

## **ADMINISTRATIVE PANEL DECISION**

### **Blackbaud, Inc v. 权中俊 (Quan Zhong Jun)**

### **Case No. D2022-0108**

#### **1. The Parties**

The Complainant is Blackbaud, Inc, United States of America (“United States”), represented by Soteria LLC, United States.

The Respondent is 权中俊 (Quan Zhong Jun), China.

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

The disputed domain name <signinblackbaud.com> is registered with DNSPod, Inc. (the “Registrar”).

#### **3. Procedural History**

The Complaint in English was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 12, 2022. On January 13, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 14, 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 January 14, 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 in English on January 18, 2022.

On January 14, 2022, the Center sent an email in English and Chinese to the Parties regarding the language of the proceeding. The Complainant requested that English be the language of the proceeding on January 17, 2022. The Respondent did not comment on the language of the proceeding.

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 in English and Chinese of the Complaint, and the proceedings commenced on January 20, 2022. In accordance with the Rules, paragraph 5, the due date for Response was February 9, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 10, 2022.

The Center appointed Rachel Tan as the sole panelist in this matter on February 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, Blackbaud, Inc, is a cloud software company that provides cloud software, services, expertise, and data intelligence. Its clients include nonprofits, foundations, corporations, education institutions, healthcare institutions, and individual change agents who support them.

The Complainant is the owner of the BLACKBAUD mark in the United States, including United States Trade Mark Registration No. 5,280,411, registered on September 5, 2017 in class 42; and United States Trade Mark Registration No. 5,280,412, registered on September 5, 2017 in class 9.

The Complainant's website is located at "www.blackbaud.com".

The Respondent is 权中俊 (Quan Zhong Jun), China.

The disputed domain name was registered on December 24, 2021. At the time of filing and at the date of this Decision, the disputed domain name resolves to an active pay-per-click ("PPC") webpage that lists out multiple third-party links related to different advertisements covering contents such as "Vpn" and "automation".

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

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

The Complainant contends that once the generic Top-Level Domain ("gTLD") ".com" is ignored, the disputed domain name is confusingly similar to the Complainant's BLACKBAUD mark. The element "signin" in the disputed domain name gives a false impression that this may be a login portal for the Complainant's clients.

The Complainant further alleges that the Respondent is neither affiliated nor authorized by the Complainant to register or use the BLACKBAUD mark. The Respondent has neither used the disputed domain name nor provided any proof of preparations for a *bona fide* offering of goods or services. Further, there is no evidence indicating that the Respondent has been commonly known by the disputed domain name.

The Complainant finally asserts that the disputed domain name is harmful to the Complainant's brand, as it gives a false impression that it is a login portal owned by the Complainant. The advertisement links displayed on the website may generate income for the Respondent who should not be making any income from the Complainant's mark. Further, this disputed domain name can be extremely harmful against the Complainant if the Respondent decides to use it as a phishing domain.

##### **B. Respondent**

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

#### **6. Discussion and Findings**

##### **6.1 Language of the Proceeding**

Initially, the Panel must address the language of the proceeding. Paragraph 11(a) of the Rules provides that the language of the administrative proceeding shall be the language of the Registration Agreement unless

otherwise agreed by the parties, subject to the authority of the panel to determine otherwise, having regard to the circumstances of the administrative proceeding. The panel may choose to write a decision in either language, or request translation of either party's submissions.

In this case, the Registrar has confirmed to the Center that the language of the Registration Agreement as used by the registrant for the disputed domain name is Chinese. However, the Complainant has requested that English be adopted as the language of the proceeding for the reasons summarized below:

- (a) the Complainant and its authorized representative are both located in the United States;
- (b) the Registrar's website has a built-in English version and their automated reply messages are in English;
- (c) the trade mark being infringed is registered under the United States Patent and Trademark Office;
- (d) a non-translated English copy of the Registration Agreement is available on the Registrar's website; and
- (e) two-thirds Parties of the proceedings only speak English, and the Respondent has not replied regarding the language of proceedings.

It is established practice to take paragraphs 10(b) and (c) of the Rules into consideration for the purpose of determining the language of the proceeding, in order to ensure fairness to the parties and the maintenance of an inexpensive and expeditious avenue for resolving domain name disputes. Language requirements should not lead to undue burdens being placed on the parties and undue delay to the proceeding.

The Panel has considered the above circumstances, and finds that English shall be the language of this proceeding. The reasons are set out below:

- (a) the Complainant is a company based in the United States. Requiring the Complainant to submit documents in Chinese would lead to delay and cause the Complainant to incur translation expenses;
- (b) the Respondent's choice of Roman letters for the disputed domain name and the website with PPC links in English which the disputed domain name resolves to indicate that the Respondent is familiar with the English language;
- (c) even if the Respondent does not possess a sufficient command of English to understand the Complaint, there were ample opportunities for the Respondent to raise an objection. The Center notified the Parties in English and Chinese of the Complainant's request for English to be the language of the proceeding, but the Respondent did not protest against this request;
- (d) the Respondent has failed to participate in the proceeding even though the Center sent the notification in English and Chinese of the Complaint, and has been notified of his/her default; and
- (e) the Complaint has been submitted in English. No foreseeable procedural benefit may be served by requiring Chinese to be used. On the other hand, the proceeding may proceed expeditiously in English.

Accordingly, the Panel will proceed with issuing this Decision in English.

## **6.2 Substantive Issues**

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

The Panel is satisfied that the Complainant has adduced evidence to demonstrate its established rights in the BLACKBAUD mark.

The Panel notes the disputed domain name is comprised of the BLACKBAUD mark in its entirety. The

positioning of the BLACKBAUD mark in the disputed domain name is instantly recognizable. In cases where a domain name incorporates the entirety of a trade mark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing. See section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

Further, it is accepted by previous UDRP panels that the addition to the complainant's trade mark of other words or terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element of the Policy. Accordingly, the additional words "sign" and "in", which are closely related to the Complainants' business, does not prevent a finding of confusing similarity between the disputed domain name and the Complainant's BLACKBAUD mark. See section 1.8 of the [WIPO Overview 3.0](#).

Lastly, it is permissible for the Panel to ignore the gTLD, in this case ".com". See section 1.11.1 of the [WIPO Overview 3.0](#).

Accordingly, the Panel finds that the Complainant has satisfied the first element under paragraph 4(a) of the Policy.

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

In circumstances where the Complainant possesses exclusive rights to the BLACKBAUD mark whereas the Respondent seems to have no trade mark rights, and considering the facts and arguments set out above, the Panel is satisfied that the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name, and the burden of production shifts to the Respondent. See section 2.1 of the [WIPO Overview 3.0](#).

The Respondent has not provided evidence of a legitimate use of the disputed domain name or reasons to justify the choice of a domain name that is identical or confusing similar to the Complainant's BLACKBAUD mark. Further, there is no indication to show that the Respondent is commonly known by the disputed domain name or otherwise has rights or legitimate interests in it. In addition, the Complainant has not granted the Respondent a license or authorization to use the Complainant's BLACKBAUD mark or register the disputed domain name. The Respondent is not making a legitimate noncommercial or fair use of the disputed domain name in the terms of paragraph 4(c)(iii) of the Policy since at the time of filing the Complaint and, at the date of this Decision, the disputed domain name resolves to a PPC website with links to third-party websites, some of which are related to the Complainant's business. Such usage may reasonably be assumed to be commercial in its intent and effect. Prior UDRP panels have found that the use of a domain name to host a parked page comprising PPC links does not represent a *bona fide* offering of goods or services where such links compete with or capitalize on the reputation and goodwill of the complainant's mark or otherwise mislead Internet users. See section 2.9 of the [WIPO Overview 3.0](#).

Therefore, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name. Accordingly, the Panel finds that the Complainant has satisfied the second element under paragraph 4(a) of the Policy.

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

The Complainant's BLACKBAUD mark has been registered in the United States. The disputed domain name was registered long after the registration of the Complainant's BLACKBAUD mark. Through extensive use and advertising, the Complainant's BLACKBAUD mark is known throughout the world. Search results using the key word "Blackbaud" on the Internet search engine direct Internet users to the Complainant and its business, which indicates that an exclusive connection between the BLACKBAUD mark and the Complainant has been established. As such, the Respondent either knew or should have known of the Complainant's BLACKBAUD mark when registering the disputed domain name, and has exercised "the kind of willful blindness that numerous panels have held support a finding of bad faith". See *Barclays Bank PLC*

v. *Andrew Barnes*, WIPO Case No. [D2011-0874](#).

Section 3.1.4 of the [WIPO Overview 3.0](#) states that “[...] mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith”. In this case, the disputed domain name is confusingly similar to the widely known BLACKBAUD mark and was registered by the Respondent who has no relationship with the Complainant, which means that a presumption of bad faith can be created.

Section 3.5 of the [WIPO Overview 3.0](#) states that “[p]articularly with respect to ‘automatically’ generated pay-per-click links, panels have held that a respondent cannot disclaim responsibility for content appearing on the website associated with its domain name (nor would such links *ipso facto* vest the respondent with rights or legitimate interests)”. The Panel notes that the disputed domain name resolves to a parked page comprising PPC advertising links that divert Internet users to various contents, some of which are related to the Complainant’s business. The Panel finds the use of the confusingly similar disputed domain name to lure Internet users to third-party websites is evidence of bad faith. See *Sodexo v. 杨智超 (Zhi Chao Yang)*, WIPO Case No. [D2020-1171](#).

The Respondent has kept silent in the face of the Complainant’s allegations of bad faith. Taking into account these circumstances, the Panel finds that the Respondent must have known of the Complainant before registering the disputed domain name and, considering the Respondent’s lack of rights or legitimate interests, and by registering and using the disputed domain name as discussed above, the Panel is led to conclude that the disputed domain name was registered and is being used in bad faith.

Accordingly, the Panel finds that the Complainant has satisfied the third element under paragraph 4(a) of the Policy.

## 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, <signinblackbaud.com>, be transferred to the Complainant.

*/Rachel Tan/*

**Rachel Tan**

Sole Panelist

Date: February 25, 2022