

## **ADMINISTRATIVE PANEL DECISION**

BlockFi Inc. v. Ghita Constantin

Case No. D2023-0744

### **1. The Parties**

Complainant is BlockFi Inc., United States of America (“U.S.” or “United States”), represented by Haynes and Boone, LLP, U.S.

Respondent is Ghita Constantin, U.S.

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

The disputed domain name <blockficlassic.com> (the “Domain Name”) is registered with Key-Systems GmbH (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 20, 2023. Then respondent in the original Complaint was identified as “On behalf of Blockficlassic.com OWNER”. On the same day, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On February 21, 2023, 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 Complainant on February 21, 2023 providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint to add Respondent identified herein on February 23, 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 Respondent of the Complaint, and the proceedings commenced on February 24, 2023. In accordance with the Rules, paragraph 5, the due date for Response was March 16, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on March 21, 2023.

The Center appointed John C. McElwaine as the sole panelist in this matter on March 31, 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.

#### **4. Factual Background**

Complainant is a financial services company founded in 2017. Relevant to this matter, Complainant owns a U.S. trademark registration for BLOCKFI, U.S. Reg. No. 5989814, registered on February 18, 2020, in International Classes 36 and 42 (the "BLOCKFI Mark").

On November 11, 2022, Respondent registered the Domain Name with the Registrar. The Domain Name at one point resolved to an active website featuring Complainant's BLOCKFI Mark and promoting cryptocurrency-related financial products and services, and currently resolves to a parked webpage using Hostinger nameservers.

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

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

As background, Complainant asserts that it is a financial services company focused on building a bridge between cryptocurrencies and traditional financial and wealth management products. Complainant alleges that its platform manages more than USD2 billion in assets and is backed by industry-leading investors, including Valar Ventures, Morgan Creek Capital Management, Coinbase Ventures, Galaxy Digital, Susquehanna Government Products, and Winklevoss Capital. In addition, Complainant asserts that it has been referenced by several high-profile media outlets since its founding. Complainant further alleges that it is active on social media, including on Twitter (which it joined in November 2017), Facebook (which it joined in February 2018), and YouTube (which it joined in January 2019) where it posts numerous videos and podcasts on blockchain technology, cryptocurrency, and wealth management.

With respect to the first element of the Policy, Complainant points out that the Domain Name incorporates Complainant's BLOCKFI Mark in its entirety, with the addition of the generic term "classic" and the non-distinctive Top-Level Domain ("gTLD") ".com."

With respect to the second element of the Policy, Complainant asserts that Respondent is neither affiliated with Complainant nor has it been authorized to use the BLOCKFI Mark in any manner. Complainant also asserts that there is no evidence to suggest that Respondent is commonly known by the Domain Name, or that Respondent was commonly or legitimately known as "Blockfi," or "Blockficlassic" or any variation thereof. Complainant alleges that Respondent uses Complainant's blue diamond logo without authorization from Complainant. Complainant further contends, since BLOCKFI is a coined term created and used exclusively by Complainant, that it is clear that Respondent's use of the Domain Name is to confuse the public into believing that Respondent's website, and its alleged cryptocurrency services, are associated with Complainant in order to benefit from this confusion. Complainant asserts that this is not a *bona fide* use of the Domain Name, nor is it noncommercial or fair use.

With respect to third element of the Policy, Complainant alleges that Respondent's registration and use of the Domain Name constitutes disruption of Complainant's business in violation of paragraph 4(b)(iii) of the Policy because the Domain Name is intended to divert Internet users away from Complainant's own website to Respondent's website - which purports to offer services which are similar to or related to those of Complainant's - thereby disrupting Complainant's business. Complainant also alleges that the website which resolves at the Domain Name purports to offer services related to those offered by Complainant, and displays the BLOCKFI Mark and diamond logo. Complainant asserts that this fact demonstrates that Respondent registered and is using the Domain Name to intentionally create a false affiliation and/or a

likelihood of confusion with Complainant and its BLOCKFI Mark in order to divert Internet users from Complainant's legitimate website for Respondent's own commercial gain.

## B. Respondent

Respondent did not reply to Complainant's contentions.

## 6. Discussion and Findings

Even though Respondent has defaulted, paragraph 4 of the Policy requires that, in order to succeed in this UDRP proceeding, Complainant must still prove its assertions with evidence demonstrating:

- (i) the Domain Name is identical or confusingly similar to a trademark or service mark in which Complainant has 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 Respondent's default, 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. Anonymous Speech 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 Complainant show that the Domain Name is identical or confusingly similar to a trademark or service mark in which Complainant has 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. On this point, Complainant has provided evidence that it is the owner of a United States trademark registration for the BLOCKFI Mark.

The Domain Name contains Complainant's BLOCKFI Mark in its entirety as a dominant element with the addition of the word, "classic". It is well-established that the addition of a descriptive or generic word to a trademark in a domain name does not avoid confusing similarity. *eBay Inc. v. ebayMoving / Izik Apo*, WIPO Case No. [D2006-1307](#). Accordingly, the Panel finds that the Domain Name is confusingly similar to Complainant's BLOCKFI Mark in which Complainant has valid trademark rights. Complainant has satisfied paragraph 4(a)(i) of the Policy.

### B. Rights or Legitimate Interests

Under the Policy paragraph 4(a)(ii), Complainant has the burden of establishing that Respondent has no rights or legitimate interests in the Domain Name. Complainant need only make a *prima facie* showing on this element, at which point the burden shifts to Respondent to present evidence that it has some rights or legitimate interests in the Domain Name. If Respondent has failed to do so, Complainant is deemed to have satisfied its 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](#).

Here, Complainant asserts that Respondent is not authorized to have registered the Domain Name and set up a website accessible from the Domain Name to confuse the public into believing that Respondent's website, and its alleged cryptocurrency services, are associated with Complainant in order to benefit from this confusion. Although properly notified by the Center, Respondent failed to submit any response on this point. 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 Saranyi 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](#).

Nevertheless, 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. The Panel finds that Respondent will not be able to show rights or legitimate interests under any of the three conditions.

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 "BlockFi Classic". In fact, to the contrary, the Whois information indicates that Respondent's name is Ghita Constantin.

The Panel notes that the website displayed at the Domain Name is a commercial venture and appears to be intended to lead visitors to believe that it is related to Complainant. Complainant provided evidence in the form of screenshots of Respondent's website, which contains the use of Complainant's diamond logo and text indicating "BlockFi Classic is the token that will fill the gap that BlockFi will leave."

The Panel finds that the use of the Domain Name in this manner 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. Microsof.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 its use of the Domain Name as authorized by Complainant or as fair use, the Panel cannot find Respondent has a legitimate interest.

Furthermore, the Panel notes that the Domain Name is very similar to Complainant's domain name <blockfi.com> and confusingly similar to Complainant's BLOCKFI Mark. In this respect, where a domain name consists of a trademark plus an additional term, UDRP panels have largely held that such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner. See section 2.5.1 of the [WIPO Overview 3.0](#).

In sum, Complainant has made a *prima facie* showing of Respondent's lack of rights or legitimate interests and Respondent has failed to come forward to rebut that showing. As provided for by paragraph 14 of the Rules, the Panel may draw such inference from Respondent's default as it considers appropriate. For all these reasons, the Panel is entitled to accept that the second element of the Policy is established by

Complainant, and Respondent has no rights or legitimate interests in respect of the Domain Name, pursuant to paragraph 4(a)(ii) of the Policy.

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

According to paragraph 4(a)(iii) of the Policy, Complainant 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 confusingly similar to the BLOCKFI Mark. The content of the website establishes familiarity with Complainant as its diamond logo and blue color were copied and the services of Respondent are also in the cryptocurrency field. 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 Complainant’s trademark or otherwise create a false association with Complainant. With no response from Respondent, such a claim of bad faith registration is undisputed.

Also as discussed herein, Respondent registered the Domain Name and linked it to a website using Complainant’s BLOCKFI Mark and copied the logo and blue color employed by Complainant. This 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).

As detailed above, the Panel finds on the record before it that Respondent’s intention in registering the Domain Name was to attract, for commercial gain, Internet users to Respondent’s website by creating a likelihood of confusion with the BLOCKFI Mark as to the source, sponsorship, affiliation, or endorsement of its website or location or of a product or service on its website or location. Thus, the Panel holds that Complainant has met its burden of providing sufficient evidence that Respondent registered and is using the Domain Name in bad faith under paragraph 4(b)(iv) of the Policy.

For these reasons, the Panel holds that Complainant has met its burden of showing 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, <blockficlassic.com>, be transferred to Complainant.

*/John C McElwaine/*

**John C McElwaine**

Sole Panelist

Date: April 14, 2023