

## **ADMINISTRATIVE PANEL DECISION**

Point B, LLC and Point B Capital, LLC v. Jeremy Hinton, Jeremy H Hinton  
Case No. D2022-2776

### **1. The Parties**

Complainants are Point B, LLC and Point B Capital, LLC, United States of America (“United States” or “U.S.”), represented by Cozen O’Connor, United States.

Respondent is Jeremy Hinton, Jeremy H Hinton, United States.

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

The disputed domain name <pointbcapital.biz> (the “Domain Name”) is registered with IONOS SE (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 28, 2022. On July 29, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On July 29, 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 Complainants on August 1, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting Complainants to submit an amendment to the Complaint. Complainants filed an amended Complaint on August 2, 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 Respondent of the Complaint, and the proceedings commenced on August 4, 2022. In accordance with the Rules, paragraph 5, the due date for Response was August 24, 2022. Respondent did not submit a formal response but sent an email communication to the Center on August 3, 2022 requesting that the Center close its file. On August 28, 2022, the Center informed the Parties that it would proceed to panel appointment. Respondent sent a second email communication asserting that Respondent would not renew the Domain Name on August 29, 2022. The two emails establish that Respondent was aware of this proceeding.

The Center appointed John C McElwaine as the sole panelist in this matter on September 1, 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**

Complainant Point B, LLC is a global consulting firm. Complainant Point B Capital, LLC is a wholly owned subsidiary of Complainant Point B, LLC and provides business development, management, and incubation services as well as financing to start-up businesses.

Complainant Point B, LLC owns the following United States trademark registrations relevant to this proceeding:

- POINT B – U.S. Reg. No. 4,736,377, which issued May 12, 2015 and covers “Project management services for others and consulting services for business purposes in the fields of architecture, facilities and resort development, construction and improvement” in International Class 35, “Construction project management services; real estate development and construction of commercial, residential and hotel properties” in International Class 37 and “IT consulting services; design and development of websites and web-based tools for others; consulting services in the design and implementation of computer-based information systems for businesses; design, development, and consulting services related thereto in the field of computer software; computer project management services” in International Class 42; and
- POINT B – U.S. Reg. No. 2,070,035, which issued June 10, 1997 and covers “business consultation services” in International Class 35; and
- POINT B – U.S. Reg. No. 2,545,584, which issued March 12, 2002 and covers “computer software design for others; computer programming for others; computer software consultation; technical support services, namely, troubleshooting of computer software problems via telephone, e-mail, and in person” in International Class 42; and
- POINT B (Stylized) – U.S. Reg. No. 2,067,352, which issued June 3, 1997 and covers “business consultation services” in International Class 35.

Complainant Point B Capital, LLC owns a United States trademark registration for POINT B CAPITAL, U.S. Reg. No. 3,955,924, which issued on May 3, 2011 and covers “business development, management, and incubation services, namely, providing business consulting and start-up support for businesses of others” in International Class 35 and “venture capital and incubation services, namely, providing financing to existing businesses and emerging and start-up companies” in International Class 36.

Complainants’ POINT B and POINT B CAPITAL trademarks are collectively referred to as the “POINT B Marks”.

The Domain Name was registered with the Registrar on February 22, 2022. As of the filing of the Complaint, the Domain Name is directed to “www.twostepfunding.com”, which is an active website.

#### **5. Parties’ Contentions**

##### **A. Complainants**

Complainants alleged that their POINT B Marks are strong, well known around the world and associated with Complainants’ high quality services in the minds of consumers. Complainants contend that they have invested in the POINT B Marks, which have become highly valuable and have come to represent significant

consumer recognition and goodwill. For instance, in 2022, Complainant Point B, LLC was recognized by Forbes Magazine as one of America's best management consulting firms and it is consistently recognized as one of the largest consulting firms in the United States. Other accolades were attached as an annex to the Complaint.

Complainants allege that they also own and use, through affiliates, the <pointb.com> and <pointbcapital.com> domain names, which were registered on June 6, 1996 and June 3, 2018, respectively.

Complainants further point out that the Domain Name was registered on February 22, 2022, long after Complainants' POINT B Marks were first used, were registered and became well known. Complainants allege that the Domain Name links to <twostepfunding.com>, which resolves to a website featuring the brand name "Business Paralegal Corporation" and advertises services allegedly directly competing with those offered by Complainants. Specifically, it advertises an "on-line course with personalized mentoring that will help you structure your business for greater profitability and increased access to funding", which are identical or closely related to Complainants' business consulting and incubation services. In addition, Complainants contend that Respondent maintains active mail exchange records in connection with the Domain Name, allowing Respondent to send and receive emails from addresses containing the Domain Name, which is alleged to be similar to Complainants' POINT B Marks.

With respect to the first element of the Policy, Complainants allege that the Domain Name is identical to Complainant Point B Capital, LLC's POINT B CAPITAL trademark. Complainants further contend that the Domain Name is confusingly similar to Complainant Point B, LLC's POINT B trademark.

With respect to the second element of the Policy, Complainants contend that Respondent cannot have rights to or legitimate interests in the Domain Name because of Complainants' prior trademark rights. Complainants allege that Respondent registered the Domain Name on February 22, 2022, long after Complainants registered their trademarks with the United States Patent and Trademark Office and long after Complainants began using their respective trademarks. Furthermore, Complainants assert in addition to targeting Complainants that there is a high risk that the Domain Name is or will be used for phishing, fraud or other illegal activity and such activity can never confer rights or legitimate interests.

With respect to the third element of the Policy, Complainants allege that Respondent registered the Domain Name to intentionally attempt to attract, for commercial gain, Internet users by creating a likelihood of confusion with Complainants' trademarks, within the meaning of paragraph 4(b)(iv) of the Policy. Specifically, Complainants contend that the Domain Name contains exact reproductions of Complainant's well-known POINT B Marks and, by registering the Domain Name and directing it to a competing website, Respondent could capitalize on the consumer recognition and goodwill in Complainants' POINT B Marks.

Furthermore, Complainants assert that the potential use of the Domain Name in connection with phishing or fraud would also be bad faith within the meaning of paragraph 4(a)(iii) of the Policy. Complainants allege that due to the similarity of the Domain Name to Complainant's POINT B Marks, it could potentially be used for deceptive email communications such as phishing, which would evidence bad faith.

## **B. Respondent**

Apart from Respondent's email communications as described under section 3. above, Respondent did not formally reply to Complainants' contentions.

## **6. Discussion and Findings**

Even though Respondent did not formally reply to the Complaint, paragraph 4(a) of the Policy requires that, in order to succeed in this UDRP proceeding, Complainants must still prove their assertions with evidence demonstrating:

- (i) the Domain Name is identical or confusingly similar to a trademark or service mark in which Complainants have rights;
- (ii) 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.

Because of the absence of a formal Response, the Panel may accept as true the reasonable factual allegations stated within the Complaint and may draw appropriate inferences therefrom. See *St. Tropez Acquisition Co. Limited v. AnonymousSpeech LLC and Global House Inc.*, WIPO Case No. [D2009-1779](#); *Bjorn Kassoe Andersen v. Direction International*, WIPO Case No. [D2007-0605](#); see also paragraph 5(f) of the Rules (“If a Respondent does not submit a response, in the absence of exceptional circumstances, the Panel shall decide the dispute based upon the complaint”). Having considered the Complaint, the Policy, the Rules, the Supplemental Rules and applicable principles of law, the Panel’s findings on each of the above cited elements are as follows.

#### **A. Identical or Confusingly Similar**

Paragraph 4(a)(i) of the Policy requires Complainants show that the Domain Name is identical or confusingly similar to a trademark or service mark in which Complainants have rights. Ownership of a trademark registration is generally sufficient evidence that a complainant has the requisite rights in a mark for purposes of paragraph 4(a)(i) of the Policy. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.2. Complainants have provided evidence that they are the owners of valid and subsisting trademark registrations for POINT B and POINT B CAPITAL.

Here, the Domain Name consists entirely of Complainant Point B Capital, LLC’s POINT B CAPITAL trademark and is confusing similar to both Complainants’ POINT B Marks. Complainants own exclusive and valid rights to their POINT B Marks. Accordingly, the Panel finds Respondent’s Domain Name to be confusingly similar to Complainants’ POINT B Marks. Thus, it is the Panel’s finding that Complainants have satisfied paragraph 4(a)(i) of the Policy.

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

Under the Policy, paragraph 4(a)(ii), Complainants have the burden of establishing that Respondent has no rights or legitimate interests in the Domain Name. Complainants need only make a *prima facie* showing on this element, at which point the burden shifts to Respondent to present evidence that it has rights or legitimate interests in the Domain Name. If Respondent has failed to do so, Complainants are deemed to have satisfied their burden under paragraph 4(a)(ii) of the Policy. See *Vicar Operating, Inc. v. Domains by Proxy, Inc. / Eklin Bot Systems, Inc.*, WIPO Case No. [D2010-1141](#); see also *Nicole Kidman v. John Zuccarini, d/b/a Cupcake Party*, WIPO Case No. [D2000-1415](#); *Inter-Continental Hotels Corporation v. Khaled Ali Soussi*, WIPO Case No. [D2000-0252](#).

Complainants assert that Respondent was not authorized to register the Domain Name and that Respondent allegedly linked the Domain Name to a website that offers services competitive to those offered by Complainants. Although properly notified by the Center, Respondent failed to submit any substantive response on these assertions. The silence of a respondent may support a finding that it has no rights or legitimate interests in respect of the domain name. See *Alcoholics Anonymous World Services, Inc., v. Lauren Raymond*, WIPO Case No. [D2000-0007](#); *Ronson Plc v. Unimetal Sanayi ve Tic. A.S.*, WIPO Case No. [D2000-0011](#). Additionally, previous UDRP panels have found that when respondents have not availed themselves of their rights to respond to complainant, it can be assumed in appropriate circumstances that respondents have no rights or legitimate interests in the disputed domain name. See *AREVA v. St. James Robyn*, WIPO Case No. [D2010-1017](#); *Nordstrom, Inc. and NIHC, Inc. v. Inkyu Kim*, WIPO Case No. [D2003-0269](#).

Even without a response, under paragraph 4(c) of the Policy, a respondent’s rights or legitimate interests to

a domain name may be established by demonstrating any of the following three conditions: (i) before any notice to respondent of the dispute, respondent's 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) respondent (as an individual, business, or other organization) has been commonly known by the domain name, even if respondent has acquired no trademark or service mark rights; or (iii) respondent is 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.

As an initial matter, Respondent cannot satisfy paragraph 4(c)(ii) of the Policy. There is no evidence in the record that Respondent is commonly known by the name "Point B" or "Point B Capital". In fact, to the contrary, the Whois information indicates that Respondent's name is Jeremy Hinton.

The Domain Name links to <twostepfunding.com> which resolves to a website featuring the brand name "Business Paralegal Corporation" and advertises an "on-line course with personalized mentoring that will help you structure your business for greater profitability and increased access to funding", which are services arguably related to Complainants' business consulting and incubation services. The Panel finds that the use of the Domain Name to divert Internet traffic or to confuse and deceive the Internet users is not a *bona fide* offering of goods or services under paragraph 4(c)(i) of the Policy. Prior UDRP panels deciding this issue have held that such use of a domain name cannot be a "*bona fide* offering of goods or services" and is not "fair use of the domain name". See *Microsoft Corporation v. Microsoft.com aka Tarek Ahmed*, WIPO Case No. [D2000-0548](#) ("by using a domain name and establishing a website deliberately designed to confuse Internet users and consumers regarding the identity of the seller of the goods and services, Respondent has not undertaken a *bona fide* or good faith offering of the goods and services."); see *Hulu, LLC v. Helecops, Vinod Madushanka*, WIPO Case No. [D2016-0365](#) (finding that an infringing website operating under the name "HuluMovies" does not entail a *bona fide* offering of services in the sense of paragraph 4(c)(i) of the Policy, nor a legitimate noncommercial or fair use under Policy, paragraph 4(c)(iii), without intent for commercial gain to misleadingly divert consumers or to tarnish the HULU mark.) Without a response from Respondent justifying his use of the Domain Name as authorized by Complainants or as fair use, the Panel cannot find Respondent has a right or legitimate interest in the Domain Name.

In sum, for the reasons detailed above, Complainants have established a *prima facie* case that Respondent lacks rights or legitimate interests in the Domain Name. Respondent had the opportunity to put forth evidence of his rights or legitimate interests yet provided no response as to why his conduct amounts to a right or legitimate interest in the Domain Name under the Policy. In the absence of such a response and combined with the factors as detailed above, the Panel finds that Respondent has no rights or legitimate interests in respect of the Domain Name under paragraph 4(a)(ii) of the Policy.

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

According to paragraph 4(a)(iii) of the Policy, Complainants must show that Respondent registered and is using the Domain Name in bad faith. A non-exhaustive list of factors constituting bad faith registration and use is set out in paragraph 4(b) of the Policy.

Bad faith registration can be found where a respondent "knew or should have known" of a complainant's trademark rights and nevertheless registered a domain name in which it had no right or legitimate interest. See *Accor v. Kristen Hoerl*, WIPO Case No. [D2007-1722](#). As detailed above, Respondent registered the Domain Name, which is identical to the POINT B CAPITAL trademark and confusingly similar to the POINT B Marks. There is no explanation for Respondent to have chosen to register the Domain Name other than to intentionally trade off the goodwill and reputation of Complainants' trademarks or otherwise create a false association with Complainant. In fact, the Domain Name linked a website at "www.twostepfunding.com" that offered services in competition with Complainants. With no response from Respondent, such a claim of bad faith registration is undisputed.

Respondent's use of the Domain Name is similarly unsubstantiated. The use of the Domain Name, which is identical or confusingly similar to the POINT B Marks, for offering services arguably related to Complainants'

business consulting and incubation services, amounts to bad faith use of the Domain Name by Respondent. See *Identigene, Inc. v. Genetest Labs*, WIPO Case No. [D2000-1100](#) (finding bad faith where the respondent's use of the domain name at issue to resolve to a website where similar services are offered to Internet users is likely to confuse the user into believing that the complainant is the source of or is sponsoring the services offered at the site); *MathForum.com, LLC v. Weiguang Huang*, WIPO Case No. [D2000-0743](#) (finding bad faith under paragraph 4(b)(iv) of the Policy where the respondent registered a domain name confusingly similar to the complainant's mark and the domain name was used to host a commercial website that offered similar services offered by the complainant under its mark).

In conclusion, the Panel finds that Respondent registered the Domain Name to attract, for purposes of profiting, Internet users to Respondent's website by creating a likelihood of confusion with POINT B Marks as to the affiliation of his website and product offering. Thus, the Panel finds that Complainants have met their burden of providing sufficient evidence that Respondent registered and is using the Domain Name in bad faith 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 Domain Name <pointbcapital.biz> should be transferred to Complainants.

*/John C McElwaine/*

**John C McElwaine**

Sole Panelist

Date: September 15, 2022