

## **ADMINISTRATIVE PANEL DECISION**

ClearBank Limited v. lar frank  
Case No. D2023-4932

### **1. The Parties**

Complainant is ClearBank Limited, United Kingdom (“UK”), represented by Founders Law Limited, UK.

Respondent is lar frank, Philippines.

### **2. The Domain Name and Registrar**

The disputed domain name <clearbankinvestments.com> is registered with NameSilo, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 27, 2023. On November 28 and 30, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 28 and 30, 2023, 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 (PrivacyGuardian.org llc) and contact information in the Complaint. The Center sent an email communication to Complainant on November 30, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amendment to the Complaint on December 5, 2023.

The Center verified that the Complaint together with the amendment to the 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 Respondent of the Complaint, and the proceedings commenced on December 6, 2023. In accordance with the Rules, paragraph 5, the due date for Response was December 26, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on January 9, 2024.

The Center appointed Stephanie G. Hartung as the sole panelist in this matter on January 15, 2024. 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**

Complainant is a company organized under the laws of the UK that is active in the financial industry.

Complainant has provided evidence that it is the registered owner of numerous trademarks relating to its company name and brand CLEARBANK, inter alia, but not limited, to the following:

- word mark CLEARBANK, European Union Intellectual Property Office (EUIPO), registration number: 015011141, registration date: May 30, 2016, status: active;
- word mark CLEARBANK, EUIPO, registration number: 015741671, registration date: November 30, 2016, status: active.

Moreover, Complainant has demonstrated to own the domain name <clear.bank> since 2017, which resolves to Complainant's main website at "www.clear.bank", used to promote Complainant's products and related services in the financial industry internationally.

Respondent, according to the disclosed Whois information for the disputed domain name, is located in the Philippines and registered the disputed domain name on April 20, 2023. By the time of rendering this Decision, the disputed domain name does not resolve to any content on the Internet. Complainant, however, has demonstrated that, at some point before the filing of the Complaint, e.g., on or around August 1, 2023, a Google search for the disputed domain name revealed search results allowing to find for some commercial activity thereunder, involving Complainant's CLEARBANK trademark and official logo, requesting Internet users to provide login data (such as passwords etc.) and, consequently, impersonating Complainant in a bid to confuse the public.

Complainant requests that the disputed domain name be transferred to Complainant.

#### **5. Parties' Contentions**

##### **A. Complainant**

Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, Complainant contends to be the sixth major clearing bank in the UK and that the launch of its company in 2017 garnered worldwide press and public attention. Today, Complainant employs over 900 people and has developed a reputation and goodwill in relation to its CLEARBANK trademark.

Complainant submits that the disputed domain name is at least confusingly similar to Complainant's CLEARBANK trademark as it incorporates the latter in its entirety and also includes the term "investment" which is directly related to Complainant's main business. Moreover, Complainant asserts that Respondent has no rights or legitimate interests in respect of the disputed domain name since (1) Complainant has not licensed or otherwise permitted third parties to use its CLEARBANK trademark, (2) there is no evidence that Respondent has been commonly known by the disputed domain name, and (3) the disputed domain name at some point resolved to a website used or intended for use in defrauding customers by purporting to derive from Complainant or somehow being associated with Complainant. Finally, Complainant argues that Respondent has registered and is using the disputed domain name in bad faith since (1) the registration of the disputed domain name postdates some of Complainant's earliest CLEARBANK trademarks by over

seven years and took place when Complainant was already well-regarded in connection with its provision of financial services, (2) Respondent knew of Complainant's CLEARBANK trademarks and official logo as evidenced by the Google search of August 1, 2023, and (3) the disputed domain name was used by Respondent to commit fraud against Complainant and to harm its reputable business and customers.

## **B. Respondent**

Respondent did not reply to Complainant's contentions.

## **6. Discussion and Findings**

Under paragraph 4(a) of the Policy, Complainant carries the burden of proving:

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

Respondent's default in the case at hand does not automatically result in a decision in favor of Complainant, however, paragraph 5(f) of the Rules provides that if Respondent does not submit a response, in the absence of exceptional circumstances, the Panel shall decide the dispute solely based upon the Complaint. Further, according to paragraph 14(b) of the Rules, the Panel may draw such inferences from Respondent's failure to submit a Response as it considers appropriate.

### **A. Identical or Confusingly Similar**

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between Complainant's CLEARBANK trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.7.

Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1. The entirety of Complainant's CLEARBANK trademark is reproduced within the disputed domain name. Although the addition of other terms (here, "investments") may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and Complainant's CLEARBANK trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8. Accordingly, the disputed domain name is confusingly similar to Complainant's CLEARBANK trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

The Panel, therefore, finds the first element of the Policy has been established.

### **B. Rights or Legitimate Interests**

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with

relevant evidence demonstrating rights or legitimate interests in the domain name (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds Complainant has established a prima facie case that Respondent lacks rights or legitimate interests in the disputed domain name. Respondent has not rebutted Complainant's prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

In particular, Respondent has neither been granted a license nor has it been otherwise authorized by Complainant to use its CLEARBANK trademark, either as a domain name or in any other way. Also, there is no evidence to suggest that Respondent's name somehow corresponds with the disputed domain name, and Respondent does not appear to have any trademark rights associated with the term "clearbank" on its own. Finally, the disputed domain name at some point in the past (e.g. on August 1, 2023) was engaged in some commercial activity, involving Complainant's CLEARBANK trademark and official logo, requesting Internet users to provide login data (such as passwords etc.) and, consequently, impersonating Complainant in a bid to confuse the public. In this context, panels have long held that the use of a domain name for illegal activity (here: impersonating/passing off Complainant for some unlawful purposes) can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1. Such use of the disputed domain name, thus, neither qualifies as bona fide nor as legitimate noncommercial or fair use within the meaning of paragraph 4(c) of the Policy.

The Panel, therefore, finds the second element of the Policy has been established.

### **C. Registered and Used in Bad Faith**

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

The circumstances to this case leave no serious doubt that Respondent was fully aware of Complainant's financial business and its rights in the CLEARBANK trademark when registering the disputed domain name and that the latter clearly is directed thereto. Moreover, using the disputed domain name in some commercial context, involving Complainant's CLEARBANK trademark and official logo, requesting users to provide login data (such as passwords etc.) and, consequently, impersonating Complainant in a bid to confuse the public, is a clear indication that Respondent intentionally attempted to attract, for commercial gain, Internet users to its own Internet presence by creating a likelihood of confusion with Complainant's CLEARBANK trademark as to the source, sponsorship, affiliation or endorsement of Respondent's Internet presence. Such circumstances are evidence of registration and use of the disputed domain name in bad faith within the meaning of paragraph 4(b)(iv) of the Policy. Again, panels have long held that the use of a domain name for illegal activity (here: impersonating/passing off Complainant for some unlawful purposes) constitutes bad faith. [WIPO Overview 3.0](#), section 3.4.

In connection with this finding, it also carries weight in the eyes of the Panel that Respondent obviously provided false or incomplete contact information in the Whois register for the disputed domain name. This is corroborated by the email correspondence between the Center and the postal courier DHL, indicating that the Written Notice of the Notification of Complaint, dated December 6, 2023, could not be delivered. This fact at least throws a light on Respondent's behavior which supports the Panel's bad faith finding.

In addition, the current non-use of the disputed domain name does not prevent a finding of bad faith under the doctrine of passive holding. [WIPO Overview 3.0](#), section 3.3.

The Panel, therefore, finds that Complainant has established the third element of the Policy, too.

## 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 <clearbankinvestments.com> be transferred to Complainant.

*/Stephanie G. Hartung/*

**Stephanie G. Hartung**

Sole Panelist

Date: January 29, 2024