

ADMINISTRATIVE PANEL DECISION

Blackbaud, Inc. v. Danilo Ceno
Case No. D2022-3352

1. The Parties

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

The Respondent is Danilo Ceno, Mexico.

2. The Domain Name and Registrar

The disputed domain name <blackbaud911.xyz> is registered with Hostinger, UAB (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 8, 2022. On September 9, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 19, 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 (Privacy Protect, LLC (PrivacyProtect.org)) and contact information in the Complaint. The Center sent an email communication to the Complainant on September 19, 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 September 20, 2022. In response to a notification by the Center that the Complaint was administratively deficient, the Complainant filed an amended Complaint on September 26, 2022.

The Center verified that the Complaint together with the amended Complaints 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 September 28, 2022. In accordance with the Rules, paragraph 5, the due date for Response was October 18, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 19, 2022.

The Center appointed Torsten Bettinger as the sole panelist in this matter on October 25, 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 is a cloud computing provider located in the United States.

The Complainant provided evidence of its United States trademark Registration No. 5280412 BLACKBAUD, registered on September 5, 2017.

The Complainant owns and operates the domain name <blackbaud.com>.

The Respondent registered the disputed domain name on July 18, 2022.

5. Parties' Contentions

A. Complainant

With regard to the requirement of identity or confusing similarity between the trademark and the disputed domain name pursuant to paragraph 4(a)(i) of the Policy, the Complainant asserts that the disputed domain name is confusingly similar to its registered trademark BLACKBAUD as;

- the word "blackbaud" is non-dictionary and unique; and
- the disputed domain name gives the false impression that the Respondent is associated with the Complainant.

With regard to the Respondent having no rights or legitimate interests in the disputed domain name, the Complainant submitted that;

- the Respondent is neither affiliated nor authorized by the Complainant to register or use the BLACKBAUD trademark;
- the website to which the disputed domain name resolved was used to market an illegal credit card selling scheme;
- the website was taken down by the Registrar due to the abuse report submitted to Registrar, by the Complainant;
- there is no evidence indicating that the Respondent has been commonly known by the disputed domain name; and
- the Respondent does not own prior rights in the BLACKBAUD mark.

Finally, with regard to the disputed domain name having been registered and being used in bad faith, the Complainant argues that;

- the domain name is infringing the Complainant's registered trademark;
- the registration of the disputed domain name is harmful and disrupting to the Complainant's business;
- the disputed domain name can be falsely misinterpreted into thinking that the disputed domain name is associated with the Complainant; and
- the use of the disputed domain name for an illegal credit card selling website is unethical and causes a reputational damage to the Complainant.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy states that the Complainant must prove each of the three following elements:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (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.

A. Identical or Confusingly Similar

The Complainant has demonstrated that it owns and has exclusive rights to the United States trademark registration for the mark BLACKBAUD prior to the registration of the disputed domain name on July 18, 2022.

It is well-established that the test of identity or confusing similarity under the Policy is confined to a comparison of the disputed domain name and the trademark alone, independent of the products for which the trademark is used or other marketing and use factors usually considered in trademark infringement cases (see sections 1.1.2 and 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#))).

In this case, the disputed domain name contains the Complainant's mark in its entirety and only differs from the BLACKBAUD mark by the addition of the numbers "911".

The Panel notes that it has long been established under the UDRP case law that the addition of numbers to a complainant's trademark does not distinguish a disputed domain name from the included trademark (see section 1.8 of [WIPO Overview 3.0](#)). The Panel therefore finds that the addition of the number "911" does not prevent a finding of confusing similarity between the disputed domain name and the Complainant's trademark.

Furthermore, it is well accepted under the UDRP case law that the specific generic Top-Level Domain ("gTLD") designation such as ".com", ".net", ".org" is not to be taken into account when assessing the issue of identity and confusing similarity, except in certain cases where the applicable top-level suffix may itself form part of the relevant trademark (see [WIPO Overview 3.0](#) section 1.11).

For the foregoing reasons the Panel concludes that the disputed domain name is confusingly similar to the Complainant's BLACKBAUD trademark, and that the Complainant has satisfied the requirements of paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy a respondent may establish its rights or legitimate interests in the domain name, among other circumstances, by showing any of the following elements;

- "(i) before any notice to you [the Respondent] 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 [the Respondent] (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 [the Respondent] 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 Complainant stated that the Respondent is neither affiliated with, nor authorized by the Complainant to register and use BLACKBAUD mark, and is not commonly known by the disputed domain name. The Complainant provided copies of an abuse report sent to the Registrar alleging that the domain name was used to promote the sale of stolen credit cards. In addition, the Complainant states that the website to which the disputed domain name resolved, was taken offline by the Registrar as a result of the Complainant's abuse report.

The Panel finds that the Complainant's submissions in the present proceeding are sufficient to establish a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name.

Where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. See section 2.1 of the [WIPO Overview 3.0](#).

The Respondent chose not to contest the Complainant's allegations and has failed to come forward with any evidence to refute the Complainant's *prima facie* showing that the Respondent lacks rights or legitimate interests. The Panel therefore accepts the Complainant's submissions, including that the Respondent used the disputed domain name for the sale of stolen credit cards as undisputed facts. See section 2.13 of the [WIPO Overview 3.0](#).

On this basis and in light of the fact that the disputed domain name except for the addition of the number 911 contains the Complainant's trademark in its entirety the Panel concludes that the Respondent lacks rights and legitimate interests in the disputed domain name and that, accordingly, the Complainant has satisfied the requirements of paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy provides four, non-exclusive, circumstances that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

- i. circumstances indicating that the Respondent has registered or has acquired the disputed domain name primarily for the purpose of selling, renting or otherwise transferring the disputed domain name registration to the Complainant who is the owner of the trademark or service mark or to a competitor of the Complainant, for valuable consideration in excess of 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 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 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 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 the Respondent's website or location.

The Complainant holds a trademark registration for the BLACKBAUD trademark in the United States that predates the registration of the disputed domain name.

Given that the Complainant's trademark is highly distinctive and that the disputed domain name contains the Complainant's trademark BLACKBAUD in its entirety, it is difficult to conceive that the Respondent coincidentally registered the disputed domain name without knowledge of the Complainant's rights in the BLACKBAUD mark. As the Respondent has not submitted a response, or offered any other explanation as to why the disputed domain name was chosen, and no legitimate reason is apparent, the Panel is satisfied that the Respondent registered the disputed domain name in bad faith.

To prove the bad faith use of the disputed domain name, the Complainant provided copies of an abuse report submitted to the Registrar showing that the disputed domain name was used to promote the sale of stolen credit cards.

The Respondent has not refuted the Complaint's allegations. The Panel is therefore satisfied that the disputed domain name was used for fraudulent purposes to divert Internet users to the Respondent's website for commercial gain, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website.

The Panel therefore concludes that the Respondent registered and used the disputed domain name in bad faith.

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, <blackbaud911.xyz> be transferred to the Complainant.

/Torsten Bettinger/

Torsten Bettinger

Sole Panelist

Date: November 8, 2022