

## **ADMINISTRATIVE PANEL DECISION**

Blackbaud, Inc. v. jiangbo Dong  
Case No. D2022-2154

### **1. The Partie**

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

The Respondent is jiangbo Dong, China.

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

The disputed domain name <blackbaudsucks.com> is registered with Hong Kong Juming Network Technology Co., Ltd. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 13, 2022. On June 14, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 15, 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 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 on June 17, 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 June 21, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 11, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 12, 2022.

The Center appointed Assen Alexiev as the sole panelist in this matter on July 18, 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**

As described on its official website at “www.blackbaud.com”, the Complainant is a cloud software vendor serving nonprofits, foundations, education institutes, and other charitable organizations. It offers comprehensive solutions for fundraising and relationship management, marketing, advocacy, peer-to-peer fundraising, corporate social responsibility and environmental, social and governance, school management, ticketing, grantmaking, financial management, payment processing, and analytics. The Complainant has operations in the United States, Australia, Canada, Costa Rica, and the United Kingdom.

The Complainant is the owner of the United States trademark BLACKBAUD with registration No. 5,280,412, registered on September 5, 2017 for goods in International Class 9, and with first use in commerce in 1982 (the “BLACKBAUD trademark”).

The disputed domain name was registered on April 25, 2022. It is inactive.

#### **5. Parties’ Contentions**

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

The Complainant submits that the disputed domain name is confusingly similar to the BLACKBAUD trademark in which the Complainant has rights, because the disputed domain name incorporates the whole of this trademark, the trade name of the Complainant and the relevant part of its domain name <blackbaud.com>.

According to the Complainant, the Respondent has no rights or legitimate interests in the disputed domain name, because it is not commonly known by it, is not affiliated with the Complainant and has not been authorized by the latter to register or use the BLACKBAUD trademark. The Complainant points out that the Respondent has not used the disputed domain name as it has remained inactive after its registration. The Complainant adds that it attempted to reach the Respondent through the Registrar to serve a cease-and-desist letter regarding the disputed domain name, but never received confirmation that the letter was transmitted to the Respondent.

The Complainant contends that the disputed domain name was registered and is being used in bad faith. According to it, the disputed domain name is disruptive to the Complainant’s business, as it may dissuade potential clients from conducting business with it, and the registration of the disputed domain name was made by the Respondent to extract profit from it. The Complainant points out that the Respondent was also found to have acted in bad faith in *Sodexo v. jiang bo dong, dongjiang bo*, WIPO Case No. [D2022-0636](#).

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

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

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

Pursuant to the Policy, paragraph 4(a), the Complainant must prove each of the following to justify the transfer of the disputed domain name:

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

In this case, the Center has employed the required measures to achieve actual notice of the Complaint to the Respondent, in compliance with the Rules, paragraph 2(a), and the Respondent was given a fair opportunity to present its case.

By the Rules, paragraph 5(c)(i), it is expected of a respondent to: “[r]espond specifically to the statements and allegations contained in the complaint and include any and all bases for the Respondent (domain name holder) to retain registration and use of the disputed domain name [...]”.

The Respondent has however not submitted a Response.

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

The Complainant has provided evidence that it is the owner of the BLACKBAUD trademark and has thus established its rights in this trademark for the purposes of the Policy.

The Panel notes that a common practice has emerged under the Policy to disregard in appropriate circumstances the Top-Level Domain (“TLD”) section of domain names for the purposes of the comparison under the Policy, paragraph 4(a)(i). See section 1.11.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”). The Panel sees no reason not to follow the same approach here, so it will disregard the “.com” TLD section of the disputed domain name.

The relevant part of the disputed domain name for purposes of the first element analysis is therefore the sequence “blackbaudsucks”, which reproduces the BLACKBAUD trademark with the addition of the word “sucks”. As discussed in section 1.13 of the [WIPO Overview 3.0](#), a domain name consisting of a trademark and a negative or pejorative term such as <[trademark]sucks.com> (the disputed domain name exhibits the same pattern) is considered confusingly similar to the complainant’s trademark for the purpose of satisfying standing under the first element. It is notable that Panels have observed that permitting such standing avoids gaming scenarios whereby appending a “sucks variation” would potentially see such cases fall outside the reach of the UDRP. The merits of such cases, in particular as to any potential fair use, are typically decided under the second and third elements.

In view of the above, the Panel finds that the disputed domain name is confusing similar to the BLACKBAUD trademark in which the Complainant has rights.

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

While the overall burden of proof in UDRP proceedings is on the complainant, UDRP panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often-impossible 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. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. See section 2.1 of the [WIPO Overview 3.0](#).

The Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name, stating that there is no relationship between the Parties, and the Complainant has not authorized the Respondent to use the BLACKBAUD trademark. The Complainant submits that the Respondent has not

used the disputed domain name because it is inactive, and that its existence may disrupt the business by dissuading potential customers from engaging with the Complainant. The Complainant has thus established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name.

The Respondent does not dispute the contentions of the Complainant and does not allege having rights or legitimate interests in the disputed domain name. It has not provided any explanation for its choice of the disputed domain name and has not described any plans for its use.

As summarized in section 2.6 of the [WIPO Overview 3.0](#), UDRP jurisprudence recognizes that the use of a domain name for fair use such as noncommercial free speech, would in principle support a respondent's claim to a legitimate interest under the Policy. Where the domain name is not identical to the complainant's trademark, but it comprises the mark plus a derogatory term (e.g., <trademarksucks.tld>), panels tend to find that the respondent has a legitimate interest in using the trademark as part of the domain name of a criticism site if such use is *prima facie* noncommercial, genuinely fair, and not misleading or false.

The above may be applicable in case the Respondent has associated the disputed domain name to a genuine criticism website directed at the Complainant. In the present case however, the disputed domain name is inactive and the Respondent has not alleged or demonstrated any preparations for its use for such purposes (or for any other purposes). In view of this, the Panel sees no justification to accept that the Respondent has intended to use the disputed domain name for noncommercial free speech and therefore has a legitimate interest in it under the Policy.

Therefore, the Panel concludes that the *prima facie* case made by the Complainant has not been rebutted, and finds that the Respondent does not have rights or legitimate interests in the disputed domain name.

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

Paragraph 4(b) of the Policy states that any of the following circumstances, in particular but without limitation, shall be considered evidence of the registration and use of a domain name in bad faith:

(i) circumstances indicating that the respondent registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant (the owner of the trademark or service mark) or to a competitor of that complainant, for valuable consideration in excess of the respondent's documented out-of-pocket costs directly related to the domain name; or

(ii) circumstances indicating that the respondent registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct; or

(iii) circumstances indicating that the respondent registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) circumstances indicating that the respondent is using the domain name to intentionally attempt to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the respondent's website or location or of a product or service on its website or location.

The examples of bad faith registration and use set forth in paragraph 4(b) of the Policy are not meant to be exhaustive of all circumstances from which such bad faith may be found. See *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#). The overriding objective of the Policy is to curb the abusive registration of domain names in circumstances where the registrant seeks to profit from and exploit the trademark of another person or entity.

The Respondent has not made any submissions or provided any evidence to show any contemplated good faith use of the disputed domain name. In particular, there is nothing in the record indicating that the

Respondent has used or made demonstrable preparations to use the disputed domain name for legitimate criticism of the Complainant. Therefore, in the lack of any evidence to the contrary, the Panel accepts as more likely the Complainant's contention that the intention of the Respondent in registering the disputed domain name was to take advantage of the Complainant's trademark rights. An additional circumstance supporting such likelihood is the fact that the Respondent has not denied its involvement as respondent in *Sodexo v. jiang bo dong, dongjiang bo*, WIPO Case No. [D2022-0636](#), where the decision was against it.

The disputed domain name is inactive. However, as discussed in section 3.3 of the [WIPO Overview 3.0](#), from the inception of the UDRP, panelists have found that the non-use of a domain name (including a blank or "coming soon" page) would not prevent a finding of bad faith under the doctrine of passive holding. While panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put. In the present case, the Panel notes that the BLACKBAUD trademark was first used in commerce 40 years ago and sees no reason not to regard it as distinctive, and as discussed above, the Respondent has not alleged any actual or contemplated good-faith use or to provide any evidence in such regard.

On this basis, the Panel finds that the disputed domain name has been registered and 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 <blackbaudsucks.com> be transferred to the Complainant.

*/Assen Alexiev/*

**Assen Alexiev**

Sole Panelist

Date: July 21, 2022