

**Decision for dispute CAC-UDRP-105817**

Case number	<b>CAC-UDRP-105817</b>
Time of filing	<b>2023-09-27 09:47:15</b>
Domain names	<b>lendingclubfinance.net</b>

**Case administrator**

Organization	<b>Iveta Špiclová (Czech Arbitration Court) (Case admin)</b>
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**Complainant**

Organization	<b>LendingClub Bank, National Association</b>
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**Complainant representative**

Organization	<b>Mike Rodenbaugh (RODENBAUGH LAW)</b>
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**Respondent**

Organization	<b>Lending Club</b>
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## OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings which are pending or decided and which relate to the disputed domain name.

## IDENTIFICATION OF RIGHTS

The evidence shows the Complainant's parent company LendingClub Corporation, a Delaware corporation, was the original owner of the trademarks below but has assigned to the Complainant the entire interest and goodwill in the trademarks. It also appears from the Complainant's website <www.lendingclub.com> that the Complainant is a wholly owned subsidiary of LendingClub Corporation.

As such, the following trademark registrations evidence the Complainant's rights as the owner of the trademarks.

Trademark	Jurisdiction	Registration No.	Registration Date
LENDING CLUB	USA	3513349	October 7, 2008
LENDINGCLUB	USA	5470831	May 15, 2018
	USA	6029627	April 7, 2020
	WIPO (EU, JP, AU, NZ, IL)	1387144	September 11, 2017

LENDINGCLUB	CHINA	26701423	March 28, 2020
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The Complainant is also the owner of the domain name <lendingclub.com> registered on May 29, 2002, that it uses in connection with its online services.

#### FACTUAL BACKGROUND

The Complainant was founded in 2006 and has continuously used the “LENDINGCLUB” mark in commerce since then.

The Complainant offers innovative, world-class financial services. It is a leading digital marketplace bank in the United States and internationally. Its members gain access to a broad range of financial products and services through a technology-driven platform, designed to help them pay less when borrowing and earn more when saving.

The Complainant has invested copious amounts of time and money to promote the ubiquitous LendingClub brand, worldwide. Consumers around the world have come to associate Complainant and its services with the “LENDINGCLUB” trademark and brand.

Through such longstanding and exclusive use by the Complainant, the “LENDINGCLUB” trademark is famous in the United States and throughout the world.

The disputed domain name <lendingclubfinance.net> was registered on June 9, 2023.

#### PARTIES CONTENTIONS

The Complainant contends that the requirements of the Policy have been met and that the disputed domain name should be transferred to it.

**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 Panel accepts that the Complainant has rights by reason of its ownership of the registered trademark “LENDINGCLUB”. See *F. Hoffmann-La Roche AG v. Relish Enterprises*, WIPO Case No. D2007-1629.

The question is whether the disputed domain name is identical or confusingly similar to the Complainant’s trademark.

Whether a disputed domain name is identical or confusingly similar to a trademark can be determined by making a side-by-side comparison with the disputed domain name. See *Research in Motion Limited v. One Star Global LLC*, WIPO Case No. D2009-0227. A disputed domain name is identical to the trademark when it is a character for character match. It is confusingly similar when it varies the trademark by, for example, adding generic terms to the dominant part of the trademark.

The Complainant contends that the disputed domain name is confusingly similar to the “LENDINGCLUB” trademark in which it holds valid rights. The Complainant’s trademark rights in “LENDINGCLUB” date back to at least 2008, predating the registration of the disputed domain name by the Respondent in June 2023.

The Complainant contends that the disputed domain name is not only confusingly similar but nearly identical to the “LENDINGCLUB” trademark. The only difference is the addition of the descriptive term “FINANCE”, which is closely related to the Complainant’s online banking services. This addition implies an association or affiliation with the Complainant. See *LendingClub, NA, v. Lending Club (2023) CAC 105350*.

The Panel considers, in undertaking a side-by-side comparison of the disputed domain name with the Complainant’s trademark, the addition of the term “FINANCE” reinforces the confusing similarity with the Complainant’s trademark. The addition of the term “FINANCE” does nothing to avoid confusion because that is a core area of Complainant’s business, i.e. within the field of loans and financing.

It is also trite to state that the addition of the gTLD “.NET” does not add any distinctiveness to each of the disputed domain names and will be disregarded for the purposes of considering this ground.

Accordingly, the Panel considers that the disputed domain name is confusingly similar to the Complainant's trademark "LENDINGCLUB" and this ground is made out.

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#### 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).

A complainant is required to make out a prima facie case that the respondent lacks rights or legitimate interests. Once such a prima facie case is made, the respondent carries the burden of demonstrating rights or legitimate interests in the disputed domain name. See *Document Technologies, Inc. v. International Electronic Communications Inc*, WIPO Case No. D20000270.

If the respondent fails to do so, the complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy. See *Croatia Airlines d.d. v. Modern Empire Internet Ltd*, WIPO Case No. D2003-0455; *Mile, Inc. v. Michael Burg*, WIPO Case No. D2010-2011.

The Complainant's contentions can be summarized as follows:

1. It is evident that the Respondent has no rights or legitimate interest in the disputed domain name. The Respondent registered the disputed domain name long after the Complainant established its rights in the well-known "LENDINGCLUB" trademark. Moreover, the Respondent is using the disputed domain name for attempted fraud.
2. The Respondent's use of a domain name that is confusingly similar to the Complainant's trademark for fraudulent purposes cannot be considered a bona fide offering of goods or services. The Respondent is not providing any product or service but is attempting to defraud Internet users for financial gain.
3. The Respondent is not commonly known by the disputed domain name. The information provided during the domain registration process, including a Gmail e-mail address, is fake and used only to confuse consumers. The Respondent has no affiliation with the Complainant.
4. Using the disputed domain name to commit fraud is not a legitimate or non-commercial fair use. The evidence shows that the Respondent is attempting to defraud individuals, and this cannot be considered a legitimate or fair use of the domain.
5. There are no demonstrable preparations by the Respondent to use the disputed domain name in connection with a bona fide offering of goods or services.

The Panel observes that the disputed domain name does not resolve to any active website.

Further, the Complainant makes allegations of fraud against the Respondent and adduces direct evidence of an e-mail received from an unsuspecting internet user, which copies the Complainant's logo, and contains a link to the disputed domain name.

In the context of UDRP disputes, the term "fraud" typically refers to dishonest or deceptive activities associated with a domain name registration or use that can undermine the rights of a trademark owner or an authorized licensee, to deceive internet users. The Complainant's evidence adduced here supports the contention that the Respondent does not have rights or legitimate interests in respect of the disputed domain name.

Evidence of fraud are also best used to prove bad faith registration and use. Examples of fraud in the context of UDRP disputes include but not limited to: Phishing, Impersonation, Counterfeiting, Cybersquatting, and False Advertising.

The Respondent has not filed any administratively compliant response.

The Panel is prepared to accept the Complainant's contention that the Respondent cannot demonstrate any legitimate offering of goods or services under the "LENDINGCLUB" trademark.

The evidence here also shows the Respondent is not commonly known by the disputed domain name it registered, nor the Respondent has legitimate interest over the disputed domain name.

If there is legitimacy in the Respondent's use of the disputed domain name, it should exercise its rights to oppose the Complaint.

The Panel can only infer from such omission that the Respondent's use of the disputed domain name is aimed at commercial gain, misleadingly diverting consumers, and tarnishing the Complainant's trademark.

Given the evidence adduced by the Complainant of its portfolio of trademarks and wide reputation which the Panel accepts as evidencing the strength of its reputation, the Panel accepts and finds that the Respondent has no rights or legitimate interests to the disputed domain name.

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#### 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).

There are two elements that must be satisfied – registration and use in bad faith.

The Complainant contends, upon the evidence adduced, that the Respondent registered and used the disputed domain name in bad faith based on the following grounds:

1. **Intentional Confusion:** The Respondent's actions are intended to cause confusion among internet users regarding the source of the website or services linked to the disputed domain name. The Respondent aims to attract internet users for commercial gain by creating a likelihood of confusion with the Complainant's trademark.
2. **Disruption of Complainant's Business:** The Respondent's primary purpose for registering and using the disputed domain name is to disrupt the Complainant's business. This disruption is achieved by defrauding internet users through deceptive e-mails sent from an e-mail address mimicking the Complainant, all for the Respondent's pecuniary gain.
3. **Awareness of Complainant's Rights:** The Respondent likely has prior knowledge of the Complainant's trademark rights, given the similarities between the trade name, Gmail address, and the disputed domain name. Even if the Respondent did not have actual knowledge, it has a duty to investigate and avoid infringing on third-party rights when registering the domain name.
4. **Common Fraud and Phishing Scam:** The Respondent's actions align with common fraud and phishing schemes, which are indicative of bad faith. By registering a confusingly similar domain name and sending fraudulent e-mails, the Respondent is attempting to defraud internet users for financial gain.
5. **Inactive Use:** The Respondent's failure to make active public use of the disputed domain name further supports the claim of bad faith. Non-use or inactive use of a domain name is considered evidence of bad faith registration and use under the UDRP.

The Respondent has not filed any administratively compliant response.

The Panel has already found that the disputed domain name is confusingly similar to the "LENDINGCLUB" trademark to which the Complainant has rights. The evidence shows that the Respondent has sought to exploit the disputed domain name by its conduct in sending phishing e-mails to unsuspecting internet users. The Panel draws the inference that the Respondent's actions here are intended to cause confusion among internet users regarding the source of the website or services linked to the Complainant.

Further, the Panel also draws the inference from such actions by the Respondent that its purported impersonation of the Complainant in a phishing e-mail that incorporates the disputed domain name and display of the Complainant's "LENDINGCLUB" trademark demonstrates actual knowledge or awareness of the Complainant's trademark at the time the Respondent registered the disputed domain name. There is no explanation by the Respondent to the contrary.

The Panel is prepared to accept that the evidence demonstrates the Respondent has, for commercial gain, registered and used the disputed domain name, to impersonate the Complainant thereby seeking to defraud internet users for pecuniary gain.

Accordingly, the Panel finds that the disputed domain name was registered by the Respondent and used in bad faith.

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#### PROCEDURAL FACTORS

##### **Notification of proceedings to the Respondent**

When forwarding a Complaint, including any annexes, electronically to the Respondent, paragraph 2 of the Rules states that CAC shall employ reasonably available means calculated to achieve actual notice to the Respondent.

Paragraphs 2(a)(i) to (iii) set out the sort of measures to be employed to discharge CAC's responsibility to achieve actual notice to the Respondent.

On October 2, 2023 the CAC by its non-standard communication stated as follows (omitting irrelevant parts):

That written notice was sent to postal address of the Respondent but CAC did not receive any advice of delivery.

That email notice was sent to <postmaster@lendingclubfinance.net> and to <lendingclub.approvedloan@gmail.com>.

No receipt of any proof of delivery or notification of undelivery.

No further e-mail address could be found on the disputed site.

The Respondent never accessed the online platform.

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PRINCIPAL REASONS FOR THE DECISION

The Complainant is the owner of the international trademark "LENDINGCLUB" and the domain name <lendingclub.com> in connection with the services it provides.

The Complainant challenges the registration of the disputed domain names under paragraph 4(a)(i) of the Uniform Dispute Resolution Policy and seeks relief that the disputed domain name be transferred to the Complainant.

The Respondent failed to file any administratively compliant response.

The Panel finds in favour of the Complainant and concludes that the disputed domain name should be transferred to the Complainant. The decision is based on the following principal reasons:

- The Domain Name is Confusingly Similar:** The disputed domain name is confusingly similar to the "LENDINGCLUB" trademark to which the Complainant has rights. The mere addition of generic or descriptive term, such as "FINANCE" does not eliminate the similarity, as the term is related to the Complainant's business, and the overall impression remains similar.
- Lack of Rights or Legitimate Interests:** The Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not provided evidence to the contrary. The Respondent is not commonly known by the disputed domain name, has not used it for a bona fide offering of goods or services, and has not made non-commercial or fair use of it. Furthermore, the Respondent's use of the disputed domain name for fraudulent activities does not constitute a legitimate interest.
- Bad Faith Registration and Use:** The Panel finds that the Respondent registered and used the disputed domain name in bad faith. The Respondent intentionally attempted to divert internet users for commercial gain by creating a likelihood of confusion with the Complainant's mark. The use of the disputed domain name to conduct phishing attacks, impersonate the Complainant, and defraud internet users demonstrates bad faith. The Respondent's actions disrupt the Complainant's business, likely show prior knowledge of the Complainant's rights, and constitute a common fraud and phishing scam.

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FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

- lendingclubfinance.net:** Transferred

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**PANELLISTS**

Name	<b>William Lye OAM KC</b>
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DATE OF PANEL DECISION 2023-10-25

Publish the Decision

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