

## **ADMINISTRATIVE PANEL DECISION**

**BlockFi Inc. v. Privacy service provided by Withheld for Privacy ehf / Blockfi Trade**

**Case No. D2022-2705**

### **1. The Parties**

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

The Respondent is Privacy service provided by Withheld for Privacy ehf, Iceland / Blockfi Trade, Nigeria.

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

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

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 25, 2022. On July 25, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 25, 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 July 26, 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 July 30, 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 August 8, 2022. In accordance with the Rules, paragraph 5, the due date for Response was August 28, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 29, 2022.

The Center appointed Gareth Dickson as the sole panelist in this matter on September 6, 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 financial services company, specializing in cryptocurrencies, based in the United States.

The Complainant is the owner of multiple trade mark registration for BLOCKFI (the “Mark”) including, a United States trade mark registration for BLOCKFI registration number 5989814, registered on February 18, 2020, and International trade mark for BLOCKFI registration number 1601112, registered on March 4, 2022.

The disputed domain name was registered on April 23, 2022. It currently (and at filing of the Complaint) directs Internet users to a webpage purporting to offer cryptocurrency investment services (the “Website”).

#### **5. Parties’ Contentions**

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

The Complainant argues that it has rights in the Mark by virtue of its ownership of various trade mark registrations for the Mark around the world. It contends that the disputed domain name is confusingly similar to the Mark since it incorporates the Mark (which is recognisable within the disputed domain name) with the addition of the generic terms “trade” and “options”, under the generic Top-Level Domain (“gTLD”) “.com”.

The Complainant confirms that the disputed domain name was registered by the Respondent without its permission and that the Respondent is not a licensee of the Complainant. It alleges that the Respondent has been using the disputed domain name to give the false impression that the Website and its alleged services are affiliated with or authorized by the Complainant, to create a false impression of legitimacy and with the intention to benefit from this conclusion, and that it is using the Mark throughout the Website. The Complainant notes too that the Website encourages customers to create accounts and to provide personal information, as well as promoting a “referral program” whereby customers are told they can earn money by referring others to the Website to also provide their personal information.

The Complainant submits that there is no evidence to suggest that the Respondent: has been commonly known by the disputed domain name; is making, or intends to make, a legitimate noncommercial or fair use of it (the services offered on the Respondent’s website, accessible via the disputed domain name, purporting to be commercial in nature); or has ever used or demonstrated preparations to use it in connection with a *bona fide* offering of goods or services.

The Complainant submits that the Respondent must have known of the Complainant and the Mark when it registered the disputed domain name. The Mark, according to the Complainant, has no dictionary meaning and is a term which was invented by the Complainant at least six years prior to the registration of the disputed domain name. The Respondent’s own use of the disputed domain name to purport to offer cryptocurrency services is closely related to the services offered by the Complainant, and very strongly suggests that the Respondent knew of the Mark and the Complainant’s interest in it when it registered the disputed domain name and that it registered it in bad faith.

The Complainant also argues that the Respondent has provided false information about its identity on the Website, having appeared to have falsified company registration records.

Finally, the Complainant argues that the Respondent has used the disputed domain name to attempt to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Mark, contrary to the Policy.

Together, the Complainant submits that the Respondent is using the disputed domain name in bad faith.

## **B. Respondent**

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

## **6. Discussion and Findings**

Under paragraph 4(a) of the Policy, the Complainant bears the burden of proving that:

- a) the disputed domain name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights;
- b) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- c) the disputed domain name has been registered and is being used in bad faith.

These criteria are cumulative. The failure of the Complainant to prove any one of these elements means the Complaint must be denied.

### **A. Identical or Confusingly Similar**

The Panel accepts that the Complainant is the owner of, and therefore has rights in, the Mark. Section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)") provides that: "[I]n cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing". Section 1.8 of the [WIPO Overview 3.0](#) further provides that: "Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element". The Panel therefore finds that the disputed domain name is confusingly similar to the Mark, since the disputed domain name incorporates the Mark in its entirety. The addition of the words "trade" and "options" in the disputed domain name do not prevent a finding of confusing similarity between the disputed domain name and the Mark, nor does the addition of the gTLD ".com".

Accordingly, the Panel finds that the disputed domain name is confusingly similar to a trade mark in which the Complainant has rights.

### **B. Rights or Legitimate Interests**

Although a complainant is required to demonstrate that a respondent has no rights or legitimate interests in respect of the domain name, as explained in section 2.1 of the [WIPO Overview 3.0](#), the consensus view of previous UDRP panels is that where a complainant establishes 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.

In the current proceeding, the Complainant has established its *prima facie* case. The evidence before the Panel is that the Mark is neither generic nor descriptive but enjoys a degree of inherent distinctiveness that makes a coincidental adoption by the Respondent highly unlikely. The Complainant states that it has not given the Respondent permission to use the Mark, in a domain name or otherwise, and submits that the Respondent has not been commonly known by the disputed domain name.

There is no evidence that the Respondent has acquired any common law rights to use the Mark, is commonly known by the Mark (an assertion that it is called “Blockfi Trade”, supported only by a falsified company incorporation document, being clearly insufficient to establish rights under this limb), or has chosen to use the Mark in the disputed domain name in any descriptive manner or is making any use of the disputed domain name that would establish rights or legitimate interests as a result of a noncommercial or fair use of it.

Furthermore, the direction of Internet users to a website designed to mimic the Complainant in order to gather their personal data and login information does not constitute a *bona fide* sale of goods or services or a legitimate noncommercial or fair use within the meaning of the Policy. Section 2.13.1 of the [WIPO Overview 3.0](#) states that: “Panels have categorically held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent”. Such consideration applies here.

By not participating in these proceedings, the Respondent has failed to refute the Complainant's *prima facie* case that it has met its burden under the second UDRP element.

As clearly stated in section 2.1 of the [WIPO Overview 3.0](#), “a panel’s assessment will normally be made on the basis of the evidence presented in the complaint and any filed response. The panel may draw inferences from the absence of a response as it considers appropriate, but will weigh all available evidence irrespective of whether a response is filed”. Having reviewed and weighed the available evidence, the Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

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

The Panel notes that the disputed domain name was registered two years after the Mark was registered and six years after the Complainant started to use the Mark and accepts that the disputed domain name was chosen by reference to the Mark.

As a result, and in the absence of evidence from the Respondent that the similarity of the disputed domain name to the Mark is coincidental, the Panel must conclude that the Respondent knew of the Complainant's rights in the Mark when it registered the disputed domain name.

The Panel therefore finds that the Respondent's registration of the disputed domain name was in bad faith since it attempted to appropriate for the Respondent, without the consent or authorisation of the Complainant, rights in the Complainant's Mark.

The disputed domain name is also being used in bad faith. It is being used for a purpose that involves targeting and attracting Internet users seeking the Complainant, to a website that appears to harvest personal data for the Respondent's purposes. The Panel also notes that the Respondent has published false information regarding its identity on the Website.

Section 3.1.4 of the [WIPO Overview 3.0](#) states: “[...] given that the use of a domain name for *per se* illegitimate activity such as the sale of counterfeit goods or phishing can never confer rights or legitimate interests on a respondent, such behavior is manifestly considered evidence of bad faith”. The disputed domain name directs Internet users to a website that appears to be associated with collection of personal data, which is not an acceptable use of the Complainant's trade mark.

The Respondent has not sought to explain its registration and use of the disputed domain name, has attempted to conceal its identity, and has not participated in these proceedings. There is also no conceivable use of the disputed domain name by the Respondent that would not be illegitimate and therefore there is no basis for the Panel to conclude that the Respondent's use of the disputed domain name is justified.

Therefore, and on the basis of the information available to it, the Panel finds that the Respondent's use of the disputed domain name is without justification and is inconsistent with the Complainant's exclusive rights in the Mark. Consideration of these and other factors militates in favour of a finding of bad faith.

The Panel finds that the Respondent has registered and is using the disputed domain name in bad faith.

## **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, <blockfitradeoptions.com>, be transferred to the Complainant.

*/Gareth Dickson/*

**Gareth Dickson**

Sole Panelist

Date: September 22, 2022