

## **ADMINISTRATIVE PANEL DECISION**

Blackbaud, Inc. v. ReachLocal Hostmaster

Case No. D2022-0726

### **1. The Parties**

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

The Respondent is ReachLocal Hostmaster, United States.

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

The disputed domain name <9620blackbaudhosting.net> is registered with Name.com, Inc. (Name.com LLC) (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 2, 2022. On March 2, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 6, 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 March 7, 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 amendment to the Complaint on March 15, 2022.

The Center verified that the Complaint together with the amendment to the 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 March 17, 2022. In accordance with the Rules, paragraph 5, the due date for Response was April 6, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 7, 2022.

The Center appointed Phillip V. Marano as the sole panelist in this matter on April 19, 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.

A Procedural Order was issued by the Panel on May 5, 2022. The Procedural Order invited Complainant to submit a further brief statement clarifying certain aspects of its case regarding the third element of the Policy. Accordingly, Complainant made a brief supplemental filing on May 11, 2022. Respondent was granted an opportunity file a responsive statement until May 18, 2022, and did not file any formal responsive statement.

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

Complainant is a cloud computing provider serving nonprofits, foundations, corporations, and educational institutions with products that focus on fundraising, website management, customer relationship management, analytics, financial management, ticketing, and education administration. Complainant owns a valid and subsisting registration for the BLACKBAUD trademark (US Reg. No. 5,280,412) in the United States, registered on September 5, 2017 and with the earliest priority based on a first use date of 1982.

Respondent registered the disputed domain name on February 25, 2022. At the time this Complaint was filed, the disputed domain name did not resolve to any website content.

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

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

Complainant asserts ownership of the BLACKBAUD trademark and has adduced evidence of a trademark registration in the United States, registered on September 5, 2017 and with earliest priority dating back to 1982. The disputed domain name is confusingly similar to Complainant's BLACKBAUD trademark, according to Complainant, because it consists of the whole of the BLACKBAUD trademark with the addition of random numbers at the front and the word "hosting" at the end.

Complainant further asserts that Respondent lacks any rights or legitimate interests in the disputed domain name based on: the lack of any affiliation or authorization between Complainant and Respondent; the lack of any evidence Respondent has used the disputed domain name; the lack of any evidence that Respondent is known by the BLACKBAUD trademark; and the lack of Respondent's prior trademark rights to the BLACKBAUD trademark.

Complainant argues that Respondent has registered and used the disputed domain name in bad faith for numerous reasons, including: the inherently distinctive nature of the BLACKBAUD trademark, a term not found in any dictionary; Respondent's attempt to typo-squat on the BLACKBAUD trademark by registering the disputed domain name; the likelihood that Respondent will use the disputed domain name maliciously based on similar prior instances of phishing; steps taken by Respondent to conceal their identity, a common practice followed by domain flippers; the relevance of the term "hosting" in the disputed domain name to the services offered by Complainant; Respondent's passive holding of the disputed domain name; and Respondent's failure to participate in this proceeding.

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

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

## 6. Discussion and Findings

To succeed in its Complaint, Complainant must establish in accordance with paragraph 4(a) of the Policy:

- i. The disputed domain name is identical or confusingly similar to a trademark in which Complainant has rights;
- ii. 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.

Although Respondent did not reply to Complainant's contentions, the burden remains with Complainant to establish by a balance of probabilities, or a preponderance of the evidence, all three elements of paragraph 4(a) of the Policy. A respondent's default 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. UDRP 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. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), sections 4.2 and 4.3; see also *The Vanguard Group, Inc. v. Lorna Kang*, WIPO Case No. [D2002-1064](#) ("The Respondent's default does not automatically result in a decision in favor of the complainant. The Complainant must still prove each of the three elements required by Policy paragraph 4(a)").

### A. Identical or Confusingly Similar

Ownership of a nationally or regionally registered trademark serves as *prima facie* evidence that Complainant has trademark rights for the purposes of standing to file this Complaint. [WIPO Overview 3.0](#), section 1.2.1. Complainant submitted evidence that the BLACKBAUD trademark has been registered in the United States with priority dating back to 1982. Thus, the Panel finds that Complainant's rights in the BLACKBAUD trademark have been established pursuant to the first element of the Policy.

The only remaining question under the first element of the Policy is whether the disputed domain name is identical or confusingly similar to Complainant's BLACKBAUD trademark. In this proceeding, the disputed domain name is confusingly similar to Complainant's BLACKBAUD trademark because, disregarding the ".com" generic Top-Level-Domain ("gTLD"), the trademark is contained in its entirety within the disputed domain name. [WIPO Overview 3.0](#), section 1.7. ("This test typically involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the domain name ... [I]n 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..."). In regards to gTLDs, such as ".com" in the disputed domain name, they are generally viewed as a standard registration requirement and are disregarded under the first element. [WIPO Overview 3.0](#), section 1.11.

The addition of the number "9620" and the term "hosting" does not prevent a finding of confusing similarity between Complainant's BLACKBAUD and the disputed domain name. WIPO Overview, section 1.8 (Additional terms "whether descriptive, geographic, pejorative, meaningless, or otherwise" do not prevent a finding of confusing similarity under the first element); see also *AT&T Corp. v. WorldclassMedia.com*, WIPO Case No. [D2000-0553](#) ("Each of the domain names in dispute comprises a portion identical to [the ATT trademark] in which the Complainant has rights, together with a portion comprising a geographic qualifier, which is insufficient to prevent the composite domain name from being confusingly similar to Complainant's [ATT trademark]") *OSRAM GmbH v. Cong Ty Co Phan Dau Tu Xay Dung Va Cong Nghe Viet Nam*, WIPO Case No. [D2017-1583](#) ("[T]he addition of the letters 'hbg' to the trademark OSRAM does not prevent a finding of confusing similarity between the Disputed Domain Name and the said trademark.").

In view of Complainant's registration for the BLACKBAUD trademark and Respondent's incorporation of that trademark in its entirety in the disputed domain name, the Panel concludes that Complainant has established the first element of the Policy.

## B. Rights or Legitimate Interests

Complainant must make out a *prima facie* case that Respondent lacks rights or legitimate interests in the disputed domain name, shifting the burden of production on this element to Respondent to come forward with evidence demonstrating such rights or legitimate interests. Where, as in this proceeding, Respondent fails to come forward with any relevant evidence, Complainant is deemed to have satisfied the second element of the Policy. WIPO Overview, section 2.1.

It is evident that Respondent, identified by the Registrar per its Whois data for the disputed domain name as "ReachLocal Hostmaster", is not commonly known by the disputed domain name or Complainant's BLACKBAUD trademark.

Moreover, passively holding a domain name in and of itself does not constitute a *bona fide* offering of goods or services. *Philip Morris USA Inc. v. Gabriel Hall*, WIPO Case No. [D2015-1779](#). In this proceeding, based on the evidence available to the Panel, Respondent has not made any ostensible use of, or preparations to use, the disputed domain name since it was registered on February 25, 2022.

In view of the absence of any evidence supporting Respondent rights or legitimate interests in the disputed domain name, and Respondent's passive holding of the disputed domain name, the Panel concludes that Complainant has established the second element of the Policy.

## C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy proscribes the following non-exhaustive circumstances as evidence of bad faith registration and use of the disputed domain name:

- i. Circumstances indicating that Respondent has registered or Respondent has acquired the disputed domain name primarily for the purpose of selling, renting, or otherwise transferring the disputed domain name registration to Complainant who is the owner of the trademark or to a competitor of that Complainant, for valuable consideration in excess of Respondent's documented out of pocket costs directly related to the disputed domain name; or
- ii. Respondent has registered the disputed domain name in order to prevent the owner of the trademark from reflecting the mark in a corresponding domain name, provided that Respondent has engaged in a pattern of such conduct; or
- iii. 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, Respondent has intentionally attempted to attract, for commercial gain, Internet users to Respondent's website or other online location, by creating a likelihood of confusion with Complainant's mark as to the source, sponsorship, affiliation, or endorsement of Respondent's website or location or of a product or service on Respondent's website or location.

Where parties are both located in the United States and a complainant has obtained a federal trademark registration pre-dating a respondent's domain name registration, some panels have applied the concept of constructive notice, subject to the strength or distinctiveness of the complainant's trademark, or circumstances that corroborate respondent's awareness of the complainant's trademark. [WIPO Overview 3.0](#), section 3.2.2. In this Panel's view, when the disputed domain name was registered on February 25, 2022, Respondent had constructive knowledge of Complainant's long pre-existing rights in Complainant's BLACKBAUD trademark under United States law. See *e.g.*, *Champion Broadcasting System, Inc. v. Nokta Internet Technologies*, WIPO Case No. [D2006-0128](#) (Applying the principle of constructive notice where both parties are located in the United States). Indeed, circumstances in this case corroborate Respondent's awareness of Complainant and Complainant's BLACKBAUD trademark, including the reproduction of

Complainant's BLACKBAUD trademark in its entirety along the term "hosting", which describes Complainant's services, in the disputed domain name.

In addition, passively holding a domain name does not prevent a finding of bad faith. WIPO Overview, section 3.3. This includes domain names that do not resolve to any website content. Where a domain name is being passively held, as alleged in this case, bad faith registration and use exists based upon: (i) the degree of distinctiveness or reputation of the complainant's mark; (ii) the failure of the respondent to submit any response or offer any credible evidence of actual or contemplated good-faith use; (iii) the respondent's concealing its identity or use of false contact details; and (iv) the implausibility of any good faith use which the domain name may be put. See *Id.* See also *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#) ("A remedy can be obtained under the Policy only if those circumstances show that the Respondent's passive holding amounts to acting in bad faith.")

To that end, the Panel acknowledges the multitude of prior panel determinations under the Policy concluding that Complainant's BLACKBAUD trademark is "not a common or descriptive term." See *e.g. Blackbaud, Inc. v. Registration Private, Domains By Proxy, LLC / Name Redacted*, WIPO Case No. [D2021-4138](#) ("a simple Internet search, normally undertaken before registering [the disputed domain name <blacksbaud.com>], would have disclosed the Complainant's Mark."); *Blackbaud, Inc. v. 权中俊 (Quan Zhong Jun)*, WIPO Case No. [D2022-0108](#) ("Through extensive use and advertising, the Complainant's BLACKBAUD mark is known throughout the world."); *Blackbaud, Inc. v. Privacy Administrator, Anonymize, Inc.*, WIPO Case No. [D2021-4153](#) ("The BLACKBAUD mark appears inherently distinctive, as it does not correspond to any dictionary word of which the Panel is aware."); *Blackbaud, Inc. v. Whois Privacy Protection Service by onamae.com / Yan Zhang*, WIPO Case No. [D2021-2344](#) ("Taking into account the uniqueness and distinctiveness of the term 'Blackbaud', the Respondent must have registered and used the disputed domain name [<blackbaudcrm.com>] knowing the existence of the Complainant.")

Furthermore, the Panel acknowledges Respondent's failure to submit any response or statement in this proceeding to offer any evidence of rights or legitimate interests.

Based upon the totality of the circumstances in this proceeding, the Panel concludes that Complainant has established under the balance of probabilities the third element 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 <9620blackbaudhosting.net> be transferred to the Complainant.

*/Phillip V. Marano/*  
**Phillip V. Marano**  
Sole Panelist  
Date: May 21, 2022