

Decision for dispute CAC-UDRP-104539

Case number	CAC-UDRP-104539
Time of filing	2022-05-02 09:11:53
Domain names	lendingclubbank.com

Case administrator

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

Complainant

Organization	LendingClub Bank, National Association
--------------	---

Complainant representative

Organization	RODENBAUGH LAW
--------------	-----------------------

Respondent

Name	Shen Zhong Chao
------	------------------------

OTHER LEGAL PROCEEDINGS

The Complainant informed the Panel that the disputed domain name is included in a list of 150 domains subjected to an “in rem” proceeding under the Anti-cybersquatting Consumer Protection Act (“ACPA”) which was filed by the Complainant in the Eastern District of Virginia. The Complainant also informed the Panel that due to the significance of the disputed domain name and the potential for fraud, the Complainant elected to file this UDRP dispute in order to obtain a faster decision. In the event the Panel awards the transfer of the disputed domain name to the Complainant, the Complainant will remove the disputed domain name from the pending ACPA action.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of numerous trademarks worldwide, including but not limited to the following:

- U.S. Trademark Registration No. 3,513,349 for “Lending Club”, registered on October 7, 2008;
- U.S. Trademark Registration No. 5,470,831 for “LENDINGCLUB”, registered on May 15, 2018;
- International Registration No. 1387144 for “LendingClub”, registered on September 11, 2017; and
- Chinese Trademark No. 26701423 for “Len Ding Club”, registered on March 28, 2020.

The Complainant states that it also owns the domain name <lendingclub.com> for its primary website and business email address.

FACTUAL BACKGROUND

The Complainant, LendingClub Bank, National Association, was founded in 2006 and is a leading digital marketplace bank based in the United States. The Complainant operates internationally and offers a broad range of financial products and services through a technology-driven platform, designed to help its members pay less when borrowing and earn more when saving. On January 19, 2021, the LendingClub announced that it had acquired a banking company and would conduct business as the Complainant, LendingClub Bank, National Association.

The disputed domain name was registered on January 28, 2021, which resolved to an active website offering the disputed domain name for sale.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant contends that the disputed domain name is confusingly similar to the LENDING CLUB mark on the basis that the disputed domain name which consists of the LENDING CLUB mark, the addition of the descriptive term "bank" and the generic top-level domain name suffix ("gTLD") ".com" are insufficient to avoid the finding that the disputed domain name is confusingly similar to its LENDING CLUB mark.

The Complainant also argues that the Respondent does not have any rights or legitimate interests in the disputed domain name. The Respondent is not commonly known by the disputed domain name. In addition, the Respondent is not affiliated with the Complainant nor did the Complainant license or authorize the Respondent to use the LENDING CLUB mark.

The Complainant further asserts that the disputed domain name has been registered and is being used in bad faith as the Respondent should have known of the Complainant's LENDING CLUB mark at the time of registration of the disputed domain name. The Complainant also asserts that the Respondent registered the disputed domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant who is the owner of the trademark or service mark or to a competitor of the Complainant, for valuable consideration in excess of the Respondent's out-of-pocket costs directly related to the disputed domain name.

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.

Preliminary Issue: Language of Proceedings

Paragraph 11 of the Rules provides that:

“(a) Unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding.”

The language of the Registration Agreement for the disputed domain name is Chinese.

The Complainant requested that the language of the proceeding be English for the following reasons:

- (i) Respondent appears to be a serial cybersquatter of English language domain names;
- (ii) the disputed domain name website is offered for sale in the English language; and
- (iii) requiring the Complainant to translate the Complaint would cause unnecessary delays and expense.

The Respondent did not comment on the language of the proceeding.

The Panel cites the following with approval: “Thus, the general rule is that the parties may agree on the language of the administrative proceeding. In the absence of this agreement, the language of the Registration Agreement shall dictate the language of the proceeding. However, the Panel has the discretion to decide otherwise having regard to the circumstances of the case. The Panel’s discretion must be exercised judicially in the spirit of fairness and justice to both parties taking into consideration matters such as command of the language, time and costs. It is important that the language finally decided by the Panel for the proceeding is not prejudicial to either one of the parties in his or her abilities to articulate the arguments for the case.” (See *Groupe Auchan v. xmxzl*, WIPO Case No. DCC2006 0004).

Having considered the above factors, the Panel determines that English be the language of the proceeding. The Panel agrees that the Respondent appear to be familiar with the English language, taking into account the Respondent’s selection of the English-language trademark and the domain name in dispute. In the absence of an objection by the Respondent, the Panel does not find it procedurally efficient to have the Complainant translate the Complaint and evidence into Chinese.

Preliminary Issue: UDRP and Court Proceedings

Under paragraph 4(k) of the Policy, the UDRP does not bar either party from seeking judicial recourse. Paragraph 18(a) of the UDRP Rules gives the panel discretion to suspend, terminate, or continue a UDRP proceeding where the disputed domain name is also the subject of other pending legal proceedings (see WIPO Overview 3.0, section 4.14). Generally, appointed panels are reluctant to suspend a UDRP case due to concurrent court proceedings, most notably because of the potential for indeterminate delay (see WIPO Overview 3.0, section 4.14.1.). Panels therefore would generally issue a UDRP decision on the merits even in when an overlapping court proceeding are existing, notwithstanding the fact that a UDRP decision would not be binding to the court, the relative expediency of the UDRP versus courts is seen as a benefit to the parties.

In the present case, the Respondent did not file a response and did not dispute the jurisdiction of the Panel. In addition, the Panel is also of the view that terminating the case would not be appropriate since it would not affect the court proceedings, which are the subject of another cause of action under ACPA. (See WIPO Overview 3.0, section 4.14.2). The Panel shall therefore proceed with the decision below.

PRINCIPAL REASONS FOR THE DECISION

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires a complainant to show that a domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights.

A registered trademark provides a clear indication that the rights in the mark shown on the trademark certificate belong to its respective owner. The Complainant has provided evidence that it owns the LENDING CLUB trademark. The differences between the disputed domain name and the Complainant's LENDING CLUB trademark are the addition of a descriptive term "bank" and the gTLD ".com", which in the Panel's view does not avoid confusing similarity with the Complainant's trademark.

It is established that where a trademark is recognizable within the disputed domain name, the addition of a descriptive term would not prevent a finding of confusing similarity under the first element. (See WIPO Overview 3.0, section 1.8). It is further established that gTLD is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test. (See WIPO Overview 3.0, section 1.11). The addition of a gTLD to a disputed domain name does not avoid confusing similarity as the use of a TLD is technically required to operate a domain name (see *Accor v. Noldc Inc.* WIPO Case No. D2005-0016; *F. Hoffmann-La Roche AG v. Macalve e-dominios S.A.*, WIPO Case No. D2006-0451; *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. D2000-0003; *L'Oréal v. Tina Smith*, WIPO Case No. 2013-0820; *Titoni AG v. Runxin Wang*, WIPO Case No. D2008-0820; and *Alstom v. Itete Peru S.A.*, WIPO Case No. D2009-0877). Therefore, the Panel finds that the disputed domain name is confusingly similar to the LENDING CLUB mark and the element under paragraph 4(a)(i) of the Policy is satisfied.

B. Rights or Legitimate Interests

Paragraph 4(a)(ii) of the Policy requires the complainant to show that the respondent has no rights or interests in respect of the domain name. Once the complainant establishes a prima facie case that the respondent lacks rights or legitimate interests in the domain name, the burden of production shifts to the respondent to show that it has rights or legitimate interests in respect to the domain name (see WIPO Overview 3.0, section 2.1).

In the present case, the Complainant has demonstrated prima facie that the Respondent lacks rights or legitimate interests in respect of the disputed domain name and the Respondent has failed to assert any such rights or legitimate interests.

The Complainant submitted evidence that it did not authorize or license the Respondent to use the LENDING CLUB mark (see *OSRAM GmbH. v. Mohammed Rafi/Domain Admin, Privacy Protection Service INC d/b/a PrivacyProtect.org*, WIPO Case No. D2015-1149; *Sanofi-Aventis v. Abigail Wallace*, WIPO Case No. D2009-0735). The Complainant also submitted evidence that its registrations and use of the trademarks predate the registration of the disputed domain name by at least 13 years and that the disputed domain name was registered just 9 days after LendingClub's press release that it would be doing business as the Complainant.

In addition, the evidence submitted by the Complainant shows that the Respondent is not commonly known by the disputed domain name.

The Panel also notes that in the present case, the addition of the term "bank" is within the Complainant's field of commerce or indicating services related to the brand, as the Complainant is a financial institution offering financial services, which may trigger an inference of affiliation with the Complainant even though the Respondent is in no way affiliated with the Complainant (see WIPO Overview 3.0, section 2.5.1). Further, in the circumstances of the present case, the Respondent's use of the disputed domain name to offer the domain name for sale appears to be for the Respondent's own commercial gain which does not constitute fair use of the disputed domain name (see WIPO Overview 3.0, section 2.5.2).

The Respondent did not submit a response in the present case and did not provide any explanation or evidence to show rights or legitimate interests in the disputed domain name which is sufficient to rebut the Complainant's prima facie case.

The Panel is therefore of the view that the Respondent has no rights or legitimate interests in respect of the disputed domain name and accordingly, paragraph 4(a)(ii) of the Policy is satisfied.

C. Registered and Used in Bad Faith

The complainant must show that the respondent registered and is using the disputed domain name in bad faith (Policy, paragraph 4(a)(iii)). Paragraph 4(b) of the Policy provides circumstances that may evidence bad faith under paragraph 4(a)(iii) of the Policy.

In this case, the evidence shows that the Complainant's mark has attained such goodwill and reputation such that the Respondent is unlikely to have registered the disputed domain name without sight and knowledge of the Complainant's mark and it is implausible that there is any good faith use to which the disputed domain name may be put to. It is also the Complainant's evidence that the Respondent could not have registered the disputed domain name without prior knowledge of the Complainant's mark as the Respondent's name has no connection with the Complainant's LENDING CLUB mark which was registered long ago. This is another indicator of bad faith on the part of the Respondent (see Boursorama SA v. Estrade Nicolas, WIPO Case No. D2017-1463).

The Panel has also taken into consideration that the Respondent did not submit a Response in this proceeding and the Respondent's antecedent track record of being a serial cybersquatter who was involved in and found against numerous UDRP decisions in recent years. Notably, at least five of these decisions related to banking institutions which indicates a pattern of cybersquatting on financial services firms.

In addition, the Complainant has submitted evidence that the disputed domain name resolved to a website offering the domain name for sale. In the circumstances of the present case, given the Respondent's likely knowledge of the Complainant's marks, the Complainant's reputation and goodwill in its marks, the pattern of abusive registrations by the Respondent, the failure of the Respondent to present a credible evidence-backed rationale for registering the disputed domain name, and that the disputed domain name is confusingly similar to the Complainant's mark, the Panel is of the view that the Respondent registered the disputed domain name primarily to sell the domain name to the Complainant (or its competitor) for valuable consideration in excess of the Respondent's costs related to the disputed domain name (see WIPO Overview 3.0, section 3.1.1).

Based on the evidence presented to the Panel, including the confusing similarities between the disputed domain name and the Complainant's mark and the fact that the disputed domain name is being offered for sale, the Panel draws the inference that the disputed domain name was registered and is being used in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **LENDINGCLUBBANK.COM**: Transferred

PANELLISTS

Name	Mr. Jonathan Agmon
------	---------------------------

DATE OF PANEL DECISION	2022-06-13
------------------------	------------

Publish the Decision
