Decision for dispute CAC-UDRP-103011

Case number	CAC-UDRP-103011
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Domain names	delubac-gestion.com

Case administrator

Name	Šárka Glasslová (Case admin)

Complainant

Organization	BANQUE DELUBAC ET CIE

Complainant representative

Organization	Nameshield (Laurent Becker)

Respondent

Organization	Delubac Gestion

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings.

IDENTIFICATION OF RIGHTS

The Complainant is the owner if several trademarks containing the term “DELUBAC”, such as the European trademark DELUBAC® n°6826135 registered on November 10th 2008.

FACTUAL BACKGROUND

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

Founded in 1924 in France by Maurice Delubac, BANQUE DELUBAC ET CIE (the Complainant) is an independent financial institution providing specialized banking services. The Complainant is the owner if several trademarks containing the term “DELUBAC”, such as the European trademark DELUBAC® n°6826135 registered on November 10th 2008. The Complainant also owns the domain name <delubac.com> and uses it for its official website.

The disputed domain name <delubac-gestion.com> was registered on April 06th 2020. It redirects to the website https://www.serveraccess.online.

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).

The disputed domain name <delubac-gestion.com> is confusingly similar to the Complainant's trademark DELUBAC®. The trademark DELUBAC® is included in its entirety. Furthermore, the addition of the generic term "Gestion" (French word for "management") that can be considered as generic or descriptive in relation to banking and financial activities. It is not sufficient to avoid the likelihood of confusion with the Complainant, its trademarks and domain names.

See WIPO Case No. D2018-2230 Crédit Industriel et Commercial v. Manager Builder, Builder Manager ("The disputed domain name incorporates the CIC trademark in its entirety. Numerous UDRP panels have recognized that incorporating a trademark in its entirety can be sufficient to establish that the disputed domain name is at least confusingly similar to a registered trademark (see e.g., PepsiCo, Inc. v. PEPSI, SRL (a/k/a P.E.P.S.I.) and EMS Computer Industry (a/k/a EMS), WIPO Case No. D2003-0696). Moreover, it has been held in many UDRP decisions and has become a consensus view among panelists (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0"), section 1.8), that where the relevant trademark is recognizable within the disputed domain name, the addition of other terms would not prevent a finding of confusing similarity under the first element of the UDRP. Accordingly, the addition of the term "banks", which even is the English translation of the French term "banques" as it is reflected in Complainant's CIC BANQUES trademark, does not avoid the confusing similarity arising from the incorporation of Complainant's CIC trademark in the disputed domain name.").

Moreover, the Panel concludes that the addition of the generic Top-Level Domain suffix ".COM" does not change the overall impression of the designation as being connected to the trademark DELUBAC®. It does not prevent the likelihood of confusion between the disputed domain names and the Complainant, its trademark and its domain names associated.

Thus, the domain name <delubac-gestion.com> is identical to the Complaint's trademark DELUBAC®.

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).

According to the WIPO Case No. D2003-0455, Croatia Airlines d .d. v. Modern Empire Internet Ltd., the Complainant is required to make out a prima facie case that the Respondent lacks rights or legitimate interests. Once such prima facie case is made, the Respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(a) (ii) of the UDRP.

The Complainant asserts that the Respondent is not known as the disputed domain name.
Past panels have held that a Respondent was not commonly known by a disputed domain name if the Whois information was not similar to the disputed domain name. Thus, the Respondent is not known as the disputed domain name. Please see for instance:
- Forum Case No. FA 1781783, Skechers U.S.A., Inc. and Skechers U.S.A., Inc. II v. Chad Moston / Elite Media Group <bobsfromsketchers.com> ("Here, the WHOIS information of record identifies Respondent as "Chad Moston / Elite Media Group." The Panel therefore finds under Policy paragraph 4(c)(ii) that Respondent is not commonly known by the disputed domain name under Policy paragraph 4(c)(ii).")
- Forum Case No. FA 699652, The Braun Corporation v. Wayne Loney.

The Respondent has no rights or legitimate interests in respect of the domain name <delubac-gestion.com> and he is not related in any way with the Complainant. The Complainant does not carry out any activity for, nor has any business with the Respondent.

Neither licence nor authorization has been granted to the Respondent to make any use of the Complainant's trademark DELUBAC®, or apply for registration of the disputed domain name by the Complainant.

The disputed domain name redirects to the website https://www.serveraccess.online. The Respondent's website cannot be considered as a bona fide offering of services or fair use, since the website can mislead the consumers into believing that they are accessing the Complainant's website.

Thus, in accordance with the foregoing, the Panel concludes that Respondent has no right or legitimate interest in respect of the disputed domain name <delubac-gestion.com>.

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).

The domain name <delubac-gestion.com> is confusingly similar to its prior trademark and services DELUBAC®. The addition of the generic term "Gestion" (French word for "management") that can be considered as generic or descriptive in relation to banking and financial activities. It is not sufficient to avoid the likelihood of confusion with the Complainant, its trademarks and domain names. Therefore, it is reasonable to infer that the Respondent has registered and used the domain name with full knowledge of the Complainant's trademark.

The website in connexion with the disputed domain name <delubac-gestion.com> redirects to the Respondent's website with user's access. The website does not contain any information about website. Therefore, by using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to his web site, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of his web site (par. 4(b)(iv) of the Policy).

On these bases, the Panel concludes that the Respondent has registered and is using the disputed domain name <delubac-gestion.com> in bad faith.

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

The disputed domain name <delubac-gestion.com> is confusingly similar to the Complainant's trademark DELUBAC®. The Respondent is not known as the disputed domain name and has no rights or legitimate interests in respect of the domain name <delubac-gestion.com> and he is not related in any way with the Complainant. By using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to his web site, by creating a likelihood of confusion with the Complainant's mark

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

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

PANELLISTS

Name	**Thomas Hoeren**

DATE OF PANEL DECISION 2020-05-08

Publish the Decision