ARBITRATION
AND
MEDIATION CENTER

WIPO
WORLD
INTELLECTUAL PROPERTY
ORGANIZATION

ADMINISTRATIVE PANEL DECISION
Blackbaud, Inc. v. 杨智超 (Yang Zhi Chao aka Zhi Chao Yang)
Case No. D2022-0533

1. The Parties

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

The Respondent is 杨智超 (Yang Zhi Chao aka Zhi Chao Yang), China.

2. The Domain Name and Registrar

The disputed domain name <justgivIng.com> is registered with Chengdu West Dimension Digital Technology Co., Ltd. (the "Registrar").

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the "Center") on February 16, 2022. On February 16, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 17, 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 February 18, 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 in English on February 22, 2022.

On February 18, 2022, the Center transmitted an email communication to the Parties in English and Chinese regarding the language of the proceeding. On February 18, 2022, the Complainant submitted its request that English be the language of the proceeding. The Respondent did not comment on the language of the proceeding.

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 in English and Chinese of the Complaint, and the proceedings commenced on February 25, 2022. In accordance with

the Rules, paragraph 5, the due date for Response was March 17, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on March 18, 2022.

The Center appointed Douglas Clark as the sole panelist in this matter on March 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. JG US, Inc., a company acquired by the Complainant in 2017, is the registered proprietor in the United States of the trademark JUSTGIVING, *e.g.*, United States trademark registration No. 5792260, registered on July 2, 2019. JustGiving is the Complainant's fundraising platform that is utilized globally to award donations to charities in over 160 countries.

The Respondent is an individual based in China.

The disputed domain name <justgivng.com> was registered on January 14, 2022. At the date of the Complaint and this decision, the disputed domain name resolves to a webpage that appears to be a parking page which includes links to other webpages relating to fundraising.

5. Parties' Contentions

A. Complainant

(a) The disputed domain name is identical or confusingly similar to the Complainant's JUSTGIVING trademark. The disputed domain name contains the whole of the Complainant's trademark JUSTGIVING;

(b) The Respondent has no rights or legitimate interests in the disputed domain name. The Respondent is not affiliated with the Complainant in any way and the Complainant has never granted the Respondent any authorization or license to use the Complainant's trademark. The Respondent has not made a *bona fide* offering of goods or services. There is no evidence indicating that the Respondent has been commonly known by the disputed domain name or holds any prior rights to the JUSTGIVING trademark; and

(c) The disputed domain name was registered and is being used in bad faith. It is possible that the disputed domain name was registered to domain flip. It is also possible that the Respondent was generating income through the advertisement links shown on the webpage at the date of the Complaint. The Respondent should not make money off the Complainant's trademark.

The Complainant requests the transfer of the disputed domain name.

B. Respondent

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

6. Discussion and Findings

6.1 Language of the Proceeding

The language of the Registration Agreement is Chinese.

The Complainant requests that the language of the proceeding be English on the grounds that: (i) the Complainant resides in the United States and does not understand Chinese; and (ii) the Registrar offers an

English version of the registration agreement on its website; and (iii) the trademark that is infringed upon operates in the United States.

The Respondent did not respond to this request.

Paragraph 11(a) of the Rules provides that: "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."

The Center made a preliminary determination to:

1) accept the Complaint as filed in English;
2) accept a Response in either Chinese or English;
3) appoint a Panel familiar with both languages mentioned above, if available.

The final determination of the language of the proceeding lies with this Panel.

The Respondent did not respond to the Center's preliminary determination. Further, the Respondent did not comment on the language of the proceeding nor did the Respondent file any response.

This Panel decided in *Zappos.com, Inc. v. Zufu aka Huahaotrade*, WIPO Case No. D2008-1191, that a respondent's failure to respond to a preliminary determination by the Center as to the language of the proceedings "should, in general, be a strong factor to allow the Panel to decide to proceed in favour of the language of the Complaint."

As set out below, the Panel considers the merits of the case to be strongly in favour of the Complainant. Translating the Complaint would cause unnecessary delays and expenses. These factors lead the Panel to determine to follow the Center's preliminary determination. As the only pleading before the Panel is in English, the Panel will render its decision in English.

6.2 Substantive Issues

A. Identical or Confusingly Similar

The Panel finds that the Complainant has rights in the trademark JUSTGIVING through its acquisition of the company, JG US, Inc., that holds the trademark. The Panel notes that the Complainant does not have a registered trademark incorporating "justgiving" in China, where the Respondent is located. However, the jurisdiction(s) where the trademark is valid is not considered relevant to panel assessment under the first element (see section 1.1.2 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0")).

The Panel finds that the disputed domain name <justgivıng.com> is confusingly similar to the Complainant's trademark JUSTGIVING. The only difference with the Complainant's trademark is the substitution of the second "i" in the Complainant's trademark for a "l" in the last three letters of the disputed domain name.

The Complainant has therefore satisfied the first element under paragraph 4(a) of the Policy.

B. Rights or Legitimate Interests

The Respondent has not asserted any rights or legitimate interests in relation to the disputed domain name.

Section 2.1 of the WIPO Overview 3.0 provides:

"While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that

proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of 'proving a negative', requiring information that is often primarily within the knowledge or control of the respondent. As such, 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 domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element."

The Complainant has asserted that the Respondent has no business with and is in no way affiliated with the Complainant. The Respondent is not authorized nor licensed to use the Complainant's JUSTGIVING trademark or to apply for registration of the disputed domain name. In addition, the Respondent has not responded to any of the Complainant's contentions. The Panel finds that the Complainant has made out a *prima facie* case that the Respondent lacks rights or legitimate interests, which has not been rebutted by the Respondent.

Accordingly, and considering the Panel's findings below, the Respondent has no rights or legitimate interests in regard to the disputed domain name.

The Complainant has therefore satisfied the second element under paragraph 4(a) of the Policy.

C. Registered and Used in Bad Faith

The nature of the links on the disputed domain name's parking page at the date of the Complaint makes it clear that the Respondent is aware of the prior registered JUSTGIVING trademark, as well as the nature of business that they are in. The Panel is satisfied that the Respondent was aware of the JUSTGIVING trademark when he registered the disputed domain name.

The Respondent has registered the disputed domain name to attract Internet users to the website for commercial gain in accordance with paragraph 4(b)(iv) of the Policy. By reproducing almost identically the Complainant's trademark in the disputed domain name and using it for a website displaying other fundraising pages, the Respondent is clearly seeking to attract users for commercial gain.

For the above reasons, the Panel finds that the disputed domain name was registered and is being used in bad faith.

The Complainant has therefore satisfied the third element under paragraph 4(a) 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 disputed domain name, <justgivlng.com>, be transferred to the Complainant.

/Douglas Clark/
Douglas Clark
Sole Panelist
Date: April 10, 2022