

## ADMINISTRATIVE PANEL DECISION

Blackbaud, Inc. v. 李西美 (li ximei)

Case No. D2022-1815

### 1. The Parties

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

The Respondent is 李西美 (li ximei), China.

### 2. The Domain Name and Registrar

The disputed domain name <microedge.net> is registered with Jiangsu Bangning Science & technology Co. Ltd. (the “Registrar”).

### 3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on May 19, 2022. On May 20, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 23, 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 May 23, 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 in English on May 28, 2022.

On May 23, 2022, the Center transmitted an email communication to the Parties in English and Chinese regarding the language of the proceeding. On May 24, 2022, the Complainant submitted its request that English be the language of the proceeding. On May 25, 2022, the Respondent submitted its request that Chinese be the language of the proceeding.

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 in English and Chinese of the Complaint, and the proceedings commenced on May 30, 2022. In accordance with the Rules, paragraph 5, the due date for Response was June 19, 2022. On May 30, 2022, the Respondent sent an email communication to the Center requesting an extension to file a Response. On May 31, 2022, the Center in accordance with paragraph 5(e) of the Rules extended the Response due date to June 29, 2022. The Response was filed in Chinese with the Center on June 28, 2022.

The Center appointed Sok Ling MOI as the sole panelist in this matter on July 6, 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, Blackbaud, Inc., is a cloud software company providing cloud software services, data intelligence services and other IT solutions to power fundraising and relationship management (CRM), marketing, advocacy, peer-to-peer fundraising, corporate social responsibility (CSR) and environmental, social and governance (ESG), school management, ticketing, grant-making, financial management, and payment processing and analytics. According to Wikipedia, founded in 1981, it is headquartered in the United States with operations in Australia, Canada, Costa Rica and the United Kingdom.

The disputed domain name was registered on March 18, 2022. As at the date of this decision, the disputed domain name does not resolve to any active website.

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

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

The Complainant contends that the disputed domain name reproduces its well-known trade mark MICROEDGE in its entirety and is therefore identical to its trade mark and domain name <microedge.com>. The Complainant contends that as the Complainant has not licensed or otherwise authorized the Respondent to use its trade mark; as the Respondent is not commonly known by the disputed domain name; as the Respondent has not provided any proof of preparations for a *bona fide* offering of goods or services relating to the disputed domain name; therefore the Respondent has no rights or legitimate interests in respect of the disputed domain name.

The Complainant contends that as the disputed domain name is solely constituted by the whole of the Complainant's trade mark, any usage of the disputed domain name by another party creates a high likelihood of confusion with the Complainant's trade mark that inherently attracts users for commercial gains. The Complainant further contends that given that the disputed domain name is passively held without any demonstrated legitimate uses, there is a possibility that the disputed domain name could be exploited to mount effective phishing attacks or launch scam campaigns against the Complainant's employees or clients. Accordingly, the Complainant contends that the Respondent has registered and used the disputed domain name in bad faith.

For the foregoing reasons, the Complainant requests for the transfer of the disputed domain name to the Complainant.

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

The Respondent claims that she is interested in the topic of "edge computing" (presumably a distributed information technology architecture in which client data is processed at the periphery of the network) and has spent the past 2 years acquiring knowledge with a view to creating a website to disseminate related information. The Respondent claims that in preparation for the launch of the website, she has actively

registered (a) email addresses incorporating the word “edge”, such as “edge@88.com”, “vip@edge.vip”, and “myedge@qq.com”; and (b) several domain names comprising the word “edge”, including <edgecomputing.vip>, <edgecomputing.cc>, <edgecomputing.club>, <5edge.com>, <6edge.com>, <8edge.com>, <freeedge.com>, <veryedge.com>, <learnedge.com>, <edgeok.com>, <edgekit.com>, <xxedge.com>, <nnedge.com>, and <hhedge.com> to build a domain name portfolio. The Respondent claims that along with the disputed domain name, she also acquired <edgemicro.cn>, <weiedge.com>, and <weibianyuan.com>, the latter two comprising “wei” being the transliteration of the Chinese equivalent of “micro”. Accordingly, the Respondent contends that she has a right or legitimate interest in respect of the disputed domain name.

The Respondent claims that prior to acquiring the disputed domain name on March 18, 2022, she was not aware of the existence of the Complainant nor its trade mark MICROEDGE. In support of her claim that the Complainant’s trade mark is not well-known, she submitted Baidu Internet search results for “micro edge” showing results mostly unrelated to the Complainant. The Respondent further claims that the website to which the disputed domain name resolves does not contain any commercial links or advertisement to mislead Internet users, nor has the Respondent done anything to disrupt the Complainant’s business operations. Accordingly, the Respondent contends that her registration and use of the disputed domain name is not in bad faith.

The Respondent claims that the first-to-file principle applies for domain names comprising terms with ordinary meaning. As the Complainant’s trade mark is not a well-known mark and does not prominently feature in Baidu Internet search results, the Complainant has no right to stop the registration of the disputed domain name by the Respondent. By filing the Complaint and alleging bad faith on the part of the Respondent, the Complainant is engaging in reverse domain name hijacking.

For the foregoing reasons, the Respondent asks that the Complaint be denied.

## **6. Discussion and Findings**

### **6.1 Procedural Issue: Language of the Proceeding**

Pursuant to paragraph 11(a) of the Rules, unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding.

Paragraphs 10(b) and (c) of the Rules require the Panel to ensure that the proceeding takes place with due expedition and that the Parties are treated equitably and given a fair opportunity to present their respective cases.

The language of the Registration Agreements for the disputed domain name is Chinese. From the evidence on record, no agreement appears to have been entered into between the Complainant and the Respondent regarding the language issue. The Complainant filed its Complaint in English and has requested that English be the language of the proceeding. The Respondent requested that Chinese be the language of the proceeding.

Although the Respondent appears to be a Chinese individual, the Panel finds persuasive evidence in the present proceeding to suggest that the Respondent has sufficient knowledge of English. In particular, the Panel notes that:

- (a) the disputed domain name comprises Latin characters;
- (b) the disputed domain name comprises the English words “micro” and “edge”;
- (c) the Respondent’s email address (namely, “[...]edge@qq.com”) comprises English words; and
- (d) the holding page to which the disputed domain name redirects has contents in English.

Additionally, the Panel notes that:

- (a) the Center has notified the Respondent of the proceeding in both Chinese and English; and
- (b) the Center has informed the Respondent that it would accept a Response in either English or Chinese.

Considering the above circumstances, and noting in particular that the Respondent was able to submit a Response (in Chinese) the Panel finds that the choice of English as the language of the present proceeding is fair to both Parties and is not prejudicial to either one of the Parties in its ability to articulate the arguments for this case. The Panel has taken into consideration the fact that to require the Complaint to be re-filed in Chinese would, in the circumstances of this case, cause an unnecessary cost burden to the Complainant and would unnecessarily delay the proceeding.

Having considered all the matters above, the Panel determines under paragraph 11(a) of the Rules that it shall accept the Complaint as filed in English, that English shall be the language of the proceeding, and that the decision will be rendered in English.

**6.2. Substantive Issues**

Paragraph 4(a) of the Policy directs that a complainant must prove each of the following three elements to obtain an order for the disputed domain name to be transferred:

- (i) the disputed domain name registered by the respondent is identical or confusingly similar to a trade mark 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 and is being used in bad faith.

On the basis of the evidence introduced by the Complainant, the Panel concludes as follows:

**A. Identical or Confusingly Similar**

The Complainant claims that it owns the trade mark registration for MICROEDGE in the United States through its legal subsidiary, MicroEdge, LLC. While the Complainant submitted a 116-page Purchase Agreement document dated August 30, 2014 as proof that MicroEdge, LLC is its legal subsidiary, the Panel was unable to ascertain the same from the document; the Panel does note however that a Wikipedia article on the Complainant does note this relationship (“Blackbaud acquired MicroEdge in 2014 for [USD] 160 million. MicroEdge was a software provider to foundations, with about 2,000 customers.”).

However, according to the trade mark information submitted by the Complainant, the United States trade mark registration is in the name of MicroEdge, Inc., a different entity. Without undertaking a detailed reading of the terms and conditions of the said document, the Panel notes that neither MicroEdge, LLC nor MicroEdge, Inc. is mentioned as a party or a target company in the preamble/recital. Without further evidence to establish the clear legal relationship between the trade mark proprietor, MicroEdge, Inc. and the Complainant, the Panel is left to speculate based on the Wikipedia entry that the Complainant owns or has control over the following trade mark registration. At the same time, the Panel does note that the website at “www.microedge.com” redirects to “www.blackbaud.com”.

Jurisdiction	Mark	Class	Registration Number	Registration Date
United States	MICROEDGE	9, 36, 42	2816535	February 24, 2004

As an aside, as the Complainant has not provided any evidence of its use of the trade mark MICROEDGE in commerce, the Panel is unable to determine that the Complainant has common law trade mark rights over MICROEDGE.

One of the main purposes of the UDRP is to provide a simple, speedy, and cost-efficient way to adjudicate domain name disputes. Basic information pertaining to the Complainant's trade mark rights should have been clearly included in the Complaint: for example, to establish legal subsidiary relationship, the Complainant could have submitted a business profile extract showing the company's legal shareholding. The Panel should not be obliged to review complicated sale and purchase agreements or to undertake independent investigations to plug the information gap. Failure to provide the basic information to meet the minimum UDRP evidentiary proof would be solely at the party's choice and risk.

Accordingly, the Panel finds that the Complainant has not satisfied the requirements of the first element under paragraph 4(a) of the Policy, and this finding would have been sufficient to dispose of the Complaint. However, for the sake of completeness, the Panel will proceed to consider the second and third elements.

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

Under paragraph 4(a)(ii) of the Policy, a complainant bears the burden of establishing that the respondent lacks rights or legitimate interests in the disputed domain name. However, once the complainant makes a *prima facie* showing under paragraph 4(a)(ii) of the Policy, the burden of production shifts to the respondent to establish its rights or legitimate interests in the disputed domain name by demonstrating any of the following, without limitation, under paragraph 4(c) of the Policy:

- (i) before any notice to it 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 has been commonly known by the disputed domain name, even if it has acquired no trade mark 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 trade mark or service mark at issue.

See *Taylor Wimpey PLC, Taylor Wimpey Holdings Limited v. honghao Internet foshan co, ltd*, WIPO Case No. [D2013-0974](#).

The Complainant has confirmed that the Respondent is not in any way affiliated with the Complainant or otherwise authorized or licensed to use the MICROEDGE trade mark or to seek registration of any domain name incorporating the MICROEDGE trade mark. There is no evidence suggesting that the Respondent is commonly known by the disputed domain name or that the Respondent has any rights in the term "micro edge". As the disputed domain name does not resolve to any active website, there is no objective evidence to suggest that the Respondent is using or has made any preparations to use the disputed domain name in connection with a *bona fide* offering of goods or services or for a legitimate noncommercial purpose.

The Panel is satisfied that the Complainant has made out a *prima facie* case showing that the Respondent lacks rights or legitimate interests in the disputed domain name. The burden of production thus shifts to the Respondent to establish its rights or legitimate interests in the disputed domain name. In response, the Respondent explains that the disputed domain name was acquired along with several other domain names comprising the word "edge" in preparation of the launch of a personal website related to "edge computing". However, the Respondent did not provide evidence such as Whois records to show that she has indeed registered the string of domain names mentioned. (The Panel does note the use of the "88" edge domain name as an email address.) Again, the Panel is entitled to, but is not obliged to undertake independent investigations to plug the information gap. Failure to provide the basic information to meet the minimum UDRP evidentiary proof would be solely at the party's choice and risk. As such, due to the lack of evidence, the *prima facie* case has not been rebutted.

Consequently, the Panel finds that the Complainant has satisfied the requirements of the second element under paragraph 4(a) of the Policy.

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

Paragraph 4(b) of the Policy sets out four circumstances which, without limitation, shall be evidence of the registration and use of the disputed domain name in bad faith, namely:

(i) circumstances indicating that the respondent has registered or acquired the disputed 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 trade mark or service mark or to a competitor of the 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 trade mark 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 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 the respondent's website or location.

The Panel notes that as at the date of this decision and according to the Complaint, the disputed domain name does not resolve to any active website but is being passively held. Nevertheless, the consensus view of previous UDRP panels is that passive holding in itself does not preclude a finding of bad faith. The panel must examine all the circumstances of the case to determine whether a respondent is acting in bad faith. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 3.3.

The Complainant claims that <microedge.com> is used as its official domain name, presumably to promote its goods and services. However, when the Panel tries to access the said website at "www.microedge.com", it redirects to another website at "www.blackbaud.com". (See above regarding the first element.) Mainly, in addition to the lack of evidence of the use of the MICROEDGE mark by the Complainant, the Panel did not sight the use of MICROEDGE as a trade mark on the main page of the Complainant's website. As best the Panel can tell from the evidence submitted, the Complainant has not substantially used the MICROEDGE mark after its acquisition; if it has, no such evidence has been presented – even a search for "microedge" on the Complainant's own blackbaud site reveals only 6 results. The Panel accepts the Respondent's contention (supported with Baidu Internet search results) that the Complainant's trade mark MICROEDGE does not appear to be well-known nor does it enjoy a strong Internet presence. No presumption could be made that the Respondent was aware of the Complainant or its trade mark, and was targeting the Complainant, when she registered the disputed domain name. At the same time, the Panel is somewhat suspicious of the claim that it is such a common term.

Consequently, the Panel finds that the Complainant is unable to prove, on a balance of probabilities, that the Respondent has registered and is using the disputed domain name in bad faith.

Accordingly, the Complainant has not satisfied the requirements of the third element under paragraph 4(a) of the Policy.

#### **D. Reverse Domain Name Hijacking**

Given the Panel's above finding as to rights or legitimate interests, it would not be appropriate to make a reverse domain name hijacking determination against the Complainant.

#### **7. Decision**

For the foregoing reasons, the Complaint is denied.

*/Sok Ling MOI/*

**Sok Ling MOI**

Sole Panelist

Date: August 7, 2022