

ADMINISTRATIVE PANEL DECISION

Banca Akros S.p.A. v. David Lopez-Darquea, Zurich Capital Holding\u2019s LLC
Case No. D2023-1099

1. The Parties

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

The Respondent is David Lopez-Darquea, Zurich Capital Holding\u2019s LLC, United States of America (“United States”).

2. The Domain Name and Registrar

The disputed domain name <akrobank.com> (the “Disputed Domain Name”) is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 13, 2023. On March 13, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On March 14, 2023, 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 (Registration Private, Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on March 15, 2023, 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 the Complaint on March 16, 2023.

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 of the Complaint, and the proceedings commenced on March 20, 2023. In accordance with the Rules, paragraph 5, the due date for Response was April 9, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 11, 2023.

The Center appointed Flip Jan Claude Petillion as the sole panelist in this matter on April 21, 2023. 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, Banca Akros S.p.A., is an Italian corporate and investment bank of the Banco BPM group. The Complainant was founded in 1997 and became part of the Banca Popolare di Milano group in 1998. Banco Popolare and Banca Popolare di Milano merged in 2017 to become the Banco BPM group.

The Complainant is the owner of various registered trademarks including the term AKROS, such as the following (hereafter jointly referred to as the “AKROS and BANCA AKROS marks”):

- Italy trademark No. 892016 depicted below, registered since May 19, 2003, in classes 35, 36, and 42:



- European Union trademark No. 001317817 depicted below, registered on June 26, 2003, in classes 35, 36, and 42:



- United States trademark No. 4527664 depicted below, registered on May 13, 2014, in class 36:



The Disputed Domain Name was registered on September 30, 2021, and resolves to a parking page including pay-per-click (“PPC”) links mentioning terms related to the banking sector.

5. Parties’ Contentions

A. Complainant

The Complainant considers the Disputed Domain Name to be confusingly similar to trademarks in which it claims to have rights.

The Complainant further claims that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name. According to the Complainant, the Respondent has never been authorized to register the Disputed Domain Name and there is no use of the Disputed Domain Name in connection with a certain and identified business source. The Complainant claims that the website linked to the Disputed Domain Name includes links referring to different entities in the banking and financial sector, which is not a *bona fide* offering of goods and services in the name of a defined subject.

Finally, the Complainant claims that the Disputed Domain Name was registered and is being used in bad faith. According to the Complainant, the Respondent cannot credibly claim to have been unaware of the Complainant’s mark, especially considering that the Respondent used the Disputed Domain Name to park links referring to the banking and financial sector.

B. Respondent

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

6. Discussion and Findings

Paragraph 15 of the Rules provides that the Panel is to decide the Complaint on the basis of the statements and documents submitted in accordance with the Policy, the Rules, and any rules and principles of law that it deems applicable.

The onus is on the Complainant to make out his case and it is apparent, both from the terms of the Policy and the decisions of past UDRP panels, that the Complainant must show that all three elements set out in paragraph 4(a) of the Policy have been established before any order can be made to transfer the Disputed Domain Name. As the UDRP proceedings are administrative, the standard of proof is the balance of probabilities.

Thus, for the Complainant to succeed it must prove, within the meaning of paragraph 4(a) of the Policy, that:

- (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 respect of the Disputed Domain Name; and
- (iii) The Disputed Domain Name has been registered and is being used in bad faith.

The Panel will therefore deal with each of these requirements.

A. Identical or Confusingly Similar

To prove this element, the Complainant must first establish that there is a trademark or service mark in which it has rights. The Complainant has clearly established that there are trademarks in which it has rights. The Complainant's AKROS and BANCA AKROS marks has been registered and used in connection to the Complainant's banking and financial services.

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the complainant's trademark and the disputed domain name. This test typically involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name (see section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#))).

The Disputed Domain Name combines the term "akro" with the word "bank". The term "akro" differs from the textual part of the Complainant's AKROS mark by only one letter.

The Panel finds that although the Disputed Domain Name does not fully incorporate the Complainant's AKROS mark, this mark remains recognizable within the Disputed Domain Name. In the Panel's view, the confusing similarity is affirmed by the fact that the Disputed Domain Name includes the word "bank", which is the English translation of the word "banca" included in the Complainant's BANCA AKROS mark.

Additionally, it is well established that generic Top-Level-Domains ("gTLDs"), here ".com", may be disregarded when considering whether a disputed domain name is confusingly similar to a trademark in which a complainant has rights.

In light of the above, the Panel considers the Disputed Domain Name to be confusingly similar to the Complainant's AKROS and BANCA AKROS marks.

B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name.

As established by previous UDRP panels, it is sufficient for the Complainant to make out a *prima facie* showing that the Respondent has no rights or legitimate interests in the Disputed Domain Name in order to place the burden of production on the Respondent (see section 2.1 of the [WIPO Overview 3.0](#)).

The Panel notes that the Respondent has not apparently been commonly known by the Disputed Domain Name and that the Respondent does not seem to have acquired trademark or service mark rights. According to the information provided by the Registrar, the Respondent is David Lopez-Darquea from the organization "Zurich Capital Holding\u2019s LLC". The Respondent's use and registration of the Disputed Domain Name was not authorized by the Complainant. There are no indications that a connection between the Complainant and the Respondent exists or existed.

Where a domain name consists of a trademark plus an additional term, UDRP panels have largely held that such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner (see section 2.5.1 of the [WIPO Overview 3.0](#)). In addition to the situation mentioned above, the Panel finds that subtle misspellings or variations of a complainant's mark in a domain name can also impersonate or suggest sponsorship or endorsement by the complainant. In the present case, the Disputed Domain Name includes a term ("akro") which is nearly identical to the distinctive textual part of the Complainant's AKROS mark, and combines it with a descriptive word ("bank") which relates to the Complainant's activity and a translation of which is part of the textual part of the Complainant's BANCA AKROS mark. Therefore, the Panel finds that the Disputed Domain Name carries a risk of implied affiliation with the Complainant.

Beyond looking at the domain name and the nature of any additional terms appended to it, UDRP panels assess whether the overall facts and circumstances of the case, such as the content of the website linked to the disputed domain name and the absence of a response, support a fair use or not (see sections 2.5.2 and 2.5.3 of the [WIPO Overview 3.0](#)).

In this case, the Panel is of the opinion that the Respondent is not making a legitimate noncommercial or fair use of the Disputed Domain Name. Although the Complainant did not provide any evidence of the website linked to the Disputed Domain Name, the Panel was able to verify that the Disputed Domain Name resolves to a parking page containing PPC links such as "Bank Account", "A Bank Account Online", and "Best Small Business Credit Cards".

Given the banking services provided by the Complainant, the Panel finds that such sponsored links may capitalize on the reputation and goodwill of the Complainant's mark or mislead Internet users, which cannot be considered as a use of the Disputed Domain Name in connection with a *bona fide* offering of goods or services (see section 2.9 of the [WIPO Overview 3.0](#)).

The Respondent had the opportunity to demonstrate his rights or legitimate interests but did not do so. In the absence of a Response from the Respondent, the *prima facie* case established by the Complainant has not been rebutted.

Therefore, the Panel finds that the Complainant has established that the Respondent has no rights or legitimate interests in the Disputed Domain Name. In light of the above, the Complainant succeeds on the second element of the Policy.

C. Registered and Used in Bad Faith

The Complainant must prove on the balance of probabilities both that the Disputed Domain Name was registered in bad faith and that it is being used in bad faith (see section 4.2 of the [WIPO Overview 3.0](#) and, for example, *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#), and *Control Techniques Limited v. Lektronix Ltd*, WIPO Case No. [D2006-1052](#)).

Paragraph 4(b) of the Policy provides a non-exclusive list of factors, any one of which may demonstrate bad faith. Among these factors demonstrating bad faith registration and use is the use of a domain name to intentionally attempt to attract, for commercial gain, Internet users to a 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 website or location or of a product or service on the website or location.

In the present case, the Panel finds it more likely than not that the Respondent was aware of the Complainant and its trademark rights when it registered the Disputed Domain Name. The Complainant's marks predate the Disputed Domain Name by approximately 18 years and the nature of the Disputed Domain Name suggests knowledge of the Complainant's marks. As mentioned above, the Disputed Domain Name includes a term ("akro") which is nearly identical to the distinctive textual part of the Complainant's AKROS mark, and combines it with a descriptive word ("bank") which relates to the Complainant's activity and a translation of which is part of the textual part of the Complainant's BANCA AKROS mark. In the Panel's view, the Respondent's awareness of the Complainant's trademark rights at the time of registration suggests bad faith (see *Red Bull GmbH v. Credit du Léman SA, Jean-Denis Deletraz*, WIPO Case No. [D2011-2209](#); *BellSouth Intellectual Property Corporation v. Serena, Axel*, WIPO Case No. [D2006-0007](#), where it was held that the respondent acted in bad faith when registering the disputed domain name, because widespread and long-standing advertising and marketing of goods and services under the trademarks in question, the inclusion of the entire trademark in the domain name, and the similarity of products implied by addition of a telecommunications services suffix ("voip") suggested knowledge of the complainant's rights in the trademarks).

According to evidence provided by the Center, the Respondent uses the Disputed Domain Name to resolve to a parking page containing PPC links relating to banking products and services. In view of the Complainant's activities in the banking and financial sector, the Panel finds that this indicates an intention on the part of the Respondent to attract Internet users to its website for commercial gain by creating a likelihood of confusion with the Complainant's trademarks. While the intention to earn click-through-revenue is not in itself illegitimate, the Panel finds that the use of the Disputed Domain Name that is confusingly similar to the Complainant's trademarks (as is the case here) to obtain click-through-revenue constitutes bad faith use (see *Mpire Corporation v. Michael Frey*, WIPO Case No. [D2009-0258](#); *L'Oréal, Biotherm, Lancôme Parfums et Beauté & Cie v. Unasi, Inc*, WIPO Case No. [D2005-0623](#)). The fact that the PPC links may be automatically generated by a third party cannot discharge the Respondent of any responsibility for the content appearing on the website connected to the Disputed Domain Name under its control (see section 3.5 of the [WIPO Overview 3.0](#)).

By failing to respond to the Complaint, the Respondent did not take any initiative to contest the foregoing. Pursuant to paragraph 14 of the Rules, the Panel may draw the conclusions it considers appropriate.

Therefore, the Panel finds that, on the balance of probabilities, it is established that the Disputed Domain Name was registered and is being used in bad faith. In light of the above, the Complainant also succeeds on the third and last element of the Policy.

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 <akrobank.com> be transferred to the Complainant.

/Flip Jan Claude Petillion/

Flip Jan Claude Petillion

Sole Panelist

Date: April 28, 2023