

ADMINISTRATIVE PANEL DECISION

ClearBank Limited v. Domain Administrator, See PrivacyGuardian.org /
James Riviere
Case No. D2022-2827

1. The Parties

The Complainant is ClearBank Limited, United Kingdom, represented by Eversheds Sutherland (International) LLP, United Kingdom.

The Respondent is Domain Administrator, See PrivacyGuardian.org, United States of America ("United States") / James Riviere, France.

2. The Domain Name and Registrar

The disputed domain name <clearbnk.net> is registered with NameSilo, LLC (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on August 1, 2022. On August 2, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 2, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on August 4, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on August 8, 2022.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements 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 WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the "Supplemental Rules").

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on August 9, 2022. In accordance with the Rules, paragraph 5, the due date for Response was August 29, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on September 1, 2022.

The Center appointed Daniel Kraus as the sole panelist in this matter on September 14, 2022. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

4. Factual Background

The Complainant is a clearing bank. Incorporated in 2015, the Complainant's business was launched in February 2017, and the Complainant has provided banking services since around October of the same year. The Complainant is accredited by the Financial Services Authority. Through its banking license, it provides clients with secure bank accounts, real-time financial payments solutions and clearing services.

At the time of its launch, the Complainant also launched its website, "www.clear.bank" (the "Original Website"). In June 2022, the Complainant updated its Original Website (the "Updated Website").

The Complainant has numerous registered trademarks for relevant goods and services. These include, amongst many other United Kingdom and United States trademarks, the following:

- European Union Registered Trademark No. 015011141 for CLEARBANK in respect of relevant services in International Classes 35, 36, 38, 42, and 45, filed on January 18, 2016;
- European Union Registered Trademark No. 015011695 for CLEAR.BANK in respect of relevant services in International Classes 35, 36, 38, 42, and 45, filed on January 18, 2016;
- United States Registered Trademark No. 5174439 for CLEARBANK in respect of relevant services in International Classes 35, 36, 38, 42, and 45, filed on February 8, 2016;
- United States Registered Trademark No. 5231286 for CLEARBANK in respect of relevant goods in International Class 9, filed on August 18, 2016;
- United States Registered Trademark No. 5231287 for CLEARBANK in respect of relevant goods in International Class 9, filed on August 18, 2016.

According to the Registrar, the disputed domain name was first registered with it on May 17, 2022. When the Complaint was filed, the disputed domain name resolved to a website, "www.clearbnk.net" ("the infringing website").

The infringing website was virtually identical to the Complainant's Original Website which was operated by the Complainant from February 28, 2017, until June 6, 2022. In particular, the infringing website features the Complainant's logo on each of its pages, the names and photographs of key members of the Complainant's business and the Complainant's registered office details.

5. Parties' Contentions

A. Complainant

The Complainant formulates the following contentions:

- The Complainant has rights in the name CLEARBANK. The disputed domain name is identical to the Complainant's brand name, save that the letter "a" is missing in "bank" and the generic Top-Level Domain ("gTLD") ".net", which can be ignored. Hence, the disputed domain name clearly consists of an intentional typographical error;
- The disputed domain name is confusingly similar to the Complainant's trademark in which it has rights;
- The Respondent has no rights or legitimate interests in respect of the disputed domain name. To the best of the Complainant's belief, the Respondent is not connected to or authorised by the Complainant in any way and has no legitimate interest in "clearbank", "clearbnk" or the disputed domain name;

- The disputed domain name is not being used in connection with a *bona fide* offering of goods or services but is rather being used in a manner which is wholly misleading as it is a virtual copy of the Complainant's original website which was operated by the Complainant;
- The Respondent is not known by the names "clearbank" or "clearbnk" and the Respondent has sought to take advantage of the Complainant's rights in CLEARBANK given that the Respondent has copied the Complainant's original website. As a result, the Respondent is using the disputed domain name to take advantage of the Complainant's rights in CLEARBANK;
- The disputed domain name is not being used for legitimate noncommercial or fair purposes. The disputed domain name resolves to a website which is virtually identical to a website which was being operated by the Complainant until recently. The Respondent cannot seek to assert that the use which is being made of the disputed domain name is legitimate;
- The disputed domain name was registered and is being used in bad faith. The Respondent is not known by the names "clearbank" or "clearbnk" and there can be no fair or legitimate reason for the Respondent's registration of the disputed domain name;
- The Respondent's use of the disputed domain name is also in bad faith as it resolves to a website which is virtually the same as the Complainant's original website which was operated by the Complainant until June 6, 2022, and it contains the names and photographs of directors of the Complainant.

B. Respondent

The Respondent did not reply to the Complainant's contentions.

6. Discussion and Findings

In order to succeed in its claim, the Complainant must demonstrate that all of the elements enumerated in paragraph 4(a) of the Policy have been satisfied:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) the Respondent has no rights or legitimate interests with respect to the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

Paragraph 15(a) of the Rules instructs the Panel to decide a complaint "[...] on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable".

A. Identical or Confusingly Similar

The Complainant has shown that it has trademark rights in the trademark CLEARBANK. The disputed domain name incorporates the entirety of the Complainant's trademark, and simply leaves out the letter "a". This omission does not prevent a finding of confusing similarity, as the mark is recognizable in the disputed domain name. Accordingly, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark.

B. Rights or Legitimate Interests

The Complainant contends that the Respondent is not affiliated or related to the Complainant in any way or licensed or otherwise authorized to use its mark in connection with a website or for any other purpose. There is no evidence in the record indicating that the Respondent is using the disputed domain name in connection with a legitimate business, or that the Respondent is using the disputed domain name in a noncommercial or fair use manner without intent for commercial gain. There is no evidence either that the

Respondent is generally known by the disputed domain name or has acquired any trademark or service mark rights in the disputed domain name. Indeed, the disputed domain name has been used to mislead the users.

For all these reasons, the Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

C. Registered and Used in Bad Faith

The record indicates that the Respondent has intentionally registered and is using the disputed domain name in bad faith. The Respondent's registration and use of the disputed domain name indicates its deliberate attempt to deceive Internet users into believing that the Respondent's website is associated with, authorized by or connected to the Complainant and that the Respondent was aware of the Complainant's trademark at the moment of registration of the disputed domain name. The disputed domain name is not being used in connection with a *bona fide* offering of goods or services but is rather being used in a manner which is wholly misleading as it is a virtual copy of the Complainant's Original Website which was operated by the Complainant until recently before the Complaint was filed.

In consequence, the Panel finds that the disputed domain name has been registered and is being used in bad faith.

7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain name, <clearbnk.net>, be transferred to the Complainant.

/Daniel Kraus/

Daniel Kraus

Sole Panelist

Date: September 28, 2022