

ADMINISTRATIVE PANEL DECISION

Banca Akros S.p.A. v. Delmira Radeva
Case No. D2023-1101

1. The Parties

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

The Respondent is Delmira Radeva, United States of America (“United States”).

2. The Domain Name and Registrar

The disputed domain name <akrosgroupllc.com> 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 24, 2023. In accordance with the Rules, paragraph 5, the due date for Response was April 13, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 14, 2023.

The Center appointed John Swinson 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.

On April 24, 2023, the Respondent sent an informal response to the Center. The April 24 communication included one line of an email from the Complainant to the Respondent. On April 26, 2023, the Complainant sent an email to the Center that contained the full text of the email that the Respondent referenced.

The Panel issued Administrative Panel Procedural Order No. 1 on May 9, 2023. In light of the email communications received on April 24, 2023 from the Respondent, and on April 26, 2023 from the Complainant, questions have been raised and the Panel gave both parties a fair opportunity to respond to such questions raised by the Panel. On May 17, 2023, the Respondent responded to the Procedural Order which was in the time set by the Panel for the Respondent to respond. On May 22, 2023, the Complainant responded to the Procedural Order which was in the time set by the Panel for the Complainant to respond.

4. Factual Background

The Complainant, an Italian company that was established in 1997, operates as an investment and private banking firm. In 2017, the Complainant became part of the Banco BPM Group. The materials provided by the Complainant show that the Complainant enjoys a high reputation and renown in the financial sector.

The Complainant is the owner of several trademark registrations, including Italian trademark registration for AKROS MARCHIO FIGURATIVO IN CHIAROSCURO (registration number 36202000016633 (previous registration number: 1258248, filed on January 28, 2020), European Union trademark registration for AKROS (registration number 001317817, registered on June 26, 2003), and United States trademark registration No. 4,527,664 for BANCA AKROS registered on May 13, 2014. (These registrations all include a logo as part of the registration.)

The Complainant owns a portfolio of domain names including <bancaakros.it> registered on January 24, 1997 and <bancaakros.org> registered on March 15, 2021.

The Complainant has provided evidence that the BANCA AKROS trademark is well-known and prior Panels have decided that BANCA ARKOS is well-known for the purposes of the Policy. See, for example, *Banca Akros S.P.A v. Privacy Service Provided by Withheld for Privacy ehf / Bancaakros Bancaakros*, WIPO Case No. [D2022-0898](#).

The disputed domain name was registered on May 17, 2022.

On that same day, the Respondent also registered the domain names <arkosadvisory.com> and <akroshealth.com>.

On May 17, 2022, the Respondent also established a corporation called Akros Group LLC with Minnesota Secretary of State office, and registered a “doing business as” name as follows: “Akros Advisory Services”. It is not disputed that the Respondent is the sole owner of Akros Group LLC.

According to the Registrar’s records, the Respondent has an address in Minneapolis, United States, and an email address from University of Minnesota – which is the email address the Respondent has communicated from. The website at <arkosadvisory.com> lists the Respondent as chief strategist. (According to a search conducted by the Panel, The Carlson School of Management at University of Minnesota lists the Respondent as an adjunct faculty member specializing in health care policy.)

On January 5, 2023, the Complainant’s trademark attorneys emailed the Respondent regarding the Respondent’s use of the domain name <arkosadvisory.com>. The email stated, in part: “We understand from the information on the website that your activity does not overlap our client’s core business and we think it is possible to find an amicable settlement.” The email proposed a possible solution.

At one time, the disputed domain name resolved to a website that is stated to be operated by Arkos Group LLC, which shows a photograph of two businessmen looking at a tablet computer and includes a slogan “A

group of businesses dedicated to transforming healthcare” The website had the following notice at the bottom of the page “Copyright © 2023 Akros Group LLC - All Rights Reserved”. The website includes links to Facebook, Instagram and Twitter, but these links are only to the home or login pages of these social media services and not any particular account. At present it is a page with pay-per-click links.

5. Parties’ Contentions

A. Complainant

In summary, the Complainant makes the following submissions:

The Complainant is present in the major domestic and international markets and operates as a trader on his own account and as a market maker on the main classes of financial investments. The Complainant has won numerous awards in its field.

The disputed domain name is constituted by a first part with the distinctive name AKROS – combined with the generic term “group” and with the acronym LLC. The Complainant’s company name is constituted by the combination of the distinctive name AKROS with the generic term BANCA and the Italian acronym S.p.A. (Joint Stock Company). The Complainant’s trademarks and domain names are in part constituted by the sole part AKROS and in part by the combination of AKROS with the generic term BANCA. The word “group” is a generic term indicating a number of people classed together to some purpose; and it is to be understood by the use of the acronym LLC that the purpose is a business one like in the case of the term BANCA.

The Complainant has never provided authorization to register the disputed domain name and that there is no use of the disputed domain name in connection with a certain and identified business source.

The website at the disputed domain name has links referring to the banking and financial sector, but there is no unitarity: the links refers to websites offering credit cards in some cases, free trading courses in others and accountant services. There is clearly no *bona fide* offering of goods or services in the name of a defined subject.

Since the Complainant’s trademark “AKROS” is inherently distinctive at a high level and is widely known in the financial sector, the Respondent cannot credibly claim to have been unaware of the Complainant’s trademark, especially considering that the Complainant also used the disputed domain name for a website with links referring to the banking and financial sector.

It is difficult to understand the reason why an individual should have an interest in registering and using the disputed domain name, where the words “group” and LLC are descriptive wordings and AKROS is exactly the distinctive sign and company name of the Complainant operating in the same field.

It is evident that the Respondent knew, or should have known, that the Complainant’s registration would be identical to the Complainant’s distinctive trademarks.

In response to the Panel Procedural Order, the Complainant stated that the Complainant was concerned about the domain name <akroshealth.com> because it included the word “health” and the links at the parking page for that domain name reflected this. The Complainant wrote to the Respondent only regarding <akrosadvisory.com> to find out further information regarding the Respondent’s intentions. The Complainant filed the present Complaint regarding the disputed domain name because the parking page for the disputed domain name included links to financial topics. At the time of filing the Complaint, the Complainant was not aware that these three domain names were all owned by the Respondent.

The Complainant also stated that the Respondent provided the Panel with a document concerning <akrosadvisory.com> that was modified to give a false impression.

B. Respondent

The Respondent did not file a formal Response to the Complainant's contentions within the time period to file the Response, but did submit a late response which stated in pertinent part "Akros Group LLC operates exclusively in the US healthcare industry. Banca Akros, [] has no visible presence in the US".

In response to the Panel Procedural Order, the Respondent stated that the disputed domain name was purchased to support her business of health care strategy, and in particular, to reflect the name of the corporation that the Respondent had incorporated on the same day that she registered the disputed domain name. The Respondent also stated that she does not compete with the Complainant, that she is not a bank, that she has different customers and audiences, and that she has no benefit of attracting the Complainant's customers.

6. Discussion and Findings

To succeed, the Complainant must demonstrate that all of the elements enumerated in paragraph 4(a) of the Policy have been satisfied, namely:

- (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 disputed domain name has been registered and is being used in bad faith.

The *onus* of proving these elements is on the Complainant.

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

A. Procedural Issue

Ten days after the due date for the Response, the Respondent sent an informal email response to the Center.

Paragraph 14(a) of the Rules provides that, in the event of a late response, absent exceptional circumstances, panels shall proceed to a decision based solely on the Complaint.

Paragraph 14(a) of the Rules is counterbalanced by paragraph 10(b) of the Rules, which requires panels to ensure that parties are treated with equality and that each party is given a fair opportunity to present its case. The Panel notes that, in the event of a late Response, the default course of action pursuant to paragraph 14(a) of the Rules, is to proceed to decision based only on the Complaint. However, the Panel may, in its discretion, consider the response if "exceptional circumstances" exist. *Türk Ticaret Bankası A.Ş. v. Seda Celik*, WIPO Case No. [D2019-3155](#).

The Respondent's response is ten days late and does not set out the reason it is late or assert any exceptional circumstances. Moreover, the Panel had written a decision in this case prior to receiving the late response.

The Panel Procedural Order asked whether the Panel should accept the Respondent's emails as a late Response, and if so, on what grounds. The Respondent did not answer this question.

No exceptional circumstances exist on the record before the Panel.

Accordingly, the Panel does not accept the late Response, and consequentially does not need to consider the Complainant's reply to the late Response.

B. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy provides that the Complainant must establish that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

As set out in Section 4 above, the Complainant has registered trademarks for ARKOS and BANCA ARKOS.

Previous UDRP panels have consistently held that domain names are identical or confusingly similar to a trademark for purposes of the Policy when the domain name includes the trademark, or a confusingly similar approximation, disregarding the Top-Level Domain ("TLD") part of the domain name (e.g., disregarding the ".com" part of the domain name.)

Here, the disputed domain name includes the ARKOS registered trademark in its entirety. The addition of the word "group" and the letters "llc" (meaning limited liability company) does not prevent a finding that the disputed domain name is confusingly similar to the Complainant's ARKOS registered trademark.

The Complainant succeeds on the first element of the Policy.

C. Rights or Legitimate Interests

The Complainant's allegations to support the Respondent's lack of rights or legitimate interests in the disputed domain name are set out in Section 5A above.

The disputed domain name was registered after the Complainant established its trademark rights in ARKOS.

The website at the disputed domain name includes a copyright notice referring to "Akros Group LLC". As it turns out, this is a company established and owned by the Respondent. The Complainant did not address this issue in the Complaint. The Panel Procedural Order gave both parties the opportunity to address whether paragraph 4(c)(i) of the Policy applies in the present case. Neither party explicitly addressed this issue.

Paragraph 4(c)(i) of the Policy states the following circumstance, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate your rights or legitimate interests to the domain name for purposes of second element of the Policy: "before any notice to you of the dispute, your 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".

The Complainant does not allege that Akros Group LLC is a sham or fraudulent company, or assert that this company was established for an improper purpose. There is no evidence before the Panel to suggest that Akros Group LLC is not a *bona fide* startup business.

The disputed domain name is registered in the name of an individual, not in the name of Akros Group LLC. This is not uncommon for startup enterprises.

The Panel finds, based on its evaluation of all evidence presented, that paragraph 4(c)(i) of the Policy applies, and according that the Complainant does not succeed on the second element of the Policy.

D. Registered and Used in Bad Faith

Paragraph 4(a)(iii) of the Policy provides that the Complainant must establish that the Respondent registered and subsequently used the disputed domain name in bad faith.

In light of the finding in respect of the second element of the Policy, the Panel does not need to address this issue. However, the Panel makes the following comments.

The Complainant's evidence demonstrates that the Complainant is well-known in Italy and in Europe. However, there is no evidence before the Panel to show that the Complainant is well-known in the United States where the Respondent is located or in the health care sector in which the Respondent works and which is the subject of the website at the disputed domain name.

The term "arkros" is a Greek noun, which describes the "end" or "outermost" reach. The Complainant states that it is difficult to understand the reason why an individual should have an interest in registering and using the disputed domain name. Maybe that reason is because of the Greek meaning of the term, and not because of the Complainant's trademark.

It is conceivable that the Respondent used the word ARKOS in its company name and then in the disputed domain name for reasons other than to take advantage of the Complainant and its reputation. In response to the Panel Procedural Order, the Respondent asserts that she did not wish to cause any confusion with the Complainant, because she is in a different line of business in a different country. Unhelpfully, the Respondent did not state why she selected ARKOS as a company name or as part of the disputed domain name, or whether she knew of the Complainant at the time of registering the disputed domain name. It is also unhelpful that the Respondent presented an extract of a document to the Panel in a way that could have been misleading and that the Respondent did not tell the full story in her initial correspondence with the Center.

There is no evidence before the Panel that shows that the Respondent has used the disputed domain name to take advantage of the Complainant's reputation. The website currently at the disputed domain name relates to healthcare, not finance. The Respondent's business does not appear to compete with the Complainant's business. As stated above, the Complainant does not assert that the Respondent's digital health startup strategy consulting business was not *bona fide*.

The Complainant asserts that the website at the disputed domain name has links to financial services. However, the Complainant did not provide evidence of these links, and the Panel has been unable to find such links on the website at the disputed domain name.

The Panel recognizes that the Complainant has acted fairly in this matter, and the Complainant's correspondence to the Respondent was measured and appropriate. The Panel commends the Complainant's attorneys in how they handled this dispute. It was not until after the Complaint was filed that relevant evidence came to light. If the Respondent had responded to the Complainant's letter in January 2023, this dispute may have been avoided.

Because of the Panel's finding in respect of the second element, the Panel does not make a finding in respect of the third element.

7. Decision

For the foregoing reasons, the Complaint is denied.

/John Swinson/

John Swinson

Sole Panelist

Date: May 31, 2023