

ADMINISTRATIVE PANEL DECISION

Banca Akros S.p.A. v. Dmitrii Mazaev

Case No. D2022-0857

1. The Parties

The Complainant is Banca Akros S.p.A., Italy, represented by Bugnion S.p.A., Italy.

The Respondent is Dmitrii Mazaev, Russian Federation.

2. The Domain Name and Registrar

The disputed domain name <akrosbanca.info> is registered with Registrar of Domain Names REG.RU LLC (the "Registrar").

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the "Center") on March 11, 2022. On March 14, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 15, 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 March 21, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. On the same date, the Center sent to the Parties a document related to the language of the proceeding and invited them to comment. The Complainant filed an amendment to the Complaint on March 21, 2022. On the same date, it requested that the language of the proceeding be English. The Respondent made no comments on the Complainant' request regarding the language of the proceeding.

The Center verified that the Complaint together with the amendment to the 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 in English and Russian of the Complaint, and the proceedings commenced on March 29, 2022. In accordance with the Rules, paragraph 5, the due date for Response was April 18, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on April 19, 2022.

The Center appointed Assen Alexiev as the sole panelist in this matter on April 28, 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 was founded in 1997. It is an Italian corporate and investment bank, member of the Banca Popolare di Milano Group. The Complainant is present in the major domestic and international markets and operates as a trader on its own account and as a market maker on the main classes of financial investments.

The Complainant is the owner of the following trademark registrations:

- the European Union trademark AKROS with registration No. 001317817, registered on June 26, 2003, for services in International Classes 35, 36, and 42; and
- the Italian trademark BANCA AKROS with registration No. 0001258246, registered on March 12, 2010, for services in International Classes 35, 36, and 42 (the “AKROS and BANCA AKROS trademarks”).

The Complainant is also the owner of the domain name <bancaakros.it>, registered on January 24, 1997.

The disputed domain name was registered on June 14, 2021. It is currently an inactive site. According to the Complainant, for a period of time the disputed domain name redirected to the Complainant’s website at “www.bancaakros.it”.

5. Parties’ Contentions

A. Complainant

The Complainant states that the disputed domain name is confusingly similar to its AKROS and BANCA AKROS trademarks and to its corporate name, as the term “banca” is a generic financial term meaning “bank” and it is descriptive of the business activity of the Complainant, and the inversion of the terms “akros” and “banca” in the disputed domain name is not relevant. The Complainant states that there is a considerable risk that the trade public will perceive the disputed domain name either as a domain name owned by the Complainant or that there is some kind of commercial relation with the Complainant.

According to the Complainant, the Respondent has no rights or legitimate interests in respect of the disputed domain name, because the Complainant has never authorized it to register the disputed domain name and the disputed domain name is not used in connection with a *bona fide* offering of goods or services. The Complainant adds that it uses the expression Akros Banca as its company name since 1997.

The Complainant contends that the disputed domain name was registered and is being used in bad faith. According to it, since the Complainant’s AKROS trademark is inherently distinctive at a high level and is widely known in the financial sector, the Respondent cannot claim to have been unaware of this trademark, especially considering that it also used the descriptive term “banca” in Italian. In the Complainant’s view, the Respondent has no legitimate interest in registering and using the disputed domain name, where the word “banca” is a descriptive financial term for “bank” and “Akros” is the distinctive sign and company name of the Complainant. According to the Complainant, the Respondent did not choose to register the disputed domain name by chance, but was well aware of the Complainant’s trademarks, company name and activity. The Complainant adds that for some time the disputed domain name redirected to the Complainant’s website without authorization.

B. Respondent

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

6. Discussion and Findings

6.1 Procedural issue - Language of Proceedings

According to the information provided by the Registrar, the language of the Registration Agreement for the disputed domain name is Russian. Under paragraph 11 of the Rules, unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding.

The Complainant requests that the language of proceeding be English and maintains that this would be fair to the Parties. It submits that the disputed domain name has redirected to the Complainant's website at "www.bancaakros.it", which has versions in Italian and English. According to the Complainant, only someone who was familiar with the Complainant's trademark, company name, and activity would register the disputed domain name. The Complainant also notes that the translation of the Complaint and all supporting documents into Russian would cause an unnecessary burden to it.

The Center has sent all its communications to the Respondent in both English and Russian, and has invited the Respondent to express its views on the language of the proceeding. The Respondent has not submitted a Response or any objections to the Complainants' request that the proceedings be held in English.

The above satisfies the Panel that the Respondent would not be disadvantaged if the language of the proceeding is English, and that using the English language in this proceeding would be fair and efficient.

Therefore, in exercise of its powers under paragraph 11 of the Rules, the Panel decides that the language of this administrative proceeding will be English.

6.2. Substantive issues

Pursuant to the Policy, paragraph 4(a), the Complainant must prove each of the following to justify the transfer of the disputed domain name:

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

By the Rules, paragraph 5(c)(i), it is expected of a respondent to: "[r]espond specifically to the statements and allegations contained in the complaint and include any and all bases for the Respondent (domain name holder) to retain registration and use of the disputed domain name [...]."

The Respondent has however not submitted a Response and has not disputed the Complainant's contentions and evidence in this proceeding.

A. Identical or Confusingly Similar

The Complainant has provided evidence for the registration of the AKROS and AKROS BANCA trademarks, which satisfies the Panel that the Complainant has established its trademark rights for the purposes of the present proceeding.

The Panel notes that a common practice has emerged under the Policy to disregard in appropriate circumstances the generic Top-Level Domain ("gTLD") section of domain names for the purposes of the comparison under the Policy, paragraph 4(a)(i). See section 1.11.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"). The Panel sees no reason not to

follow the same approach here, so it will disregard the “.info” gTLD of the disputed domain name.

The disputed domain name incorporates the AKROS trademark entirely, and the two elements of the BANCA AKROS trademark in inverse order. Both trademarks are easily recognizable in the disputed domain name. As discussed in section 1.7 of the [WIPO Overview 3.0](#), in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing.

In view of the above, the Panel finds that the disputed domain name is confusingly similar to the AKROS and AKROS BANCA trademarks in which the Complainant has rights.

B. Rights or Legitimate Interests

While the overall burden of proof in UDRP proceedings is on the complainant, UDRP panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often-impossible task of “proving a negative”, requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. See section 2.1 of the [WIPO Overview 3.0](#).

The Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name, because it has not been authorized to use the AKROS and AKROS BANCA trademarks, and the disputed domain name creates a risk of implied affiliation with the Complainant. The Complainant adds that the disputed domain name has redirected for a period of time to its domain name <bancaakros.it>. Thus, the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name.

The Respondent had a fair opportunity to present its case and to address the arguments and evidence of the Complainant and explain why it has chosen and registered the disputed domain name, but refrained from doing so.

The disputed domain name is confusingly similar to the AKROS and AKROS BANCA trademarks, to the Complainant’s corporate name, and to its domain name <bancaakros.it>.

In view of the above, it appears to the Panel that it is more likely than not that the Respondent is aware of the goodwill of the Complainant and of its AKROS and AKROS BANCA trademarks, and has registered the disputed domain name in an attempt to benefit from the confusing similarity between the disputed domain name and the Complainant’s trademarks, corporate name, and domain name. To the Panel, such conduct does not appear to be fair or giving rise to rights or legitimate interests of the Respondent in the disputed domain name.

Therefore, the Panel finds that the Respondent does not have rights or legitimate interests in the disputed domain name.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy lists four illustrative alternative circumstances that shall be evidence of the registration and use of a domain name in bad faith by a respondent, namely:

“(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly

related to the domain name; or

(ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product or service on your website or location."

The disputed domain name is confusingly similar to the Complainant's trademarks, corporate name, and domain name, and Internet users may well be confused that it is affiliated to the Complainant. As submitted by the Complainant, for a period of time it has redirected to the Complainant's official website. This is sufficient to satisfy the Panel that the Respondent must have been well aware of the Complainant and of the AKROS and AKROS BANCA trademarks when it registered the disputed domain name and that it has targeted this trademark with the registration of the disputed domain name, likely in an attempt to confuse and attract Internet users for financial gain as to the affiliation of the disputed domain name.

The disputed domain name is currently inactive. However, as discussed in section 3.3 of the [WIPO Overview 3.0](#), 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. While panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put.

The Panel finds that some of these factors are present here. The Respondent has failed to submit a Response and to provide any evidence of actual or contemplated good-faith use of the disputed domain name, and given its confusing similarity to the Complainant's trademarks, corporate name, and domain name, the Panel is not aware of any good faith use to which the disputed domain name may be put.

On the basis of the above, the Panel concludes that the disputed domain name was registered and is being 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 <akrosbanca.info> be transferred to the Complainant.

/Assen Alexiev/

Assen Alexiev

Sole Panelist

Date: May 12, 2022