

## **ADMINISTRATIVE PANEL DECISION**

BlockFi Inc. v. BitMex BitMex

Case No. D2022-2714

### **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 BitMex BitMex, Nigeria.

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

The disputed domain name, <blockfidigitaltrading.com> (the “Domain Name”), is 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 Domain Name. On July 25, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the 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 July 30, 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 2, 2022. In accordance with the Rules, paragraph 5, the due date for Response was August 22, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 24, 2022.

The Center appointed Tony Willoughby 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.

The invitation to the Complainant to file an amended Complaint stemmed from the fact that the registrant details of the Domain Name were redacted and not fully available in the public Whois at the time of the submission of the Complaint. In response to the Center's registrar verification request, the Registrar disclosed the name and address of the entity in whose name the Domain Name is currently registered. The amended Complaint names the underlying registrant as the Respondent.

#### **4. Factual Background**

The Complainant is a financial services company founded in 2017 focusing on cryptocurrencies. It operates a trading website connected to its domain name, <blockfi.com>, where it offers a variety of financial services including crypto-based interest accounts.

The Complainant trades under and by reference to its "Blockfi" name, which is protected by United States Trademark Registration No. 5989814 registered on February 18, 2020 (application filed on July 29, 2019) BLOCKFI (standard character mark) in class 36 for banking and related financial services and in class 42 for various cryptocurrency software services.

The Domain Name was registered on July 24, 2021 and at the time of the Complaint was not connected to an active website, but when the Panel investigated further on September 1, 2022, the Panel found that the Domain Name was connected to a parking page hosted by the Registrar and featuring three 'related links' labelled "Online Trading Platforms", "Xm Trading Account" and "Best Trading Platform" respectively.

The unchallenged evidence of the Complainant supported by screenshots demonstrates that prior to the filing of the Complaint the Domain Name was connected to a commercial website headed with a logo featuring the name, "Blockfi Digital Trading" and the messages: "One low fee More great trading with Blockfidigitaltrading" and "Find your trading opportunity in 3 easy steps – Open Account – Deposit – Start Trading". To open an account the visitor is required to register, involving the provision of personal information.

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

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

The Complainant contends that the Domain Name is confusingly similar to the Complainant's BLOCKFI registered trade mark; that the Respondent has no rights or legitimate interests in respect of the Domain Name and that the Domain Name has been registered and is being used in bad faith. The Complainant seeks transfer of the Domain Name.

The essence of the Complainant's case is that the Respondent, having no connection with the Complainant yet aware of the fame of the Complainant and its financial services, registered the Domain Name without the Complainant's authority to attract visitors to its website on the back of the reputation and goodwill associated with the Complainant's BLOCKFI registered trade mark. The Complainant suspects that one of the Respondent's aims, beyond diverting traffic away from the Complainant's website for commercial gain, was to acquire personal information from visitors to its website for the purpose of a phishing scam.

## **B. Respondent**

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

## **6. Discussion and Findings**

### **A. Preliminary matter**

Section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)) addresses the issue of respondent default in the following terms:

"Noting the burden of proof on the complainant, a respondent's default (i.e., failure to submit a formal response) would not by itself mean that the complainant is deemed to have prevailed; a respondent's default is not necessarily an admission that the complainant's claims are true.

In cases involving wholly unsupported and conclusory allegations advanced by the complainant, or where a good faith defense is apparent (e.g., from the content of the website to which a disputed domain name resolves), panels may find that – despite a respondent's default – a complainant has failed to prove its case. Further to paragraph 14(b) of the UDRP Rules however, panels have been prepared to draw certain inferences in light of the particular facts and circumstances of the case e.g., where a particular conclusion is *prima facie* obvious, where an explanation by the respondent is called for but is not forthcoming, or where no other plausible conclusion is apparent. ...."

### **B. General**

According to paragraph 4(a) of the Policy, for this Complaint to succeed in relation to the Domain Name, the Complainant must prove each of the following, namely that:

- (i) the Domain Name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights: and
- (ii) the Respondent has no rights or legitimate interests in respect of the Domain Name: and
- (iii) the Domain Name has been registered and is being used in bad faith.

### **C. Identical or Confusingly Similar**

The Domain Name comprises the Complainant's registered trade mark BLOCKFI, the words, "digital", and "trading" and the ".com" generic Top Level Domain ("gTLD") identifier.

Section 1.7 of [WIPO Overview 3.0](#) explains the test for identity or confusing similarity under the first element of the Policy and includes the following passage:

"While each case is judged on its own merits, in cases where a domain name incorporates the entirety of a trademark, 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."

The Complainant's registered trade mark is readily recognizable in its entirety in the Domain Name. The Panel finds that the Domain Name is confusingly similar to a trade mark in which the Complainant has rights.

### **D. Rights or Legitimate Interests**

The Complainant asserts that it has no connection with the Respondent and has given the Respondent no authorisation to use its BLOCKFI registered trade mark.

The Complainant states: "Given that the BLOCKFI Mark is a coined term created and used exclusively by Complainant, it is clear that Respondent's demonstrated purpose and use of the Disputed Domain Name was to confuse the public into believing that Respondent's website, and its alleged cryptocurrency services, were associated with Complainant in order to benefit from this confusion. Such use cannot constitute a legitimate noncommercial or fair use of the Disputed Domain Name, or a *bona fide* offering of goods or services."

The Panel is satisfied that the Complainant has made out a *prima facie* case under this element of the Policy; in other words, a case calling for an answer from the Respondent. The Respondent has not responded to the Complainant's contentions. While respondents may fail to respond for a variety of reasons, in this case the Panel is satisfied on the balance of probabilities that the Respondent has failed to respond because it has no satisfactory answer to the Complainant's contentions.

The original use of the Domain Name to which the Complainant objected has now been replaced by a parking page hosted by the Registrar and featuring 'related links' associated with the Complainant's area of business.

The Panel can conceive of no basis upon which the Respondent could be said to have acquired rights or legitimate interests in respect of the Domain Name.

The Panel finds that the Respondent has no rights or legitimate interests in respect of the Domain Name.

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

The Complainant contends that the Domain Name has been registered and is being used in bad faith within the meaning of paragraphs 4(b)(iii) and 4(b)(iv) of the Policy. Those paragraphs provide as follows:

"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 a domain name in bad faith:

- (i) ....
- (ii) ....
- (iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your 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 your web site or location or of a product or service on your web site or location."

While disruption of the Complainant's business was an inevitable consequence of what the Respondent has done with the Domain Name, the Panel does not believe that that was the Respondent's primary aim when registering the Domain Name.

The Complainant's more persuasive contention is that the Respondent, having no connection with the Complainant yet aware of the fame of the Complainant and its financial services, registered the Domain Name without the Complainant's authority to attract visitors to its website on the back of the reputation and goodwill associated with the Complainant's BLOCKFI registered trade mark. The Panel agrees. The evidence filed by the Complainant demonstrates that in its specialist field of activity its BLOCKFI trade mark is very well-known. "Blockfi" is an unusual name and the Panel regards it as inconceivable that the Respondent, using the Domain Name in the same specialist area of business, can have selected the Domain Name independently and unaware of the Complainant.

For completeness, it should be mentioned that the Complainant suspects that one of the Respondent's aims, beyond diverting traffic away from the Complainant's website for commercial gain, was to acquire personal information from visitors to its website for the purpose of a phishing scam. This may well be the case as visitors to the Respondent's original website were required to provide personal information in order to register for an account with the Respondent. However, in light of the finding below, it is unnecessary for the Panel to express a concluded view on this contention.

Finally, as described in section 4 above, use of the Domain Name has gone through various stages. First, it was connected to the website to which the Complainant has objected; then prior to the Complaint it ceased to connect to an active website of any kind; now it connects to a parking page hosted by the Registrar and featuring 'related links' associated with the Complainant's area of business. The Panel is satisfied that at all times the Domain Name has targeted the Complainant.

The Panel finds that the Domain Name has been registered and is being used in bad faith within the meaning of paragraphs 4(a)(iii) and 4(b)(iv) 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 Domain Name, <blockfidigitaltrading.com>, be transferred to the Complainant.

*/Tony Willoughby/*

**Tony Willoughby**

Sole Panelist

Date: September 7, 2022