

ADMINISTRATIVE PANEL DECISION

BlockFi Inc. v. Privacy Service Provided by Withheld for Privacy ehf / David Bronze

Case No. D2022-2701

1. The Parties

The Complainant is BlockFi Inc., United States of America (“United States”), represented by Haynes and Boone, LLP, United States.

The Respondent is Privacy Service Provided by Withheld for Privacy ehf, Iceland / David Bronze, Nigeria.

2. The Domain Name and Registrar

The disputed domain name <blockfitrade.com> registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 25, 2022. On July 25, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 25, 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 July 25, 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 1, 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 1, 2022. In accordance with the Rules, paragraph 5, the due date for Response was August 21, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 22, 2022. The Respondent sent an informal communication to the Center on August 23, 2022.

The Center appointed Warwick A. Rothnie as the sole panelist in this matter on August 29, 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.

In light of the Respondent's informal communication, the Panel issued Administrative Procedural Order No 1, extending the time for submission of the Response to September 24, 2022, and the due date of the Decision to September 28, 2022.

The Respondent did not submit a Response within the time stipulated.

4. Factual Background

The Complainant is a financial services firm specialising in cryptocurrencies. Its services include buying, selling and earning cryptocurrencies. The Complainant was founded in 2017. By August 20, 2020, the Complainant had over 50,000 funded accounts and more than USD 1.5 billion under management. It now manages more than USD 2 billion in assets.

The Complainant has the usual social media accounts under its "BlockFi" name including Twitter, Facebook, and a YouTube channel. The Twitter account was opened in 2017 and has over 45,000 followers. The Facebook account was opened in 2018 and has over 3,000 followers. The Complainant's YouTube channel was started in 2019 and has over 3,000 subscribers.

The Complainant operates a website from "www.blockfi.com", from which it promotes its services and provides considerable information. A notable feature of the website is that the Complainant uses a logo-form of its trademark featuring a square rotated 45 degrees and the word "BlockFi".

Amongst other things, the Complainant is the owner of United States Registered Trademark Number 5,989,814, BLOCKFI, which was registered on February 18, 2020, in respect of a range of services in class 36 including banking services, providing loans secured by cryptocurrency, financing loans for cryptocurrency investors; loan services; financial services namely wealth management services; Investment services and financial advisory and consultancy services.

The disputed domain name was registered on June 22, 2021.

The disputed domain name resolves to a website in English promoting the services of "the leading blockchain investment firm". The website features prominently the Complainant's logo form of the BLOCKFI trademark. The website also includes a video "BlockFi tutorial" which is very similar in appearance to the videos on the Complainant's YouTube channel.

The Respondent's website also states that it is a "Scotland Registered Company" and provides a link to download what appears to be a copy of the Official Certificate of Incorporation of the company by the "Registrar of Companies for Scotland and Wales" under the name "Blockfitrade" with the registration number 98765409.

A search of the Companies House online register, however, does not disclose the registration of any company under that name or number. Further, under the *Companies Act 2006* (UK) section 1060, there is a registrar of companies for England and Wales and a registrar of companies for Scotland but no registrar of companies for Scotland and Wales. Further still, the certificate of registration downloaded from the Respondent's website purports to have been issued pursuant to s 1115 of the *Companies Act*. Section 1115 of the Act, however, deals with supplementary provisions relating to electronic communications. Certificates of registration are issued pursuant to s 15.

5. Discussion and Findings

Paragraph 4(a) of the Policy provides that in order to divest the Respondent of the disputed domain name, the Complainant must demonstrate each of the following:

- (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 in respect of 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 directs the Panel to decide the 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 first element that the Complainant must establish is that the disputed domain name is identical with, or confusingly similar to, the Complainant's trademark rights.

There are two parts to this inquiry: the Complainant must demonstrate that it has rights in a trademark at the date the Complaint was filed and, if so, the disputed domain name must be shown to be identical or confusingly similar to the trademark.

The Complainant has proven ownership of the BLOCKFI trademark registered in the United States.

The second stage of this inquiry simply requires a visual and aural comparison of the disputed domain name to the proven trademarks. This test is narrower than and thus different to the question of "likelihood of confusion" under trademark law. Therefore, questions such as the scope of the trademark rights, the geographical location of the respective parties and other considerations that may be relevant to an assessment of infringement under trademark law are not relevant at this stage. Such matters, if relevant, may fall for consideration under the other elements of the Policy. See e.g. [WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition \(WIPO Overview 3.0\)](#), section 1.7.

In undertaking that comparison, it is permissible in the present circumstances to disregard the generic Top-Level Domain ("gTLD") component as a functional aspect of the domain name system. [WIPO Overview 3.0](#), section 1.11.

Disregarding the ".com" gTLD, the disputed domain name consists of the Complainant's registered trademark and the term "trade". As this requirement under the Policy is essentially a standing requirement, the addition of this term does not preclude a finding of confusing similarity. See e.g. [WIPO Overview 3.0](#), section 1.8. Apart from anything else, the Complainant's trademark remains visually and aurally recognisable within the disputed domain name.

Accordingly, the Panel finds that the Complainant has established that the disputed domain name is confusingly similar to the Complainant's trademark and the requirement under the first limb of the Policy is satisfied.

B. Rights or Legitimate Interests

The second requirement the Complainant must prove is that the Respondent has no rights or legitimate interests in the disputed domain name.

Paragraph 4(c) of the Policy provides that the following circumstances can be situations in which the

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 trademark 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 trademark or service mark at issue.

These are illustrative only and are not an exhaustive listing of the situations in which a respondent can show rights or legitimate interests in a domain name.

The onus of proving this requirement, like each element, falls on the Complainant. Panels have recognized the difficulties inherent in proving a negative, however, especially in circumstances where much of the relevant information is in, or likely to be in, the possession of the respondent. Accordingly, it is usually sufficient for a complainant to raise a *prima facie* case against the respondent under this head and an evidential burden will shift to the respondent to rebut that *prima facie* case. The ultimate burden of proof, however, remains with the Complainant. See e.g., [WIPO Overview 3.0](#), section 2.1.

The Respondent¹ registered the disputed domain name after the Complainant began using its trademark and also after the Complainant had registered its trademark.

The Complainant states that it has not authorised the Respondent to use the disputed domain name. Nor is the Respondent affiliated with it.

The disputed domain name is not derived from the Respondent's name. Nor is there any suggestion of some other name by which the Respondent is commonly known from which the disputed domain name could be derived. From the available record, the Respondent does not appear to hold any trademarks for the disputed domain name.

The Respondent's website does claim that the operator of the website "Blockfitrade" is a company incorporated under that name in Scotland, United Kingdom. It also provides a link from which a document purporting to be the Certificate of Incorporation issued by the Registrar of Companies for Scotland and Wales. As noted above, however, there is no such Registrar and a search of Companies House records discloses no such company either under the name "BlockFiTrade" (which is not by itself a permissible name under Companies Act 2006, s 59) or the purported registration number.

Through Procedural Order No. 1, the Panel invited the Respondent to address these matters in a supplemental filing. However, no further response has been received by the Respondent. The Panel proceeds therefore on the basis that the purported Certificate of Incorporation is false and there is no such company.

The Respondent is using the disputed domain name in connection with a website which appears to be offering the same or very similar services to those of the Complainant. Moreover, given the resemblance of the disputed domain name to the Complainant's trademark and the use of the logo-form of the Complainant's trademark on the website, both the website and the disputed domain name convey a strong appearance of belonging to, or being associated with, the Complainant. That is false and misleading.

¹ As the first named Respondent is a privacy service, the Panel will refer to the second named Respondent as the Respondent unless the context requires the contrary.

All of these matters indicate a calculated scheme to give the false impression that the Respondent is the Complainant and the services being offered from the website are the Complainant's genuine services. As that is quite false, the Respondent cannot claim to be using the disputed domain name in connection with a good faith offering of goods or services.

These matters, taken together, are sufficient to establish a very strong *prima facie* case under the Policy that the Respondent has no rights or legitimate interests in the disputed domain name. The basis on which the Respondent has adopted the disputed domain name, therefore, calls for explanation or justification. The Respondent, however, has not sought to rebut that *prima facie* case or advance any claimed entitlement. Accordingly, the Panel finds the Complainant has established the second requirement under the Policy also.

C. Registered and Used in Bad Faith

Under the third requirement of the Policy, the Complainant must establish that the disputed domain name has been both registered and used in bad faith by the Respondent: see e.g. *Burn World-Wide, Ltd. d/b/a BGT Partners v. Banta Global Turnkey Ltd*, WIPO Case No. [D2010-0470](#).

Paragraph 4(b) identifies situations which may demonstrate that registration or use of a disputed domain name was not in bad faith under the Policy:

For the purposes of paragraph 4(a)(iii), the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of [the disputed] domain name in bad faith:

(i) circumstances indicating that [the Respondent] has registered or [the Respondent has] acquired the [disputed] domain name primarily for the purpose of selling, renting, or otherwise transferring the [disputed] domain name registration to the Complainant who is 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 [disputed] domain name; or

(ii) [the Respondent has] registered the [disputed] 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) [the Respondent has] registered the [disputed] domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the [disputed] domain name, [the Respondent has] intentionally attempted to attract, for commercial gain, Internet users to [the Respondent's] web site or other on-line 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 [the Respondent's] web site or location.

These are illustrative only and do not limit the bases on which a respondent may be found to have registered and used a domain name in bad faith.

Generally speaking, a finding that a domain name has been registered and is being used in bad faith requires an inference to be drawn that the respondent in question has registered and is using the disputed domain name to take advantage of its significance as a trademark owned by (usually) the complainant.

The use of the Complainant's logo-form of its trademark on the Respondent's website, which started after the Complainant had been using its trademark and the logo-form for several years, and the provision of what appears to be a false Certificate of Incorporation leads to a strong inference that the Respondent was well-aware of the Complainant and its trademark and has embarked on an elaborate scheme to attract funds and information from people seeking the Complainant's services.

Such conduct clearly constitutes registration of the disputed domain name in bad faith and the operation of the website with such a false and misleading character at the disputed domain name is use in bad faith.

Accordingly, the Complainant has established all three requirements under the Policy.

6. 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 <blockfitrade.com> be transferred to the Complainant.

/Warwick A. Rothnie/

Warwick A. Rothnie

Sole Panelist

Date: September 27, 2022