nice Agreement;

CREDIT MUTUEL, European Union semi-figurative trademark number 16130403 filed on December 5, 2016 in classes 7, 9, 16, 35, 36, 38, 41, and 45 of Nice Agreement;

CREDIT MUTUEL, European Union semi-figurative trademark number 18130619 filed on September 30, 2019 in classes 7, 9, 16, 35, 36, 38, 41, and 45 of Nice Agreement;

CREDIT MUTUEL LA BANQUE A QUI PARLER, European Union semifigurative trademark number 5146162 filed on June 19, 2006 in classes 9, 16, 35, 36, 37, 38, 39, 41, 42, 43, 44, and 45 of Nice Agreement;

CREDIT MUTUEL, French trademark number 1475940 of July 8, 1988, duly renewed, in classes 35 and 36;

CREDIT MUTUEL, French nominal trademark number 1646012 of November 20, 1990, duly renewed, in classes 16, 35, 36, 38, and 41.

The disputed domain name <creditmutuel.business> was registered by the Respondent on July 11, 2022 and is being used to redirect Internet users to a potential malicious website.

5. Parties' Contentions

A. Complainant

The Complainant, CONFEDERATION NATIONALE DU CREDIT MUTUEL – CNCM, is the political and central body for the banking group CREDIT MUTUEL which is the second French banking and insurance services group providing services to 12 million clients for more than a century. The Complainant consist of a network of 3,178 offices in France, congregated in 18 regional federations. Present in all fields of finance, the group is a major actor on the market of banking services for both individuals and businesses. The Complainant's official websites are "www.creditmutuel.com" and "www.creditmutuel.fr" where the Complainant's clients can, once connected through their personal access, manage their account online. The Complainant was one of the first French banking groups to offer online banking services to their clients, individuals as well as companies. The disputed domain name <creditmutuel.business> was registered on July 11, 2022. Consequently, all the above-mentioned trademarks and intellectual property rights are prior to the registration of the disputed domain name.

Furthermore, the trademark CREDIT MUTUEL has been recognized well-known in UDRP cases, *inter alia* in *Confederation Nationale du Credit Mutuel v. Philippe Marie*, WIPO Case No. [D2010-1513](#) regarding <credit-mutuel-3dsecure.com>.

The Complainant asserts that it is well established that gTLDs such as “.com” or “.business” have not to be taken into account while comparing the disputed domain name with the claimed trademarks, as they are only a technical and necessary part of the domain name with no distinguishing feature nor legal significance. As a consequence, “.business” has to be ignored in comparing the disputed domain name with the trademark CREDIT MUTUEL. The trademark is entirely reproduced in the radical of the disputed domain name as the only difference being the omission of the space between the two elements. As commonly ruled, this omission must be ignored, as it is a minor element of the domain name that has no distinguishing effect.

In view of these elements, the disputed domain name should be considered identical to the trademark.

The Respondent should be considered as having no rights or legitimate interests in respect of the disputed domain name. First, the Respondent is not related in any way to the Complainant's business: it is not one of its agents and does not carry out any activity for or has any business with it. The Respondent is not currently and has never been known under the wording CREDIT MUTUEL. No license or authorization has been granted to the Respondent to make any use or apply for registration of the disputed domain name.

When trying to access the website to which the disputed domain name resolves, warnings of a potential malicious website are displayed. Such use of a domain name is neither a *bona fide* offering of goods or services pursuant to Policy Paragraph 4(c)(i) nor a legitimate noncommercial or fair use pursuant to Policy Paragraph 4(c)(iii). After several warning notices displayed by the user's browser, the disputed domain name displays an inactive webpage. Such use of the domain name undoubtedly demonstrates bad faith use since the warning notices must have been set as a result of abuse reports. This means that the disputed domain name has been used for unappropriated purpose if not a fraudulent one. The Complainant also contends that this use of the disputed domain name constitutes bad faith use, as “passive holding”.

The Complainant has previously demonstrated the strong reputation and the well-known character of its trademark CREDIT MUTUEL at least in France where the Complainant has the substantial part of its business. In similar cases where the prior trademark is well-known, panels have decided that the notoriety of a complainant's trademark creates a *prima facie* presumption that the respondent registered the domain name for the purpose of selling it to the complainant or to one of its competitors, or that it was intended to be used in some way to attract for commercial gain users to the website by creating a likelihood of confusion with the complainant's mark.

The name “credit mutuel” is not used per se in the common French language and designates nothing else in French than the Complainant and its trademark, so there is no other explanation to register the disputed domain name than to target the Complainant. There is no doubt that the Respondent has registered the disputed domain name precisely because the Respondent knew the well-known character of the brand and the reputation of the Complainant and because the Respondent decided to refer to the Complainant with this domain name. Therefore, the deliberate choice of registering a domain name that is reproducing the trademark and that is targeting the Complainant is an evidence per se of bad faith registration.

Besides, the identity of the disputed domain name with the Complainant's well-known trademark would make it implausible to use it in correlation with any good faith use. Additionally, the Complainant is using identity proxy services to keep its contact details obfuscated. Correlated with the previous elements, this may be considered as supplemental evidence of registration in bad faith.

The disputed domain name is reproducing the well-known trademark CREDIT MUTUEL and will immediately suggest to the Internet users, a relation with the Complainant, which does not exist. The Complainant would like to point out the fact that, as a banking services group, the Complainant continually faces counterfeiting and phishing attempts. Therefore, the Complainant must prevent a new fake of its website and to protect in the meantime its clients from counterfeiting and fraud.

In conclusion, the Complainant claims that the Respondent is undoubtedly not making any good faith use of the disputed domain name and that there is a strong suspicion of the Respondent using or intending to use the disputed domain name in a phishing scam. Combined to supplemental circumstances as the

Complainant's well-known trademark and bad faith registration of the domain name, as demonstrated above, the Complainant claims that the above cited domain name is not registered and used in good faith.

B. Respondent

The Respondent did not reply to the Complainant's contentions.

6. Discussion and Findings

According to paragraph 4(a) of the Policy, the Complainant must prove each of the following:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) the Respondent has no rights or legitimate interests in the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant is, according to the submitted evidence, the owner of the registered trademark CREDIT MUTUEL. The disputed domain name <creditmutuel.business> incorporates the Complainant's trademark in its entirety. It is standard practice to disregard the gTLD under the confusingly similar test, see section 1.11 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

Having the above in mind, the Panel finds that the disputed domain name is identical to the Complainant's trademark and that the Complainant has proved the requirements under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Complainant must show that the Respondent has no rights or legitimate interests with respect to the disputed domain name. The Respondent may establish rights or legitimate interests in the disputed domain name by demonstrating in accordance with paragraph 4(c) of the Policy any of the following:

- (i) the Respondent uses or has made preparations to use the disputed domain name or a name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services prior to the dispute; or
- (ii) the Respondent is commonly known by the disputed domain name, even if the Respondent has not acquired any trademark rights; or
- (iii) the Respondent is making a legitimate noncommercial or fair use of the disputed domain name without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark.

The Complainant's trademark registrations for CREDIT MUTUEL predate the Respondent's registration of the disputed domain name <creditmutuel.business>. In addition, the Complainant has submitted evidence that previous UDRP panels have considered the Complainant's CREDIT MUTUEL trademark to be well-known. See for example *Confederation Nationale du Credit Mutuel v. Philippe Marie*, WIPO Case No. [D2010-1513](#). The Complainant has not licensed, approved or in any way consented to the Respondent's registration and use of the CREDIT MUTUEL trademark in the disputed domain name. The Complainant maintains that the Respondent has no rights or legitimate interests in the disputed domain name.

There is no evidence in the case file indicating that the Respondent has used or made any preparations to use the disputed domain name <creditmutuel.business> in connection with a *bona fide* offering of goods or services prior to the dispute. On the contrary, the Complainant has submitted evidence indicating that the Respondent is using the disputed domain name to redirect Internet users to a potential malicious website.

Although given the opportunity, the Respondent has not rebutted the Complainant's *prima facie* case. It has not submitted any evidence indicating that the Respondent is the owner of any trademark or that the Respondent is commonly known by the disputed domain name. Furthermore, there is no evidence indicating that the Respondent intends to make a legitimate, noncommercial or fair use of the disputed domain name without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark.

The Respondent has failed to invoke any circumstances, which could demonstrate, pursuant to paragraph 4(c) of the Policy or otherwise, any rights or legitimate interests in respect of the disputed domain name. Thus, there is no evidence in the case that refutes the Complainant's submissions, and the Panel concludes that the Complainant has also proven the requirement under paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Under paragraph 4(b) of the Policy, evidence of bad faith registration and use include without limitation:

- (i) circumstances indicating the disputed domain name was registered or acquired primarily for the purpose of selling, renting, or otherwise transferring the disputed domain name registration to the owner of a trademark or to a competitor of the trademark owner, for valuable consideration in excess of the documented out-of-pocket costs directly related to the disputed domain name; or
- (ii) circumstances indicating that the disputed domain name was registered in order to prevent the owner of a trademark from reflecting the mark in a corresponding disputed domain name, provided there is a pattern of such conduct; or
- (iii) circumstances indicating that the disputed domain name was registered primarily for the purpose of disrupting the business of a competitor; or
- (iv) circumstances indicating that the disputed domain name has intentionally been used in an attempted to attract, for commercial gain, Internet users to the Respondent's website or other online location, by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of the website or location or of a product or service on that website or location.

The Complainant's trademark registration for CREDIT MUTUEL predates the registration of the disputed domain name <creditmutuel.business>. In addition, the Panel notes that the Complainant's trademark is considered well-known according to previous UDRP decisions cited by the Complainant. According to the Complainant, the term "credit mutuel" is not used per se in the common French language and designates nothing else than the Complainant and its trademark. In the absence of any evidence to the contrary, the Panel agrees with the Complainant that the disputed domain name was registered by the Respondent with the Complainant's trademark in mind.

The disputed domain name appears to resolve to a potential malicious website. In this regard, the [WIPO Overview 3.0](#), section 3.4 states: "Panels have held that the use of a domain name for purposes other than to host a website may constitute bad faith. Such purposes include sending email, phishing, identity theft, or malware distribution." The Respondent's use of the disputed domain name described above may be damaging to the goodwill and reputation associated with the Complainant's trademark if Internet users falsely believes that the Respondent's website is associated with or endorsed by the Complainant.

Thus, the evidence in the case before the Panel indicates that the disputed domain name has intentionally been used in an attempt to attract Internet users to the Respondent's website by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of the website or the disputed domain name.

There is no evidence in the case file that refutes the Complainant's submissions.

The Panel concludes that the Complainant has proved the requirements under paragraph 4(b) of the Policy and that the disputed domain name <creditmutuel.business> has been registered and used in bad faith.

7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain name <creditmutuel.business> shall be transferred to the Complainant.

/Johan Sjöbeck/

Johan Sjöbeck

Sole Panelist

Date: October 3, 2022