

## Decision for dispute CAC-UDRP-105831

Case number CAC-UDRP-105831

Time of filing 2023-09-29 11:32:14

Domain names lbofrance.com

### Case administrator

Name Olga Dvořáková (Case admin)

### Complainant

Organization LBO FRANCE GESTION

### Complainant representative

Organization NAMESHIELD S.A.S.

### Respondent

Name Morgan Sharp

#### 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 <lbofrance.com>.

#### IDENTIFICATION OF RIGHTS

The Complainant submitted evidence that it is the owner of the following trademark registration: The European trademark n°9227307, "LBO FRANCE", registered on July 6, 2010. The Complainant also owns many domain names, including its trademark LBO FRANCE, such as the domain name <lbofrance.com>, registered since May 5, 1999.

#### FACTUAL BACKGROUND

The Complainant, LBO FRANCE, is a French private equity company founded in 1985. The Complainant is 100% owned by management and operates in different sectors of activity (transmission capital, venture capital, real estate, debt). The disputed domain name was registered on September 4, 2023. The disputed domain name resolves to an inactive page. The Respondent has not filed a Response in the provided time period. After the time limit for filing a response expired, the respondent sent the following statement via email address: I have been advised by Microsoft to ignore this during to possible scam. We do not have this domain. Someone fraudulently acquired this through Microsoft. If you want resolution, contact Microsoft. We will prosecute the person or entity that misrepresented to obtain this domain. Morgan R Sharp President/CEO AbbaWell 316-804-8890 ext 100"

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#### PARTIES CONTENTIONS

The Complainant made the following contentions: The LBO FRANCE trademark of the Complainant is confusingly similar to its trademark, LBO FRANCE. The addition of the letter "L" to the trademark is not sufficient to escape the finding that the disputed domain name is confusingly similar to the trademark and branded goods LBO FRANCE. According to the Complainant, this is a clear case of typosquatting, i.e. the disputed domain name contains an apparent misspelling of the Complainant's trademark. It is well-established that the slight spelling variations do not prevent a disputed domain name from being confusingly similar to the Complainant's trademark. The Complainant contends that the addition of the gTLD ".COM" does not change the overall impression of the designation as being connected to the Complainant's trademark. It does not prevent the likelihood of confusion between the disputed domain name and the Complainant, its trademark and its domain names associated. The Respondent has no rights or legitimate interests in respect of the disputed domain name and is not related in any way to 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 or apply for registration of the disputed domain name by the Complainant. The disputed domain name resolves to an inactive page. The Complainant contends that the Respondent has not made any use of the disputed domain name since its registration. It demonstrates a lack of legitimate interests regarding the disputed domain name. The Complainant states the misspelling of the disputed domain name was intentionally designed to be confusingly similar to the Complainant's trademark. The Respondent did not file an administratively complaint response. Respondent's contentions are included in the Factual background section above.

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#### 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).

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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).

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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).

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#### 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.

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#### PRINCIPAL REASONS FOR THE DECISION

This is a proceeding pursuant to Paragraph 4 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 CAC Supplemental Rules. Paragraph 15 of the Rules provides that the Panel shall decide the complaint on the basis of the statements and documents submitted and in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable. As the Respondent has not filed any administratively compliant Response, pursuant to paragraph 14(b) of the Rules, the Panel may draw such inferences therefrom as it considers appropriate. According to Paragraph 4(a) of the Policy, a complainant must prove each of the following: (A) the domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; (B) the respondent has no rights or legitimate interests in respect of the domain name; (C) the domain name has been registered and is being used in bad faith. (A) Identical or confusingly similar domain name The Complainant demonstrated that it owns the asserted trademark registration for the trademark LBO FRANCE, which was registered long before the registration of the disputed domain name by the Respondent. It is well established that a nationally or regionally registered trademark confers on its owner sufficient rights to satisfy the requirement of having trademark rights for standing to file a UDRP case. Therefore, the Panel finds that the Complainant has established such rights. It is also well established that the generic top-level suffix .com may be disregarded when considering whether a disputed domain name is identical or confusingly similar to a trademark in which the Complainant has rights, as it is a

necessary technical requirement of a domain name. The disputed domain name adds the letter “L” to the trademark. As such, the relevant mark is recognizable in the disputed domain name and is not sufficient to escape the finding that the disputed domain name is confusingly similar to the Complainant’s LBO FRANCE trademark and branded goods and does not change the overall impression of the designation as being connected to the trademark and company name of the Complainant. Also, it is well established that typosquatting can constitute a finding that the domain name is confusingly similar (Deutsche Bank Aktiengesellschaft v. New York TV Tickets Inc., WIPO Case No. D2001-1314, DaimlerChrysler Corporation v. Worshipping, Chrisler, and Chr, aka Dream Media and aka Peter Conover, WIPO Case No. D2000-1272 and Playboy Enterprises v. Movie Name Company, WIPO Case No. D2001-1201). The Panel considers this to be a clear case of typosquatting. The Panel therefore finds that the disputed domain name is confusingly similar to the Complainant’s trademark. (B) Lack of rights or legitimate interests The Respondent has not filed a Response and has neither provided any other information that would oppose the Complainant’s allegations. Therefore, the Panel holds that the Complainant successfully presented its prima facie case that the Respondent has no rights or legitimate interests in respect of the disputed domain name. In particular, the Respondent is not in any way connected with the Complainant nor is it authorized to use the Complainant’s trademark for its commercial activities. In addition, the Respondent is not commonly known by the disputed domain names pursuant to Paragraph 4(c)(ii) of the Policy. The Respondent has no rights or legitimate interests in the disputed domain name resolving to an inactive page at the time of the decision in the present case (see, e.g., Philip Morris USA Inc. v. Daniele Tornatore, WIPO Case No. D2016-1302). Past panels have held that the lack of use of a domain name is considered an important indicator of the absence of legitimate interests by the Respondent. See Forum Case No. FA 1773444, Ashley Furniture Industries, Inc. v. Joannet Macket / JM Consultants (“The Panel finds that Respondent’s lack of content at the disputed domain shows the lack of a bona fide offering of goods or services or a legitimate noncommercial or fair use per Policy 4(c)(i) and (iii).”). The Panel thus takes the view that the Respondent lacks rights or legitimate interests in the disputed domain name. (C) Registration and use of the disputed domain name in bad faith The Panel finds that the Respondent has registered and used the disputed domain name with full knowledge of the Complainant and its trademark. The Complainant’s use and registration of the trademark LBO FRANCE largely precede the registration date of the disputed domain name. The fact that the Respondent registered the disputed domain name with the misspelling of the trademark LBO FRANCE indicates that the Respondent had knowledge of the Complainant’s trademark at the time of registration of the disputed domain name. It is reasonable to conclude that this is evidence of registration of the domain name in bad faith. Based on the evidence presented by the Complainant, the Panel finds that the Respondent has intentionally attempted to attract, for commercial gain, Internet users and the Complainant’s potential customers by creating a likelihood of confusion with the Complainant’s registered trademark and company name as to the source, sponsorship, affiliation or endorsement of Respondent’s website. The disputed domain name redirects to an inactive page. According to the Panel, a passive holding of the disputed domain name may amount to bad faith when it is difficult to imagine any plausible future active use of the disputed domain name by the Respondent that would be legitimate and not infringing the Complainant’s well-known mark or unfair competition and consumer protection legislation (See Inter-IKEA v Polanski, WIPO Case No. D2000 1614; Inter-IKEA Systems B.V. v. Hoon Huh, WIPO Case No. D2000 0438; Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003). Countless UDRP decisions also confirmed that the passive holding of a domain name with the knowledge that the domain name infringes another party’s trademark rights is evidence of bad faith registration and use (Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003). Consequently, the Panel finds that the disputed domain name has been registered and has been used by the Respondent in bad faith. In conclusion, the Panel finds that all three elements required by Paragraph 4(a) of the Policy were met and makes the following decision.

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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

1. **ibolfrance.com**: Transferred

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## PANELLISTS

Name	<b>Barbora Donathová</b>
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DATE OF PANEL DECISION 2023-10-30

Publish the Decision

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