

ADMINISTRATIVE PANEL DECISION

block.one (Voice Group, Inc.) v. Registration Private, Domains By Proxy, LLC
/ lianxin zhou

Case No. D2022-2037

1. The Parties

The Complainant is block.one (Voice Group, Inc.), United Kingdom, represented by McDermott Will & Emery LLP, United States of America (“United States”).

The Respondent is Registration Private, Domains By Proxy, LLC, United States / lianxin zhou, China.

2. The Domain Name and Registrar

The disputed domain name <voicenft.com> 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 June 6, 2022. On June 7, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 8, 2022, the Registrar transmitted by email to the Center its verification response:

- (a) confirming the disputed domain name is registered with it;
- (b) confirming the language of the registration agreement is English; and
- (c) 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 June 11, 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 June 15, 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 June 17, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 7, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on July 8, 2022.

The Center appointed Warwick A. Rothnie as the sole panelist in this matter on July 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 or its affiliate, Voice Group Inc.,¹ creates platforms and tools to enable the creation of blockchain related activities and applications. According to the Complaint, the Complainant provides the only blockchain platform with parallel processing and continuous scalability.

One of the Complainant's activities is the provision of a blockchain based platform and marketplace for non-fungible tokens (NFTs).

In June 2019, the Complainant announced that it was launching a new platform under the name "Voice" based on the EOS open-source protocol. The "Voice" platform was intended to enable trusted transactions between creators and customers. Since that date, the Complainant has been promoting its activities from, amongst other things, its website at <voice.com>.

In July 2020, after some delays and a USD 150 million investment in the platform by the Complainant and beta testing, the Complainant finally launched its "Voice" social media app to the public. By August 2020, the Complainant's Voice app was available in 20 countries. Reputable business publications including Forbes, SiliconAngle, CoinDesk, and TheBlockCrypto have recognised the Complainant and its VOICE trademarks.

The Complaint includes evidence that the United States Patent and Trademark Office has issued notices of allowance to register VOICE and VOICE.COM as trademarks in the Principal Register, based on applications filed on June 6, 2019, for the plain text versions of those trademarks, respectively, Serial Numbers 88461547 and 88461546. These applications do not appear to have proceeded to grant as yet. However, the Complaint also includes evidence that these trademarks have been registered claiming priority from the United States applications in Australia (for example, No. 2055034 for VOICE, registered on December 4, 2019), China (for example, No. 40970260 for VOICE, registered on August 7, 2020), the European Union (for example, No. 018160467 for VOICE, registered on March 27, 2021), Hong Kong, China (for example, No. 305131971AB for VOICE, registered on March 25, 2021), Switzerland (for example, No. 747984 for VOICE, registered on June 8, 2020), and the United Kingdom (for example, No. UK00003449127 for VOICE, registered on August 14, 2020). Most of these are registered for goods and services in International Classes 9, 35, 36, 42, and 45. The Complaint includes evidence of other registrations in these jurisdictions as well.

The Complainant's Twitter account, @VoiceHQ, has some 30,000 followers.

On February 17, 2021, the Complainant announced its plans to begin releasing NFTs on a new and improved version of its VOICE platform. This announcement on Twitter included an offer of a "Voice OG Badge for our ride-or-die Original Genesis members" and invited the public to nominate designers who would be commissioned to collaborate on the first series of NFTs to be released on the new platform. Numerous online publications covered this announcement including The Currency Analyser.

¹ The Complaint does not distinguish between the two entities. For ease of exposition, therefore, the Panel will simply refer to the Complainant.

Eight days later, the disputed domain name was registered on February 25, 2021. Since that date, it appears to have resolved to a page on the website at <Dan.com> where it is offered for sale. As at May 31, 2022, the Whois information displayed by DomainTools stated “This domain is listed for sale at one of our partner sites for [USD] 50,000”.

5. Discussion and Findings

No response has been filed. The Complaint and Written Notice have been sent, however, to the Respondent at the electronic and physical coordinates confirmed as correct by the Registrar in accordance with paragraph 2(a) of the Rules. The courier attempting delivery of the Written Notice was unable to complete delivery. Bearing in mind the duty of the holder of a domain name to provide and keep up to date correct Whois details, therefore, the Panel finds that the Respondent has been given a fair opportunity to present its case.

When a respondent has defaulted, paragraph 14(a) of the Rules requires the Panel to proceed to a decision on the Complaint in the absence of exceptional circumstances. Accordingly, paragraph 15(a) of the Rules requires the Panel to decide the dispute on the basis of the statements and documents that have been submitted and any rules and principles of law deemed applicable.

Paragraph 4(a) of the Policy provides that in order to divest the Respondent of the disputed domain name, the Complainant must demonstrate each of the following:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (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 first element that the Complainant must establish is that the disputed domain name is identical with, or confusingly similar to, the Complainant’s trademark rights.

There are two parts to this inquiry: the Complainant must demonstrate that it has rights in a trademark at the date the Complaint was filed and, if so, the disputed domain name must be shown to be identical or confusingly similar to the trademark.

The Complainant has proven ownership of the registered trademarks in a number of different jurisdictions referred to in section 4 above. The Panel does not include the United States trademark applications as they do not appear to have been granted yet. See e.g., WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#)), section 1.1.4.

The second stage of this inquiry simply requires a visual and aural comparison of the disputed domain name to the proven trademarks. This test is narrower than and thus different to the question of “likelihood of confusion” under trademark law. Therefore, questions such as the scope of the trademark rights, the geographical location of the respective parties and other considerations that may be relevant to an assessment of infringement under trademark law are not relevant at this stage. Such matters, if relevant, may fall for consideration under the other elements of the Policy. See e.g., [WIPO Overview 3.0](#), section 1.7.

In undertaking that comparison, it is permissible in the present circumstances to disregard the generic Top-Level Domain (“gTLD”) component as a functional aspect of the domain name system. [WIPO Overview 3.0](#), section 1.11.

Disregarding the “.com” gTLD, the disputed domain name consists of the Complainant’s registered trademark, VOICE, and the term “nft”. As this requirement under the Policy is essentially a standing requirement, the addition of such a term does not preclude a finding of confusing similarity. See e.g., [WIPO Overview 3.0](#), section 1.8. Apart from anything else, the Complainant’s trademark remains visually and aurally recognisable within the disputed domain name.

Accordingly, the Panel finds that the Complainant has established that the disputed domain name is confusingly similar to the Complainant’s trademark and the requirement under the first limb of the Policy is satisfied.

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. 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 usually sufficient for a complainant to raise a *prima facie* case against the respondent under this head and an evidential burden will shift to the respondent to rebut that *prima facie* case. The ultimate burden of proof, however, remains with the Complainant. See e.g., [WIPO Overview 3.0](#), section 2.1.

The Complainant states that it has not authorised the Respondent to use the disputed domain name. Nor is the Respondent affiliated with it.

The disputed domain name is not derived from the Respondent’s name. Nor is there any suggestion of some other name by which the Respondent is commonly known from which the disputed domain name could be derived. From the available record, the Respondent does not appear to hold any trademarks for the disputed domain name.

The Respondent registered the disputed domain name after the Complainant began using and promoting its trademark and, importantly, only a few days after the Complainant made a major announcement about its plans to relaunch its “Voice” platform. “Voice” is of course an ordinary English word. However, it has no descriptive capacity for blockchain technologies nor for non-fungible tokens. Therefore, the Panel accepts there is a strong inference that the Respondent registered the disputed domain name with knowledge of the Complainant and its trademark. That inference is even stronger bearing in mind that the “nft” component of the disputed domain name is an acronym for non-fungible tokens which were the subject matter of the Complainant’s announcement only six days before the Respondent registered the disputed domain name.

Accordingly, the nature of the disputed domain name carries a very high risk of implied affiliation. See e.g. [WIPO Overview 3.0](#), section 2.5.1.

The use of the disputed domain name merely to offer it for sale does not qualify as a legitimate noncommercial or fair use for the purposes of paragraph 4(c)(iii) of the Policy.

In addition, it does not qualify as a good faith offering of goods or services for the purposes of paragraph 4(c)(i) where “Voice” is not a descriptive term for NFTs and is not otherwise associated with the Respondent. Instead, the Respondent appears to be targeting the Complainant’s trademark.

These matters, taken together, are sufficient to establish a *prima facie* case under the Policy that the Respondent has no rights or legitimate interests in the disputed domain name. The basis on which the Respondent has adopted the disputed domain name, therefore, calls for explanation or justification. The Respondent, however, has not sought to rebut that *prima facie* case or advance any claimed entitlement. Accordingly, the Panel finds the Complainant has established the second requirement under the Policy also.

C. Registered and Used in Bad Faith

Under the third requirement of the Policy, the Complainant must establish that the disputed domain name has been both registered and is being used in bad faith by the Respondent. These are conjunctive requirements; both must be satisfied for a successful complaint: see e.g., *Burn World-Wide, Ltd. d/b/a BGT Partners v. Banta Global Turnkey Ltd*, WIPO Case No. [D2010-0470](#).

Generally speaking, a finding that a domain name has been registered and is being used in bad faith requires an inference to be drawn that the respondent in question has registered and is using the disputed domain name to take advantage of its significance as a trademark owned by (usually) the complainant.

For the reasons discussed in section 5.B. above, it appears that the Respondent was aware of the Complainant and its trademark when the Respondent registered the disputed domain name.

As the term “Voice” is not descriptive of blockchain technology or NFTs, it appears that the Respondent has adopted the disputed domain name only eight days after the Complainant’s announcement of its plans to relaunch because of its resemblance to the trademark. Such opportunistic exploitation of another’s trademark without that other’s permission is the essence of bad faith under the Policy. That inference is reinforced by the offering of the disputed domain name for sale for USD 50,000 which is well in excess of the ordinary out-of-pocket costs of registering a domain name in the “.com” gTLD. In circumstances where the Respondent has not sought to claim, let alone establish, that he or she has rights or legitimate interests in the disputed domain name, therefore, the Panel finds the Respondent has registered and used it in bad faith.

Accordingly, the Complainant has established all three requirements under the Policy.

6. 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 <voicenft.com> be transferred to the Complainant.

/Warwick A. Rothnie/
Warwick A. Rothnie
Sole Panelist
Date: August 8, 2022