Decision for dispute CAC-UDRP-102468

Case number	CAC-UDRP-102468
Time of filing	2019-05-02 09:58:02
Domain names	delubac-online.com

Case administrator

Organization	Iveta Špiclová (Czech Arbitration Court) (Case admin)

Complainant

Organization	BANQUE DELUBAC ET CIE

Complainant representative

Organization	Nameshield (Enora Millocheau)

Respondent

Organization	TLANGLEY LLC

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings pending or decided between the same parties and relating to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of several trademarks containing the term “DELUBAC”, in particular the French trademark DELUBAC FACTOR, No. 3765745 registered on January 28, 2011 for services in class 36; the French trademark DELUBAC-FACTOR, No. 3765778 registered on January 28, 2011 for services in class 36; the French trademark DELUBAC-EDI, No. 3654728 registered on November 6, 2009 for services in class 36.

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:

It results from the Complainant’s undisputed allegations that it was founded in 1924 in France by Maurice Delubac and is an independent financial institution providing specialized banking services. It offers five main branches of business which are: Judicial Bank; Bank of Property Administrators; Savings Management Bank; Investment bank; Bank of Companies and Factoring.

It also uses the official website <delubac.com>.

The disputed domain name <delubac-online.com> was registered on January 12, 2019 and redirects to the Complainant's official website <delubac.com>.

The Complainant further contends that the Respondent used the disputed domain name to pass itself off as one of Complainant's former employee to conduct a phishing scheme.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant has, to the satisfaction of the Panel, shown the Respondent to have no rights or legitimate interests in respect of the disputed domain name (within the meaning of paragraph 4(a)(ii) of the Policy).

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name has been registered and is being used in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy).

PROCEDURAL FACTORS

The Panel is satisfied that all procedural requirements under UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

1. The Panel finds that the disputed domain name <delubac-online.com> is confusingly similar to the Complainant's trademarks, containing the term "DELUBAC", in particular to the French trademark DELUBAC FACTOR, No. 3765745 registered on January 28, 2011 for services in class 36.

It is the view of this Panel that the most distinctive element of the Complainant's trademarks is the term "DELUBAC", which is exactly replicated in the disputed domain name <delubac-online.com>. This Panel joins the view of the Panel in Banque Delubac et Cie v. Mickael Zeitoun, Milscorp, WIPO Case No. D2018-2705, which decided as follows: "Moreover, the Panel notes that the part placed at the left of the trademark catches the most the attention of the reader. Therefore, when comparing the disputed domain name <delubaconline.com> with the trademarks, the Panel finds that the most distinctive element of the trademarks is the term "DELUBAC"" (see also Banque Delubac et Cie v. Pierre Dieudonne, WIPO Case No. DEU2018-0030).

The addition of the dash and of the generic term "online" does not avoid the confusing similarity between the disputed domain name and Complainant's trademarks: in fact, DELUBAC is recognizable in the disputed domain name. On this regard this Panel shares the view mentioned in WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Jurisprudential Overview 3.0") at point 1.7: "While each case is judged on its own merit, 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".

2. In the absence of any Response, or any other information from the Respondent indicating the contrary, the Panel further holds that the Complainant successfully presented its prima facie case and that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

In particular, the Respondent is not affiliated with nor authorized by the Complainant in any way, and he is not related in any way to the Complainant's business. In addition, the Respondent is not commonly known by the disputed domain name.

Finally, the disputed domain name redirects to the Complainant's official website <delubac.com> and the Complainant provided evidence that the Respondent used the disputed domain name to pass itself off as one of the Complainant's former employee to conduct a phishing scheme. Such use can neither be considered as bona fide offering of goods or services nor a legitimate non-commercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue; see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Jurisprudential Overview 3.0") at point 2.13: "Panels have categorically held that the use of a domain name for illegal activity (e.g. the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent".

3. It is the view of this Panel that the Respondent has intentionally registered the disputed domain name which replicates the most distinctive element of the Complainant's trademarks. By the time the disputed domain name was registered, it is unlikely that the Respondent did not have knowledge of the Complainant's rights on its trademarks. The Complainant also proved that the Respondent used the disputed domain name to pass itself off as one of Complainant's former employee to conduct a phishing scheme, so that the Panel is satisfied that the disputed domain name is used to intentionally attempt to attract, for commercial gain, Internet users to the Respondent's web site or other on-line location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's web site or location, or of a product or service on the Respondent's web site or location.

In addition, this Panel shares the view mentioned in WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Jurisprudential Overview 3.0") at point 3.1.4: "(..) "given that the use of a domain name for per se illegitimate activity such as the sale of counterfeit goods and phishing can never confer rights or legitimate interest on a respondent, such behaviour is manifestly considered evidence of bad faith. Similarly, panels have found that a respondent redirecting a domain name to the complainant's website can establish bad faith insofar as the respondent retains control over the redirection thus creating a real or implied ongoing threat to the complainant".

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

AND THE DISPUTED DOMAIN NAME(S) IS (ARE) TO BE

1. **DELUBAC-ONLINE.COM**: Transferred

PANELLISTS

Name	**Dr. Federica Togo**

DATE OF PANEL DECISION 2019-06-17

Publish the Decision