

ADMINISTRATIVE PANEL DECISION

Boku, Inc. v. Phuc To
Case No. D2023-1338

1. The Parties

The Complainant is Boku, Inc., United States of America (“USA”), represented by Fieldfisher LLP, United Kingdom.

The Respondent is Phuc To, United Kingdom.

2. The Domain Name and Registrar

The disputed domain name <boku.money> is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 28, 2023. On March 29, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 30, 2023, 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 (GoDaddy.com LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on March 30, 2023 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 March 31, 2023.

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 April 5, 2023. In accordance with the Rules, paragraph 5, the due date for Response was April 25, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 26, 2023. The Respondent submitted a late Response on April 26, 2023, alleging that the delay was due to a technical issue.

The Center appointed Ganna Prokhorova as the sole panelist in this matter on April 28, 2023. 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.

On June 5, 2023, the Panel issued a Procedural Order no. 1 asking the Respondent to submit particular evidence to which the latter refers in its Response by June 10, 2023. The Respondent replied and provided the requested documents on June 8, 2023.

4. Factual Background

The Complainant is a company with a global presence headquartered in San Francisco in the USA. The Complainant was founded in 2009, and currently provides the largest mobile payments network in the world. The Complainant has built a mobile payments network that combines carrier billing and mobile wallets into a single payment scheme, providing businesses with the capability to accept mobile payments from consumers. The Complainant's mobile payments network features more than 330 mobile payment types in 91 countries worldwide. The Complainant processes more than USD 9 billion of payments per year, and has more than 28 million active users monthly.

The Complainant has registered a huge portfolio of trademarks worldwide comprising of the word BOKU, including in the United Kingdom where the Respondent resides, in particular:

- BOKU, trademark No. UK00908251241 registered on April 28, 2009 for services in classes 35, 36, and 42;
- BOKU, trademark No. UK00908251209 registered on April 28, 2009 for services in class 36.

The Complainant predominately advertises and markets its business through its website at the domain name "www.boku.com".

The disputed domain name was registered on June 14, 2022 and currently resides to a holding web page, which includes the word BOKU, a green circular moving graphic, and the slogan "Things will never be the same again...".

The Respondent appears to be the Director of Boku Labs Ltd., a United Kingdom based company incorporated on June 22, 2022. According to the information from the Companies House, the main activity of Boku Labs Ltd. is "Other information technology service activities".

On August 30, 2022, Boku Labs Ltd filed a trademark application for BOKU in class 36 (UK00003824945) covering "Electronic transfer of crypto assets; financial exchange of crypto assets; Electronic transfer of crypto assets; Financial exchange of crypto assets; Electronic financial trading services; Trading of financial derivatives; Currency trading; Trading in currencies; Financial exchange; Financial investment brokerage; Financial asset management; Financial savings services; Financial exchange services; Issuance of tokens of value".

On October 11, 2022, the Complainant sent a cease-and-desist letter to Boku Labs Ltd, drawing its attention upon its trademarks' rights and informing it, in particular, about ordering a takedown of the website under the disputed domain name. The Respondent replied rejecting the claims of the Complainant.

On December 28, 2022, the Complainant filed an opposition to the trademark application filed by Boku Labs Ltd.

5. Parties' Contentions

A. Complainant

The Complainant contends as follows:

- (1) The disputed domain name is identical to the Complainant's trademark BOKU. The disputed domain name reproduces the Complainant's trademarks BOKU entirely combined with a generic Top-Level Domain ("gTLD") ".money". As the Complainant's area of business is financial services, and in particular facilitating online, mobile payments (of money), the registration of the disputed domain name <boku.money> is inherently confusing as it uses the identical BOKU element to the Complainant's trademarks, and situates itself within the same area of business as the Complainant with ".money".
- (2) The Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent has not used the domain name in connection with the offering of goods or services and has made no demonstrable preparation to do so. Any use by the Respondent of the disputed domain name is not related to a *bona fide* offering of goods and services. The Respondent is not making any legitimate noncommercial or fair use of the disputed domain name. The URL of the disputed domain name directs to a holding web page, which simply includes the word BOKU, a green circular moving graphic, and the slogan "Things will never be the same again...". The Respondent's name has been redacted for privacy purposes, being replaced by "Registration Private", that suggests the Respondent does not have any legitimate interest regarding the disputed domain name and that their name may not bear any resemblance with the word BOKU, which has no ordinary meaning and therefore is highly distinctive.
- (3) The disputed domain name was registered and is being used in bad faith. The Respondent has used a domain privacy and proxy service. Regardless of whether the Respondent's business is a scam, it is clear that the disputed domain name and its use of the BOKU branding is seeking to intentionally attract Internet users by a likelihood of confusion for commercial gain.

The Complainant requests transfer of the disputed domain name.

B. Respondent

In its Response, the Respondent contends that the Complainant intentionally misleads the Panel by citing privacy and bad faith concern: The Complainant and the Respondent have had conversations before, and the Complainant knows about the identity as well as the business purpose of the Respondent.

The Respondent claims to be a start-up founded by upstanding leaders and veterans in the Fintech industry, and backed by respectable Venture Capital investors. There is no similarity between the services of the Respondent and the Complainant and its subsidiary. The Respondent claims to have a different clientele from the ecommerce merchants of the Complainant and its subsidiaries.

Finally, the Respondent contends that it is in R&D phase and that the content of the disputed domain name is generic and cannot demonstrate bad-faith practices.

After the issuance of the Panel Order no. 1, the Respondent submitted the email exchange between the Respondent and the Complainant's representative in which the Respondent stated, among others that:

"Boku Labs Ltd as a company is more than prepared to defend its trademark application as well as its interest in court in case you wish to escalate (...) Boku is not a fanciful word as mentioned in your letter. It's the alternate form of 'beaucoup' commonly used as a slang in the financial services industry".

...

"Boku Labs Ltd will also market its products and services to individual consumers, which are a completely different clientele from the e-commerce merchants Boku, Inc. and its subsidiaries are targeting.

The estimated traffic to the resources pages of Boku, Inc. (Boku News and Boku Knows) are next to zero. A quick check using independent brand tracker indicates that brand awareness of your client is way below 1% in the UK. Even their stock is not popular among investors with its price dropping more than 36% over the last 15 months and volume constituting significantly lower than 0.01% of stock volume traded on London

Stock Exchange. Considering all the facts, it would be absurd to suggest that Boku Labs Ltd via its trademark will be able to enjoy any benefits from the reputation (?) of Boku, Inc.”.

In a follow-up communication, the Respondent contended that its “business is dealing with crypto, which is officially recognised as an intangible asset and not financial asset or money by the UK regulators”.

The Respondent also submitted among others, the business plan shared with its investors while fundraising its seed round.

6. Discussion and Findings

To succeed, the Complainant must demonstrate that all the elements listed in paragraph 4(a) of the Policy have been satisfied, as following:

- (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. The Complainant bears the burden of proving that all these requirements are fulfilled, even if the Respondent has not replied to the Complaint.

The onus of proving these elements is on the Complainant. Paragraph 15(a) of the Rules directs the Panel to decide the Complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules, and any rules and principles of law that it deems applicable.

It is further noted that the Panel has taken note of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”) and, where appropriate, will decide consistent with the consensus views captured therein.

For the purpose of these proceedings, the Panel also draws attention of the Complainant and the Respondent that according to [WIPO Overview 3.0](#), section 3.1, since the UDRP normally provides for a single round of pleadings without opportunity for discovery, panels expect that a complainant should anticipate and address likely plausible respondent defenses with supporting arguments and evidence in its complaint, while respondent submits arguments together with evidence in support of its defense.

Since the Policy defines the limits of administrative proceedings and contains a non-exclusive list of factors by which the parties can justify their legal position in the case, the complainants are advised to prepare a strong complaint, predicting possible arguments of the respondent in their favor in order to provide all possible arguments and evidence on the basis of which the panel can conclude which circumstance, that is the subject of evidence in the case, is recognized by the panel established or refuted in view of the balance of probabilities or preponderance of the evidence, being the applicable standard of proof in UDRP cases.

The Panel also notes that it has undertaken limited independent research in assessing the case merits, in particular to confirm information on the Respondent’s identity. The Panel has made its research in accordance with paragraph 10 of the Rules. Such an approach is consistent with a majority of panel views about the capacity of a panel to undertake independent research (see [WIPO Overview 3.0](#), section 4.8). The Panel has undertaken this research only to the extent necessary to clarify matters of public record on which both the Complainant and the Respondent were silent.

A. Identical or Confusingly Similar

According to paragraph 4(a)(i) of the Policy it should be established that the disputed domain name is identical or confusingly similar to a mark in which the complainant has rights.

The Panel confirms that the Complainant has satisfied the threshold requirement of having relevant trademark rights. As evidenced in the Complaint, the Complainant is the owner of BOKU trademark, which has been first registered and used long ago. Therefore, the Panel is satisfied that the Complainant has registered trademark rights in the BOKU mark. See [WIPO Overview 3.0](#), section 1.2.1.

The Panel also considers that the disputed domain name is identical to the Complainant's BOKU mark. The addition of the generic Top-Level Domain ("gTLD") e.g. ".money" in a domain name is a technical requirement. Thus, it is well established that such element may generally be disregarded when assessing whether a domain name is identical or confusingly similar to a trademark.

Therefore, the Panel finds that the disputed domain name is identical to the Complainant's trademark and that the requirement of paragraph 4(a)(i) of the Policy is met.

B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

The Complainant made out a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name, after which the burden of production shifted to the Respondent to demonstrate rights or legitimate interests in the disputed domain name.

As evidenced by the Respondent, it appears that the latter is the director of Boku Labs Ltd., a UK-based company incorporated on June 22, 2022. The evidence provided by the Respondent indicates a significant amount of venture capital raised by the said company. The Respondent's name, Phuc To, as identified in the Registrar's Whols database, matches the registered information of the director of Boku Labs Ltd. in the United Kingdom companies registry (Companies House) that was independently consulted by the Panel. Previous correspondence between the Complainant and Boku Labs Ltd. (submitted in response to the Panel Order no. 1) establishes that the Respondent, individual Phuc To, acted on behalf of Boku Labs Ltd. The Response in the case file includes contact details of Boku Labs Ltd., which align with the information listed in the Companies House, as well as the Respondent's email address, from which past correspondence between the Complainant and Boku Labs Ltd. was sent. Given these circumstances, the Panel accepts that the Respondent is associated with Boku Labs Ltd.

Records show that Boku Labs Ltd. was incorporated one week after the registration of the disputed domain name, which incorporates the "boku" element with the addition of the "money" as a gTLD. In assessing this case, several questions need to be carefully considered in the appropriate context. It is important to note that, at least on the surface, there is no evidence indicating the misuse of the disputed domain name to intentionally target the Complainant.

In view of the above circumstances, the Panel considers that the disputed domain name is part of a wider and more complex dispute. The Panel recalls that the Policy is not designed to adjudicate all type of disputes that relate in any way to domain names. Rather, the Policy establishes a streamlined, inexpensive administrative dispute resolution procedure intended only for cases of "abusive cybersquatting". The UDRP is not an appropriate process to adjudicate a complex business dispute such as this because the Panel does not have the benefit of witness testimony, disclosure of documents, or the other appropriate instruments that are typically available to assist a court to resolve such a dispute. See, for example, *Symphony Holdings Limited v. Jaimie Fuller, Fuller Consultancy F.Z.E.*, WIPO Case No. [D2019-2887](#), *Paradise International General Trading LLC v. Suwanna Mayeux*, WIPO Case No. [D2023-1569](#).

Therefore, the Panel considers this is a more complex dispute that exceeds the scope of the UDRP. The dispute would be more appropriately addressed by a court of competent jurisdiction, or perhaps in mediation. See [WIPO Overview 3.0](#), section 4.14.6, as well as *Capital Distribution Consulting Inc. v. Hiro Bharwani, Horizons Group (London) Ltd*, WIPO Case No. [D2021-2871](#).

For the above reasons, the Panel denies the Complaint, not on the merits, but on the broader ground that this dispute exceeds the “cybersquatting” scope of the UDRP, and would be more appropriately addressed by a court of competent jurisdiction. See [WIPO Overview 3.0](#), section 4.14.6. Accordingly, the Complaint is denied, but in no way restricts the pursuance by the Complainant of the matter before the courts of competent jurisdiction.

C. Registered and Used in Bad Faith

The third element of paragraph 4(a) refers to the question of whether the disputed domain name has been registered and is being used in bad faith by the Respondent.

In view of the conjunctive requirements of paragraph 4(a) of the Policy, and noting the Panel’s conclusion under the second element (concerning paragraph 4(a)(ii) of the Policy), the Panel will not proceed with the analysis of this element, being this matter better suited for courts of competent jurisdiction or perhaps mediation.

7. Decision

For the foregoing reasons, the Complaint is denied.

/Ganna Prokhorova/
Ganna Prokhorova
Sole Panelist
Date: June 21, 2023