

ADMINISTRATIVE PANEL DECISION

Blackbaud, Inc. v. Yang Zhi Chao (杨智超)

Case No. D2022-2189

1. The Parties

The Complainant is Blackbaud, Inc., United States of America (“United States”), represented by Nelson Mullins Riley & Scarborough, LLP, United States.

The Respondent is Yang Zhi Chao (杨智超), China.

2. The Domain Names and Registrar

The disputed domain names <bblackbaudhosting.com>, <blackbauddhosting.com>, <blackbaudgosting.com>, <blackbaudhhosting.com>, <blackbaudhisting.com>, <blackbaudhoating.com>, <blackbaudhodting.com>, <blackbaudhoosting.com>, <blackbaudhositng.com>, <blackbaudhosring.com>, <blackbaudhossting.com>, <blackbaudhostibg.com>, <blackbaudhostign.com>, <blackbaudhostiing.com>, <blackbaudhostimg.com>, <blackbaudhostinf.com>, <blackbaudhostingg.com>, <blackbaudhostings.com>, <blackbaudhostinh.com>, <blackbaudhostinng.com>, <blackbaudhostlng.com>, <blackbaudhostnig.com>, <blackbaudhostong.com>, <blackbaudhostting.com>, <blackbaudhostung.com>, <blackbaudhosying.com>, <blackbaudhoting.com>, <blackbaudhotsing.com>, <blackbaudhpsting.com>, <blackbaudhsoting.com>, <blackbaudhsting.com>, <blackbaudh0sting.com>, <blackbaudjosting.com>, <blackbaudohsting.com>, <blackbaudosting.com>, <comblackbaudhosting.com>, <myblackbaudhosting.com>, and <wwwblackbaudhosting.com> are registered with eName Technology Co., Ltd. (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on June 16, 2022. On June 16, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On June 17, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on June 17, 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 June 22, 2022.

On June 17, 2022, the Center transmitted an email communication to the Parties in English and Chinese regarding the language of the proceeding. On June 22, 2022, the Complainant submitted its request that English be the language of the proceeding. 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 proceeding commenced on June 24, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 14, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on July 15, 2022.

On June 24, 2022, the Complainant inquired regarding the possible addition of two additional domain names.

The Center appointed Sebastian M.W. Hughes as the sole panelist in this matter on July 21, 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

A. Complainant

The Complainant is a company headquartered in the State of South Carolina in the United States, and a leading provider of cloud based software solutions to customers in the United States, Canada, Europe, and Australia, under the trade mark BLACKBAUD (the "Trade Mark").

The Complainant is the owner of several registrations in the United States for the Trade Mark, including registration No. 2,397,946, with a registration date of October 24, 2000.

The Complainant also provides cloud based hosting services under the name "Blackbaud Hosting"; and has since March 3, 2010 owned the domain name <blackbaudhosting.com>.

B. Respondent

The Respondent is apparently an individual resident in China.

C. The Disputed Domain Names

The disputed domain names were all registered on the same date, May 25, 2022.

D. Use of the Disputed Domain Names

Each of the disputed domain names resolves to the same English language parking page with sponsored links relating to software.

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain names are identical or confusingly similar to the Trade Mark; the Respondent has no rights or legitimate interests in respect of the disputed domain names; and the disputed domain names have been registered and are being used in bad faith.

B. Respondent

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

6. Discussion and Findings

6.1. Preliminary Issue: Language of the Proceeding

The language of the Registration Agreement for the disputed domain name is Chinese. Pursuant to the Rules, paragraph 11(a), in the absence of an agreement between the Parties, or unless specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding.

Paragraph 11(a) of the Rules allows the Panel to determine the language of the proceeding having regard to all the circumstances. In particular, 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 burden being placed on the Parties and undue delay to the proceeding (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.5.1).

The Complainant has requested that the language of the proceeding be English for several reasons, including the following:

- (i) the disputed domain names consist of Latin text and English words;
- (ii) the websites to which the disputed domain names resolve are in the English language;
- (iii) the hosting services and IP addresses for each of the websites are provided by a company in Canada whose website is in the English language;
- (iv) the name servers for each of the websites are provided by a company with an English language website;
- (v) the Respondent has been the named respondent in at least eighteen prior UDRP proceedings, seventeen of which were English language proceedings;
- (vi) the above factors demonstrate that the Respondent is conversant in English; and
- (vii) proceeding in Chinese would cause additional cost and unnecessary delay.

The Respondent did not file a response and did not file any submissions with respect to the language of the proceeding.

In exercising its discretion to use a language other than that of the Registration Agreement, the Panel has to exercise such discretion judicially in the spirit of fairness and justice to both Parties, taking into account all relevant circumstances of the case, including matters such as the Parties' ability to understand and use the proposed language, time, and costs.

In light of the factors set out above, the Panel finds there is sufficient evidence to suggest the likely possibility that the Respondent is conversant in the English language.

The Panel is also mindful of the need to ensure the proceeding be conducted in a timely and cost effective manner.

In all the circumstances, the Panel therefore finds it is not foreseeable that the Respondent would be prejudiced, should English be adopted as the language of the proceeding.

Having considered all the matters above, the Panel determines under paragraph 11(a) of the Rules that the language of the proceeding shall be English.

6.2. Preliminary Issue: Request for Addition of Domain Names

On June 24, 2022, after the Notification of the Complaint, the Complainant inquired regarding the possible addition of two additional domain names it contends were registered by the Respondent. The Panel notes that the Complainant did not provide an amended Complaint including such domain names or evidence in support of its assertion that the two additional domain names were registered by the same Respondent. As provided in [WIPO Overview 3.0](#), section 4.12.2, UDRP panels are generally reluctant to accept such requests, and, moreover, the declining of such request would not prevent the filing of a separate complaint.

In the present circumstances, and in the interest of due expedition, the Panel declines to order further procedural steps and delay the present matter for the addition of the two additional domain names, which would be necessary in order to add, and notes that the Complainant may file a separate Complaint regarding such domain names.

6.3. Substantive Elements of the Policy

The Complainant must prove each of the three elements in paragraph 4(a) of the Policy in order to prevail.

A. Identical or Confusingly Similar

The Panel finds that the Complainant has rights in the Trade Mark acquired through use and registration.

Each of the disputed domain names incorporates the entirety of the Trade Mark (see [WIPO Overview 3.0](#), section 1.7).

Each of the disputed domain names consist of the Trade Mark together with the terms "com", "www", "b", "my", "hosting", or various misspellings of "hosting".

Where a relevant trade mark is recognisable within a disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) does not prevent a finding of confusing similarity under the first element (see [WIPO Overview 3.0](#), section 1.8).

The Panel therefore finds that the disputed domain names are confusingly similar to the Trade Mark.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of non-exhaustive circumstances any of which is sufficient to demonstrate that a respondent has rights or legitimate interests in a disputed domain name:

- (i) before any notice to the respondent of the dispute, the respondent's use of, or demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services; or
- (ii) the respondent (as an individual, business, or other organization) has been commonly known by the disputed domain name even if the respondent has acquired no trade mark or service mark rights; or
- (iii) the respondent is making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trade mark or service mark at issue.

The Complainant has not authorised, licensed, or permitted the Respondent to register or use the disputed domain names or to use the Trade Mark. The Panel finds on the record that there is therefore a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain names, and the burden is thus on the Respondent to produce evidence to rebut this presumption.

The Respondent has failed to show that he has acquired any trade mark rights in respect of the disputed domain names or that the disputed domain names have been used in connection with a *bona fide* offering of goods or services. To the contrary, the disputed domain names have been resolved to parking pages with sponsored links relating to software (the services under which the Complainant's Trade Mark has been registered and used).

There has been no evidence adduced to show that the Respondent has been commonly known by the disputed domain names; and there has been no evidence adduced to show that the Respondent is making a legitimate noncommercial or fair use of the disputed domain names.

The Panel finds that the Respondent has failed to produce any evidence to rebut the Complainant's *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain names.

C. Registered and Used in Bad Faith

Given the notoriety of the Complainant and of its Trade Mark in particular in the software field; the distinctiveness of the Trade Mark; the Respondent's choice of additional term "hosting" (or various misspellings thereof) in the disputed domain names, which further indicates the Respondent's knowledge of and intent take unfair advantage of the goodwill associated with the Complainant and its trademarks; and the manner of the Respondent's use of the disputed domain names referred to above, the Panel finds, in all the circumstances, that the requisite element of bad faith has been made out pursuant to paragraph 4(b)(iv) of the Policy.

For all the foregoing reasons, the Panel concludes that the disputed domain names have been registered and are 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 names <bblackbaudhosting.com>, <blackbaudhhosting.com>, <blackbaudgosting.com>, <blackbaudhhosting.com>, <blackbaudhisting.com>, <blackbaudhoating.com>, <blackbaudhodting.com>, <blackbaudhoosting.com>, <blackbaudhositng.com>, <blackbaudhosring.com>, <blackbaudhossting.com>, <blackbaudhostibg.com>, <blackbaudhostign.com>, <blackbaudhostiing.com>, <blackbaudhosting.com>, <blackbaudhostinf.com>, <blackbaudhostingg.com>, <blackbaudhostings.com>, <blackbaudhostinh.com>, <blackbaudhostinng.com>, <blackbaudhosting.com>, <blackbaudhostnig.com>, <blackbaudhostong.com>, <blackbaudhostting.com>, <blackbaudhostung.com>, <blackbaudhosying.com>, <blackbaudhoting.com>, <blackbaudhotsing.com>, <blackbaudhpsting.com>, <blackbaudhsoting.com>, <blackbaudhsting.com>, <blackbaudh0sting.com>, <blackbaudjosting.com>, <blackbaudohsting.com>, <blackbaudosting.com>, <comblackbaudhosting.com>, <myblackbaudhosting.com>, and <wwwblackbaudhosting.com> be transferred to the Complainant.

/Sebastian M.W. Hughes/

Sebastian M.W. Hughes

Sole Panelist

Dated: August 4, 2022