

## **ADMINISTRATIVE PANEL DECISION**

**Banca Akros S.P.A. v. Carolina Rodrigues, Fundacion Comercio Electronico**  
**Case No. D2023-1105**

### **1. The Parties**

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

The Respondent is Carolina Rodrigues, Fundacion Comercio Electronico, Panama.

### **2. The Domain Name and Registrar**

The disputed domain name <akrofinance.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 21, 2023. In accordance with the Rules, paragraph 5, the due date for Response was April 10, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on April 12, 2023.

The Center appointed Ugur G. Yalçiner 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, which was founded in 1997 and became part of the Banco BPM Group in 2017. 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 is the owner of the following trademark registrations.

- Italian trademark BANCA AKROS with registration No. 362020000016633, first filed on August 6, 1999, and lastly filed on January 28, 2020,
- European Union trademark AKROS with registration No. 001317817, registered on June 26, 2003,
- Italian trademark AKROS with registration No. 362020000016648, first filed on August 6, 1999, and lastly filed on January 28, 2020,
- Italian trademark BANCA AKROS with registration No. 302020000021472, first filed on March 3, 2020, and registered on September 10, 2020,
- United States of America (“United States”) Trademark BANCA AKROS with registration No. 4527664, registered on May 13, 2014.

The Complainant also owns several domain name registrations including <bancaakros.it>, registered on January 24, 1997, <bancakros.info>, <bancakros.org>, <bancakros.net>, and <bancakros.com> registered on March 15, 2021.

The disputed domain name was registered on January 2, 2023, and it is initially pointed to the webpage warning “potential phishing attempt” and when the threat is ignored the disputed domain name opens different pages depending on the visitors’ country, which contains variety of contents that are not related to each other or the Respondent.

#### **5. Parties’ Contentions**

##### **A. Complainant**

The Complaint includes the following contentions:

##### **(i) Identical or Confusingly Similar**

The Complainant states that it is the owner of trademark registrations BANCA AKROS and AKROS, which are mentioned above in the Factual Background, the disputed domain name is constituted by a first part with a distinctive character “akro” and combined with the term “finance”, the Complainant’s company name is constituted by the combination of the distinctive name “akros” with the term “banca”, its trademarks and domain names are in part constituted by the sole part AKROS and in part by the combination of AKROS with the term “banca”.

The Complainant asserts that the disputed domain name is confusingly similar to the Complainant’s AKROS trademarks as the term “akro/akros” is the most distinctive, while the terms “finance/banca” are financial terms that are descriptive of the business activity of the Complainant and the trademarks also risk being tarnished by being connected to such a website, which in particular does not refer to a precise and unique content.

(ii) Rights or legitimate interests

The Complainant contends that it 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 contested domain name opens pages different and not related to the financial or banking sector, there is clearly no *bona fide* offering of goods or services in the name of a defined subject.

The Complainant states that it uses the expression Akros Banca as company name since 1997 and this use serves as *prima facie* and conclusive evidence of the Complainant's ownership and exclusive right to use the marks in connection with the mentioned services.

The Complainant requests the burden of production be shifted to the Respondent to bring forward evidence of rights or legitimate interests in respect of the disputed domain name.

(iii) Registration and Use in Bad Faith

The Complainant claims that its 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 mark, especially considering that he also used the word "akro" combined with the term "finance".

According to the Complainant it is not understandable why a private person should have an interest in registering and using the disputed domain name, where the word "finance" is descriptive and "akro" is identical to the first part of the Complainant's trademarks and distinctive signs "akros" if the websites reachable through it are not related to the finance sector.

The Complainant also contends that the Respondent was well aware of the Complainant's trademarks, company name and activity, the Respondent knew, or should have known, that his registration would be almost identical to the Complainant's distinctive signs, therefore the domain name was 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 accordance with paragraph 4(a) of the Policy, the Complainant must prove that each of the three elements are present:

- (i) the disputed domain name registered by the Respondent 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.

**A. Identical or Confusingly Similar**

The Complainant submits sufficient evidences for its registered trademarks in the European Union, Italy, and the United States. Accordingly, the Panel is satisfied that the Complainant is the owner of the trademarks BANCA AKROS and AKROS.

The Complainant's trademark BANCA AKROS contains the Italian term "banca" which is translated as "bank" in English and it is easily understandable that it corresponds to "bank" globally. The Complainant also owns

trademark registrations including the term “akros” solely. On the other hand, the disputed domain name incorporates the Complainant’s trademark AKROS with omission of the last letter “s” along with an additional term “finance”. Considering that the trademark AKROS is recognizable within the disputed domain name, the Panel notes that the omission of the letter “s” and addition of the term “finance” do not avoid the confusing similarity with the Complainant’s trademarks. Herein, the Panel refers to *Starbucks Corporation v. Withheld for Privacy Purposes, Privacy service provided by Withheld for Privacy ehf / huu nhu anh tran*, WIPO Case No. [D2021-2362](#), where the domain name <starbuckvietnam.com> is confusingly similar with the Complainant’s trademark “starbucks” regardless of having the letter “s” removed and the term “vietnam” added.

(See also WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.9 and the cases cited therein, finding that a domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element.)

(See also [WIPO Overview 3.0](#), section 1.8 and the cases cited therein, finding that where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element.)

It is an accepted principle that generic Top-Level-Domains (“gTLDs”), in this case “.com”, are to be typically disregarded in the consideration of the issue of whether a domain name is identical or confusingly similar to a complainant’s trademark. Disregarding the gTLD “.com”, the Panel notes that the disputed domain name is confusingly similar to the Complainant’s trademarks.

In the light of the above, the Panel finds that the disputed domain names are confusingly similar to the Complainant’s registered trademarks and that the requirements in paragraph 4(a)(i) of the Policy are fulfilled.

## **B. Rights or Legitimate Interests**

Once the Complainant makes out a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name, the burden of production shifts to the Respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain name. See [WIPO Overview 3.0](#), section 2.1.

The Panel confirms that the Complainant has made out a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name. The Respondent has neither replied to the Complainant’s contentions formally nor presented any evidence to support his rights or legitimate interests in the disputed domain name. As the Respondent has failed to rebut this case, the Panel concluded that the Complainant has established the second element of paragraph 4(a) of the Policy. See *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#); *Spenco Medical Corporation v. Transure Enterprise Ltd*, WIPO Case No. [D2009-1765](#); *Swarovski Aktiengesellschaft v. blue crystal*, WIPO Case No. [D2012-0630](#); *Pomellato S.p.A v. Richard Tonetti*, WIPO Case No. [D2000-0493](#).

The Panel notes that the Respondent does not have any registered trademarks or trade names and no license or authorization of any other kind has been given by the Complainant to use its registered trademark. There is no evidence of the Respondent’s demonstrable 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, neither.

The Panel determines that the disputed domain name is initially pointed to the page warning “potential phishing attempt” and when the threat is ignored the disputed domain name opens different pages depending on the visitors’ country, which contains variety of contents that are not related to each other or the Respondent and points out that using the disputed domain name in this manner does not constitute rights or legitimate interests to the Respondent. Moreover, inclusion of the term “finance”, which is descriptive of the

services provided under Complainant's BANCA AKROS and AKROS trademarks, in the disputed domain name creates a direct inference to the Complainant and therefore the composition of the disputed domain name cannot constitute fair use. [WIPO Overview 3.0](#), section 2.5.1.

As a result, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain names, and the requirements of paragraph 4(a)(ii) of the Policy are therefore fulfilled by the Complainant.

### **C. Registered and Used in Bad Faith**

The Panel is satisfied with the relevant evidence filed by the Complainant showing that it owns trademark registrations for BANCA AKROS and AKROS, which have been registered long before the registration of the disputed domain name and the Panel confirms the Complainant's trademarks are widely-known especially in the financial sector.

As the Respondent added the term "finance" that is related to the field in which the Complainant and its trademarks are widely-known, to the term "akro" that is also confusingly similar to the Complainant's trademark, the Panel is in the opinion that it is not possible for the Respondent to be unaware of the Complainant's trademark when the disputed domain name was registered and the Respondent's aim of the registration was to take advantage of the possible confusion between the disputed domain name and the Complainant's widely-known trademark. Therefore, the Panel is satisfied that the defaulting Respondent likely has the intention of misleading the public to believe that there was some affiliation or business relationship with the Complainant. Several UDRP panels have held that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith. [WIPO Overview 3.0](#), section 3.1.4.

The Panel also notes that the disputed domain name has been flagged for its alleged use in connection with a phishing scheme, which further supports a finding of bad faith registration and use. Ultimately, given the use of the confusingly similar disputed domain name to redirect to various third party websites, it is clear that the Respondent intentionally attempted to attract Internet users to its website by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the disputed domain name, which constitutes bad faith registration and use pursuant to paragraph 4(b)(iv) of the Policy.

Having considered all the facts in this case, the Panel finds that the Complainant has sustained its burden of proof in showing that the disputed domain name was registered and are 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, <akrofinance.com>, be transferred to the Complainant.

*/Ugur G. Yalçiner/*

**Ugur G. Yalçiner**

Sole Panelist

Date: May 5, 2023