

## **ADMINISTRATIVE PANEL DECISION**

Blackbaud, Inc. v. Privacy Service provided by Withheld for Privacy ehf /  
Kamel Yahia Ammar, Shirts Everywhere  
Case No. D2022-0907

### **1. The Parties**

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

The Respondent is Privacy Service provided by Withheld for Privacy ehf, Iceland / Kamel Yahia Ammar, Shirts Everywhere, Algeria.

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

The disputed domain name <justgiving.online> is registered with NameCheap, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 15, 2022. On March 16, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 16, 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 March 21, 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 March 21, 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 the Respondent of the Complaint, and the proceedings commenced on March 22, 2022. In accordance with the Rules, paragraph 5, the due date for Response was April 11, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 13, 2022.

The Center appointed John Swinson as the sole panelist in this matter on April 26, 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.

On April 26, 2022, after the Panel was appointed, a person using a Gmail email account in a different name to the Respondent sent four emails to the Center, with statements such as. "I have a lot of domain please just tell me witch one,?" and "Hi WIPO team i hope that you are doing well i take it down the montioned domain (justgiving.online) from my list."

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

The Complainant is a software company that assists charities and educational institutions raise funds and donations.

A company called JG US, Inc. owns a United States trademark registration for JUSTGIVING, being United States Reg. No. 5792260. The application for this trademark registration was filed on September 19, 2018 and claims a date of first use in 2001.

JG US, Inc. has been owned by the Complainant since 2017.

The Respondent did not file a formal Response, so little is known of the Respondent.

The disputed domain name was registered on March 4, 2022.

At one time, the disputed domain name resolved to a registrar-generated page, that included pay-per-click links in the German language. At the present time, the disputed domain name does not resolve to an active website.

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

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

The Complaint is very thin. In summary, the Complainant makes the following submissions:

A subsidiary of the Complainant owns a trademark registration for JUSTGIVING in the United States.

Once the Top-Level Domain ".online" is removed, the disputed domain name contains the whole of the JUSTGIVING trademark.

The Respondent is not affiliated or authorized by the Complainant to use the JUSTGIVING trademark or to use the disputed domain name. The Respondent has not used the disputed domain name or provided a *bona fide* offering of goods or services at the disputed domain name. A pay-per-click parking page is not *bona fide* use. There is no evidence that the Respondent is commonly known by the disputed domain name.

The Complainant's complete submission in respect of the third element is as follows:

"It is possible that this domain was registered to domain flip, and it is also possible that the domain owner is generating income through the advertisement links shown on the home page. The domain owner should not be allowed to make money off of our client's trademarked brand name."

##### **B. Respondent**

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

## 6. Discussion and Findings

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

- (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 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.

### A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy provides that the Complainant must establish that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

The Complainant's subsidiary owns a trademark registration for JUSTGIVING. Unhelpfully, the subsidiary which owns the trademark registration is not named as a complainant on this Complaint. One can assume the Complainant has rights in the trademark noting that it is the parent company of the trademark holder. See *Putzmeister Holding GmbH v. Burj Man*, WIPO Case No. [D2021-1003](#).

The disputed domain name is identical to the JUSTGIVING trademark.

The Complainant succeeds on the first element of the Policy in relation to the disputed domain name.

### B. Rights or Legitimate Interests

The second requirement the Complainant must prove is that the Respondent has no rights or legitimate interests in the disputed domain name.

Paragraph 4(c) of the Policy provides that the following circumstances can be situations in which the Respondent has rights or legitimate interests in a disputed domain name:

- (i) before any notice to [the Respondent] of the dispute, [the Respondent's] use of, or demonstrable preparations to use, the [disputed] domain name or a name corresponding to the [disputed] domain name in connection with a *bona fide* offering of goods or services; or
- (ii) [the Respondent] (as an individual, business, or other organization) has been commonly known by the [disputed] domain name, even if [the Respondent] has acquired no trademark or service mark rights; or
- (iii) [the Respondent] is making a legitimate noncommercial or fair use of the [disputed] domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

These are illustrative only and are not an exhaustive listing of the situations in which a respondent can show rights or legitimate interests in a domain name.

The onus of proving this requirement, like each element, falls on the Complainant.

Previous UDRP panels have recognized the difficulties inherent in proving a negative, however, especially in circumstances where much of the relevant information is in, or likely to be in, the possession of the respondent. Accordingly, it is sufficient for a complainant to raise a *prima facie* case against the respondent under this head and an evidential burden of production will shift to the respondent to rebut that *prima facie* case.

The Complainant asserts the Respondent is not affiliated or authorized by the Complainant to use the JUSTGIVING trademark or to use the disputed domain name. The Complainant also asserts that the Respondent has not used the disputed domain name or provided a *bona fide* offering of goods or services at the disputed domain name. The Complainant asserts that a pay-per-click parking page is not *bona fide* use. The Complainant states there is no evidence that the Respondent is commonly known by the disputed domain name.

The Panel notes that the Respondent's business name "Shirts Anywhere" does not give the Respondent rights in respect of "JUSTGIVING".

The Panel considers that, based upon the above, the Complainant has established a *prima facie* case that the Respondent does not have any rights or legitimate interests in the disputed domain name and thereby the burden shifts to the Respondent to produce evidence demonstrating rights or legitimate interests in respect of the disputed domain name.

The Respondent has chosen not to file any Response. The Panel finds that the Respondent has failed to produce any evidence to establish its rights or legitimate interests in the disputed domain name.

Based on the evidence before the Panel, none of the circumstances listed in paragraph 4(c) apply in the present circumstances. Accordingly, the Panel finds that the Respondent has no rights or any legitimate interests in the disputed domain name.

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

Paragraph 4(a)(iii) of the Policy provides that the Complainant must establish that the Respondent registered and subsequently used the disputed domain name in bad faith.

The Complainant provides very little evidence in respect of the third element of the Policy. For example, no evidence has been provided regarding the fame or reputation of the JUSTGIVING brand, or how the Complainant is using JUSTGIVING. The Complainant must demonstrate that the Respondent registered the disputed domain name because of the Complainant's trademark rights. The Respondent is located in Algeria, and there is no evidence that the Complainant does business in Algeria or that it is likely that a person in Algeria would be aware of the Complainant. The Panel notes that the disputed domain name is composed of two dictionary terms "just" and "giving", and the Panel considers that it is probably merely coincidental that the disputed domain name corresponds to the Complainant's trademark.

An asserting party needs to establish that it is more likely than not that the claimed fact is true. An asserting party cannot meet its burden by simply making conclusory statements unsupported by evidence. To allow a party to merely make factual claims without any supporting evidence would essentially eviscerate the requirements of the Policy as both complainants or respondents could simply claim anything without any proof. For this reason, panels have generally dismissed factual allegations that are not supported by any *bona fide* documentary or other credible evidence.

The Complainant must also demonstrate that the Respondent used the disputed domain name in bad faith. The only evidence of use is a temporary parking page, which at some unknown date had links in German. There is no evidence that these links attempt to divert traffic to competitors of the Complainant or trade off the Complainant's reputation.

In relation to bad faith use, the Complainant does not rely on the doctrine of passive holding to demonstrate bad faith use, in accordance with the principles set out in well-known cases of *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#), *Jupiter Limited v. Aaron Hall*, WIPO Case No. [D2000-0574](#); and *Virgin Enterprises Limited v. Cesar Alvarez*, WIPO Case No. [D2016-2140](#). However, even if the Complaint so relied on this doctrine, based on the evidence before the Panel, the Complainant does not meet the passive holding test. In the *Telstra Corporation Limited v. Nuclear Marshmallows, ut supra*, case, the Complainant's trademark was one of the most famous in Australia, the complainant provided substantial evidence of its reputation in Australia, the respondent had an Australian address and was likely aware of the complainant, and the respondent used a fake name (Nuclear Marshmallows) to conceal his or her identity. In *Jupiter Limited v. Aaron Hall, ut supra*, the respondent lived near the complainant's Gold Coast casino, the casino is well-known on the Gold Coast, and the respondent offered to sell the disputed domain names to the complainant. In *Virgin Enterprises Limited v. Cesar Alvarez, ut supra*, the respondent offered to sell the disputed domain name to the complainant, and the complainant's trademark was internationally famous. The Complainant in the present case has not provided sufficient evidence to establish that there is passive holding under the test set out in the *Telstra Corporation Limited v. Nuclear Marshmallows, ut supra*, case and thus does not demonstrate bad faith use.

The Complainant is unsuccessful in respect of the third element of the Policy.

## **7. Decision**

For the foregoing reasons, the Complaint is denied.

*/John Swinson/*

**John Swinson**

Sole Panelist

Date: May 4, 2022