

ADMINISTRATIVE PANEL DECISION

Black Bull Group Limited v. Privacy Service Provided by Withheld for Privacy ehf / elijah king, bb market
Case No. D2022-1306

1. The Parties

The Complainant is Black Bull Group Limited, New Zealand, represented by Potter IP Limited, New Zealand.

The Respondent is Privacy Service Provided by Withheld for Privacy ehf, Iceland / elijah king, bb market, United Kingdom.

2. The Domain Names and Registrar

The disputed domain names <bullmarket.com> and <blackbull-market.com> are registered with NameCheap, Inc. (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on April 12, 2022. On April 12, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On April 12, 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 May 4, 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 May 9, 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 May 12, 2022. In accordance with the Rules, paragraph 5, the due date for Response was June 1, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on June 9, 2022.

The Center appointed Cherise Valles as the sole panelist in this matter on June 17, 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

The Complainant in this administrative proceeding is Black Bull Group Limited, a company incorporated under the laws of New Zealand. The Complainant is a leading regulated online trading brokerage headquartered in New Zealand and having dedicated Equinix Servers in New York, London and Tokyo, as well as staff and technology covering Australasia, Europe, North and South America, Asia, and Africa. Founded in 2014, the Complainant was created to provide retail investors with the same experiences and resources typically enjoyed by institutional investors, including faster trade execution and smaller price spreads and personalised account management. Today, it offers access to 300+ tradable instruments (Equities, FX, CFDs, Commodities) on the popular MetaTrader 4 and MetaTrader 5 platforms, and serves tens of thousands of traders from 180+ different countries.

The disputed domain name <blackbull-market.com> was registered on August 24, 2021 and the disputed domain name <bullmarket.com> was registered on December 29, 2021 (“the disputed domain names”). The principal trademarks comprising the Complainant’s brand are:

- (a) word marks BLACKBULL and BLACKBULL MARKETS;
- (b) a composite mark;
- (c) a logo; and
- (d) a colour palette of blue, white and black.

The BlackBull Brand has been consistently and prominently used since the Complainant’s inception, both as the core elements of the Complainant’s name, identity and domain name <blackbullmarkets.com>, and in connection with the Complainant’s financial services offerings, and has played a key role in raising the profile of the brand internationally.

The BlackBull Brand is subject of numerous trade mark applications and registrations owned by the Complainant around the world for goods and services including brokerage, investment and trading services, including in New Zealand, Australia, Japan, Singapore, the United Kingdom, the European Union and the United States (Annex 6). Some examples of such trademark registrations are below:

- New Zealand trademark registration No. 1115710, BLACKBULL, registered on December 9, 2019, for goods and services in Classes 9, 36, and 42;
- United Kingdom trademark registration No. UK00801486845, BLACKBULL, registered on February 14, 2020, for goods and services in Classes 9, 36, and 42;
- United Kingdom trademark registration No. UK00801486845, BLACKBULL MARKETS, registered on October 23, 2020, for goods and services in Classes 9, 36, and 42; and
- United States trademark Registration No. 6132496, BLACKBULL, registered on September 6, 2020, for goods and services in Classes 9, 36, and 42.

Blackbullmarkets.com

The Complainant’s website at URL “blackbullmarkets.com” is a critical component of the Complainant’s online brokerage business and features the BlackBull Brand prominently throughout.

The Complainant’s website is the very first hit returned in a search using the Google search engine for both the words “blackbull” and “blackbull markets”. The high search rankings, which can only be achieved over a prolonged period, not only demonstrates the relevance of the website, but the significant traffic it generates on a daily basis and the high degree of recognition of the BlackBull brand (Annex 7). A screenshot taken from “Alexa.com” showing the “blackbullmarkets.com” website has a bounce rate of 31.3%, indicating that

close to 70% of visitors interact with the website after accessing it.

The Complainant consistently makes use of the BlackBull Brand throughout its advertising, and over the years it has invested significant sums in promoting its BlackBull Brand and associated financial services offerings.

In or around November 2021, the Complainant discovered that the Respondent had registered <blackbull-market.com> without its consent, and was using it in connection with a website and online platform purporting to offer online trading and brokerage services identical to Complainant.

The website is branded "BlackBull Market", with the stylised mark shown below prominently displayed in the website banner, and has additionally been designed so as to have some conceptual similarities to that of the Complainant, including the Complainant's blue, white and black colour palette, (Annex 9).

Most likely in response to the Complainant filing abuse complaints with the registrar, Namecheap, Inc., and network provider, Cloudflare, Inc., the website contents were moved to the sub-domain <client.blackbullmarket.com> and hidden behind a password-protected area. The contents were also replicated on a website utilising with very similar domain name, <bullmarket.com>, (the "Infringing Websites").

Several of the Complainant's clients have been scammed by fraudulent activities linked to the Infringing Websites, with victims transferring payments to the Respondent in the mistaken belief that they were dealing with the Complainant.

5. Parties' Contentions

A. Complainant

The Complainant asserts that each of the elements enumerated in paragraph 4(a) of the Policy and the corresponding provisions in the Rules have been satisfied. In particular, the Complainant asserts that:

The disputed domain names are identical or confusingly similar to a trademark in which the Complainant has rights.

- The disputed domain names are confusingly similar to the Complainant's registered BLACKBULL and BLACKBULL MARKETS trademarks, in light of the fact that it wholly incorporates the Complainant's mark.
- The Respondent lacks rights or legitimate interests in the disputed domain names.
- The Complainant states that the Respondent should be considered as having no rights or legitimate interests in the disputed domain names. The Complainant has never licensed or otherwise permitted the Respondent to use its trademarks or to register any domain names that included its trademarks.
- The disputed domain names have been registered and are being used in bad faith.
- The Complainant asserts that the disputed domain names were registered and are being used in bad faith. The mere fact of registration of a domain name that is confusingly similar or identical to a famous trademark by an entity that has no relationship to that mark is itself evidence of bad faith registration and use. Furthermore, the Respondent's impersonating and/or competing uses of the disputed domain names is clear evidence of bad faith.
- The Complainant asserts that several of its clients have been scammed by fraudulent activities linked to the disputed domain names, with victims transferring payments to the Respondent in the mistaken belief that they were dealing with the Complainant.

- The Complainant requests the Panel to issue a decision finding that the disputed domain names be transferred to the Complainant, in accordance with paragraph 4(i) of the Policy.

B. Respondent

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

6. Discussion and Findings

In terms of paragraph 4(a) of the Policy, for a Complain to succeed, the Complainant must prove each of the following elements:

- (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 disputed domain name has been registered or is being used in bad faith.

The Respondent has failed to file a Response in this proceeding. The Panel may draw appropriate inferences from the available evidence submitted by the Complainant.

A. Identical or Confusingly Similar

To prove this element, the Complainant must have relevant UDRP rights in a trademark and the disputed domain name must be identical or confusingly similar to such trademark.

The Complainant submits that the disputed domain names are confusingly similar to the trademarks in which it has rights. Given the Complainant's trademark registration as detailed above, the Panel finds that the Complainant has established its trade mark rights in the terms BLACKBULL and BLACKBULL MARKETS for the purposes of paragraph 4(a)(i) of the Policy.

As stated in section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)) "[w]here the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element".

The Complainant asserts that the disputed domain names are confusing similar to its trademark BLACKBULL and BLACKBULL MARKETS. The disputed domain name <blackbull-market> reproduces the Complainant's BLACKBULL mark in its entirety, and is confusingly similar to the Complainant's BLACKBULL MARKETS mark, since it differs in respect of the hyphen "-" between "blackbull" and "market", and absence of the letter "s" at the end of the term "market".

Similarly, the disputed domain name <bbullmarket.com> is confusingly similar to the Complainant's trademark as it contains sufficiently recognizable aspects of the Complainant's trademark BLACKBULL MARKETS.

The disputed domain names incorporate the Complainant's trademarks with a few immaterial differences. As stated in section 1.9 of the [WIPO Overview 3.0](#), "[a] domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element". Thus, the inclusion of the hyphen, the absence of the letter "s" after market and the misspelling of "bull" before market in the disputed domain names do not prevent a finding of confusing similarity between the disputed domain names and the Complainant's BLACKBULL and

BLACKBULL MARKETS trademarks.

It is standard practice when comparing a disputed domain name to a complainant's trademark not to take the generic Top-Level Domain ("gTLD") into account. See section 1.11.1 of the [WIPO Overview 3.0](#), which states that the "applicable TLD in a domain name (e.g., ".com", ".club", ".nyc") is viewed as a standard registration requirement and, as such, is disregarded under the first element of the confusing similarity test". In the present case, the gTLD ".com" is disregarded under the first element of the confusing similarity test.

In the light of the foregoing, the Panel finds that the disputed domain names are confusingly similar to the Complainant's registered trademark and that the Complainant has met its burden with respect to paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy sets out a non-exhaustive set of circumstances, any of which, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate a respondent's rights or legitimate interests to a domain name for the purposes of paragraph 4(a)(ii) of the Policy, namely:

"[a]ny of the following circumstances, in particular but without limitation, if found by the panel to be proved based on its evaluation of all evidence presented, shall demonstrate your rights or legitimate interests to the domain name for purposes of paragraph 4(a)(ii):

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

The Respondent did not submit a Response or attempt to demonstrate any rights or legitimate interests in the disputed domain names, whether on the basis of the non-exhaustive examples set out in paragraph 4(c) of the Policy or on any other basis, and the Panel draws inferences from this failure, where appropriate, in accordance with paragraph 14(b) of the Rules.

It is recognised in cases under the Policy that it is sufficient for a complainant to make a *prima facie* case under the second element of the Policy, not rebutted by the respondent, that the respondent has no rights or legitimate interests in the domain name concerned (see, for example, *LinkedIn Corporation v. Privacy service provided by Withheld for Privacy ehf / Scrap LinkedIn*, WIPO Case No. [DIO2021-0019](#); *Bayerische Motoren Werke AG v. Domain Privacy Ltd/ DNS Admin*, WIPO Case No. [DIO2021-0012](#); and the discussion in section 2.1 of the [WIPO Overview 3.0](#)). If a respondent fails to rebut such a *prima facie* case by demonstrating rights or legitimate interests in the disputed domain name in accordance with paragraph 4(c) of the Policy, or on any other basis, the complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy.

In this case, it appears that the Complainant has established the requisite *prima facie* case.

On the evidence before the Panel, it appears that there has never been any relationship between the Complainant and the Respondent. The Respondent has not been authorized or licensed, either directly or indirectly, to register or use the Complainant's BLACKBULL brand trademark in any manner, including in, or as part of, the disputed domain names.

The Complainant asserts that the Respondent is unable to invoke any of the circumstances set out in

paragraph 4(c) of the Policy in order to demonstrate rights or legitimate interests in the disputed domain name. In particular, the Respondent cannot assert that, prior to any notice of this dispute, it was using, or had made demonstrable preparations to use, the disputed domain names in connection with a *bona fide* offering of goods or services in accordance with paragraph 4(c)(i) of the Policy.

The Complainant submits that the Respondent is not a licensee, authorized agent of the Complainant, or in any other way authorized to use the Complainant's trademark. Specifically, the Respondent is not an authorized reseller of the Complainant and has not been authorized to register and use the disputed domain names.

Moreover, the disputed domain names resolve to Infringing Websites created for the sole purpose of impersonating the Complainant and deceiving investors into believing that the Infringing Websites are in some way connected with the Complainant, and thereby dupe investors into investing funds with the Respondent. This conduct nullifies any possible claim that the disputed domain names are used in connection with a *bona fide* offering of goods and services. See section 2.13.1 of the [WIPO Overview 3.0](#).

In light of the foregoing, the Panel finds that the Complainant has established an unrebutted *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name, and concludes that paragraph 4(a)(ii) of the Policy is satisfied.

C. Registered and Used in Bad Faith

For this element, the Complainant is required to prove that the disputed domain names were registered and used in bad faith. The term "bad faith" is "broadly understood to occur where a respondent takes unfair advantage of, or otherwise abuses, a complainant's mark". See section 3.1 of the WIPO Overview. Paragraph 4(b) of the Policy sets out four non-exhaustive examples of circumstances which, if found by the panel to be present, shall be evidence of the registration and use of a domain name in bad faith, namely:

- (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 who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of the documented out-of-pocket costs directly related to the domain name; or
- (ii) the respondent has 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) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, the respondent has intentionally attempted 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.

In the present case, the Complainant's submissions relate to paragraph 4(b)(iv) of the Policy.

Previous UDRP panels have found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typographical errors or incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith. See section 3.1.4 of the [WIPO Overview 3.0](#).

On the facts of this case, there is little doubt that the Respondent was aware of the Complainant's trademark and relies on the confusing similarity with the brand to impersonate the Complainant and intentionally draw the Complainant's investor clients to its Infringing Websites to fraudulently solicit their investments. Indeed,

as noted above, several of the Complainant's clients have fallen victim to these fraudulent activities. These actions show clear intent to use the disputed domain names in order to exploit the Complainant's trademark and perpetuate fraud by creating a likelihood of confusion with the Complainant's trademarks.

The Respondent has not participated in the administrative proceeding and has not answered the Complainant's contentions. The fact that the Respondent has decided not to provide any legitimate explanation or to assert any alleged good faith motivation in respect of the registration or use of the disputed domain names in the face of the Complainant's contentions can be regarded as an indicator of registration and use in bad faith.

Accordingly, the Panel concludes that the Complainant has satisfied its burden of showing bad faith registration and use of the disputed domain names under paragraph 4(a)(iii) 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 names <bbullmarket.com> and <blackbull-market.com> be transferred to the Complainant.

/Cherise Valles/

Cherise Valles

Sole Panelist

Date: July 1, 2022