

ADMINISTRATIVE PANEL DECISION

Credit Industriel et Commercial S.A v. tonsi, lebg tonsi
Case No. D2022-3946

1. The Parties

The Complainant is Crédit Industriel et Commercial S.A, France, represented by MEYER & Partenaires, France.

The Respondent is tonsi, lebg tonsi, France.

2. The Domain Name and Registrar

The disputed domain name <cic-annulation.com> (the “Domain Name”) is registered with NameSilo, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 21, 2022. On October 21, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On October 21, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent (See PrivacyGuardian.org) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 3, 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 amendment to Complaint on November 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 November 10, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 30, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 1, 2022.

The Center appointed Vincent Denoyelle as the sole panelist in this matter on December 13, 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

Given that no Response was filed, the following facts are based on the submissions in the Complaint and the Annexes to the Complaint.

The Complainant is a banking group headquartered in France.

The Complainant is the owner of several trade marks for CIC including in France where the Respondent appears to be based. The Complainant's CIC trade marks include the following:

- European Union Trade Mark CIC, registration No. 005891411, registered on March 5, 2008.

The Complainant is also the owner of several domain names reflecting its CIC trade mark including <cic.fr> and <cic.eu>.

The Domain Name was registered on September 23, 2022. The Domain Name previously resolved to an apparent online banking portal reproducing the Complainant's official website and trade mark containing a log-in box. When the Panel tried to access the website associated with the Domain Name, the following warning message was triggered "This site has been reported as unsafe. Hosted by cic-annulation.com. Microsoft recommends you don't continue to this site. It has been reported to Microsoft for containing phishing threats which may try to steal personal or financial information".

5. Parties' Contentions

A. Complainant

The Complainant contends that the Domain Name is confusingly similar to the CIC trade mark in which the Complainant has rights, as the Domain Name incorporates the entire CIC trade mark of the Complainant with the mere addition of the term "annulation". The Complainant considers that such addition does not prevent the confusing similarity between the Domain Name and the Complainant's trade mark. The Complainant also contends that the addition of the generic Top-Level Domain ("gTLD") ".com" does not change the overall impression of the Domain Name being connected to the Complainant's CIC trade mark.

The Complainant asserts that the Respondent should be considered as having no rights or legitimate interests in respect of the Domain Name. The Complainant contends that the Respondent is not authorised by the Complainant to use its CIC trade mark. Furthermore, the Complainant contends that the Respondent has not, before the original filing of the Complaint, used or made preparations to use the Domain Name in relation to a *bona fide* offering of goods or services as the Domain Name used to point to a webpage falsely giving the impression that it was operated by the Complainant and it now triggers a warning message. Moreover, the Complainant contends that the Respondent is not commonly known by the Domain Name. The Complainant concludes that the Respondent has no rights or legitimate interests in the Domain Name.

The Complainant contends that the Respondent has registered the Domain Name with full knowledge of the Complainant's CIC trade mark which the Complainant argues is well-known. In terms of use of the Domain Name in bad faith, the Complainant points to the fact that the Domain Name used to point to a webpage misleading Internet users into thinking that it was operated by the Complainant and including an online banking login page designed to divert consumers seeking to reach the Complainant's website. Finally, the Complainant adds that should the Domain Name be considered to be used passively, this would not cure the Respondent's bad faith given the overall circumstances of the case. The Complainant concludes that the Domain Name has been registered and is being used in bad faith.

B. Respondent

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

6. Discussion and Findings

In order to prevail the Complainant must substantiate that the three elements of paragraph 4(a) of the Policy have been met for the Domain Name, namely:

- (i) the Domain Name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights; and
- (ii) the Respondent has no rights or legitimate interests in respect of the Domain Name; and
- (iii) the Domain Name has been registered and is being used in bad faith.

In the case of default by a party, as is the case here, paragraph 14(b) of the Rules makes it clear that if a party, in the absence of exceptional circumstances, does not comply with any provision of, or requirement under, the Rules or any request from the Panel, the Panel shall draw such inferences therefrom as it considers appropriate.

In the absence of a Response from the Respondent whereby the Respondent did not object to any of the contentions from the Complainant, the Panel will have to base its decision on the basis of the Complaint and supporting Annexes.

A. Identical or Confusingly Similar

In light of the evidence provided by the Complainant, the Panel is satisfied that the Complainant has substantiated that it holds valid trade mark rights in the CIC trade mark, which is reproduced in its entirety in the Domain Name.

The second point that has to be considered is whether the Domain Name is identical or confusingly similar to the CIC trade mark in which the Complainant has rights.

At the second level, the Domain Name incorporates the entire CIC trade mark with the mere addition of an hyphen "-" and the term "annulation". The Panel finds that the CIC trade mark of the Complainant is instantly recognizable in the Domain Name and that the term added to the Complainant's CIC trade mark does not prevent a finding of confusing similarity arising from the incorporation of the Complainant's exact CIC trade mark in the Domain Name.

Then there is the addition of the gTLD ".com". As is generally accepted, the addition of a gTLD such as ".com" is merely a technical registration requirement and as such is typically disregarded under the first element confusing similarity test.

Thus, the Panel finds that the Domain Name is confusingly similar to a trade mark or service mark in which the Complainant has rights.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy sets out relevant circumstances that could demonstrate that a respondent has rights or legitimate interests in a domain name, namely:

"Any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate [the respondent's] rights or legitimate interests to the domain name for purposes of paragraph 4(a)(ii):

- (i) before any notice to [the respondent] of the dispute, [the respondent's] use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or
- (ii) [the respondent] (as an individual, business, or other organization) ha[s] been commonly known by the domain name, even if [the respondent] ha[s] acquired no trade mark or service mark rights; or
- (iii) [the respondent] is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trade mark or service mark at issue.”

Numerous previous panels have found under the UDRP that once the Complainant makes a *prima facie* showing that the respondent does not have rights or legitimate interests in the domain name, the burden of production shifts to the respondent to rebut the showing by providing evidence of its rights or legitimate interests in the domain name.

Having reviewed the Complainant's assertions and evidence, the Panel is satisfied that the Complainant has made a *prima facie* showing that the Respondent does not have rights or legitimate interests in the Domain Name.

The Complainant has stated that the Respondent has no rights in the Domain Name and that it has not licensed or otherwise authorised the Respondent to make any use of its CIC trade mark. There is no indication that the Respondent is commonly known by the Domain Name.

The past use of the Domain Name and the current absence of use or rather the apparently malevolent underlying use of the Domain Name, as suggested by the security warnings triggered when the Complainant and the Panel tried to access the website associated with the Domain Name cannot be considered *bona fide*, legitimate, or fair. Indeed, as previous panels under the Policy have consistently found, such illegal use can never be considered *bona fide*, legitimate or fair under the Policy. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 2.13.1.

Furthermore, the nature of the Domain Name, comprising the Complainant's trade mark in its entirety in combination with the term “annulation” (meaning “cancellation” in French), carries a risk of implied affiliation. See section 2.5.1 of the [WIPO Overview 3.0](#).

Thus, the Panel finds that the Respondent has no rights or legitimate interests in respect of the Domain Name.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy sets out a number of relevant non-exhaustive circumstances, which can be deemed to constitute evidence of registration and use of a domain name in bad faith, namely:

- “(i) circumstances indicating that [the respondent has] registered or acquired [a disputed] 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 trade mark or service mark or to a competitor of that complainant, for valuable consideration in excess of [the respondent's] documented out-of-pocket costs directly related to the domain name; or
- (ii) [the respondent has] registered the domain name in order to prevent the owner of the trade mark or service mark from reflecting the mark in a corresponding domain name, provided that [the respondent has] engaged in a pattern of such conduct; or
- (iii) [the respondent has] registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, [the respondent has] intentionally 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 mark as to the source, sponsorship, affiliation, or endorsement of [the respondent's] website or location or of a product or service on [the respondent's] website or location."

Given the circumstances described in the Complaint and the documentary evidence provided by the Complainant, the Panel finds that the Domain Name was registered in bad faith.

The Domain Name reproduces the exact CIC trade mark of the Complainant and this cannot be a coincidence. The Complainant has provided ample evidence of the substantial renown of the CIC trade mark, especially in France where the Respondent appears to be based, so the fact that the Respondent decided to register the Domain Name reproducing this trade mark strongly suggests that the Respondent had the Complainant's CIC trade mark in mind and targeted it specifically.

This is even more likely given (i) the choice of the term "annulation" added to the Complainant's CIC trade mark in the Domain Name which is relevant in the context of the Complainant's banking business and (ii) the fact that the Domain Name was registered relatively recently and many years after the registration of the Complainant's CIC trade mark.

Thus, the Panel finds that the Domain Name was registered in bad faith.

As for use of the Domain Name in bad faith, given the circumstances described in the Complaint and the documentary evidence provided by the Complainant, the Panel is satisfied that the Domain Name is used in bad faith.

The Domain Name used to point to a webpage misleading Internet users into thinking that it was operated by the Complainant and including an online banking login page probably designed to fraudulently obtain personal information and divert consumers seeking to reach the Complainant's website. When the Panel tried to access the website associated with the Domain Name, the following warning message was triggered "This site has been reported as unsafe. Hosted by cic-annulation.com. Microsoft recommends you don't continue to this site. It has been reported to Microsoft for containing phishing threats which may try to steal personal or financial information". This type of malevolent use of the Domain Name in the past and at present can only be seen as use in bad faith of the Domain Name.

In any event, passive use itself would not prevent a finding of the Respondent's bad faith given the overall circumstances here, noting in particular the renown of the Complainant's CIC trade mark and the Respondent's default.

Furthermore, the current use of the Domain Name constitutes a cybersecurity threat hanging over the Complainant and the Complainant's customers or potential customers.

The fact that the Respondent chose not to object to the Complainant's assertions can only reinforce the Panel's view that the Domain Name is used in bad faith.

Thus, the Panel finds that the Domain Name is being used in bad faith.

Accordingly, the Complainant has met its burden of showing that the 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 Domain Name <cic-annulation.com> be transferred to the Complainant.

/Vincent Denoyelle/

Vincent Denoyelle

Sole Panelist

Date: December 27, 2022