

ADMINISTRATIVE PANEL DECISION

Bullish Global v. Believe Edjeba, bullish
Case No. D2022-4101

1. The Parties

The Complainant is Bullish Global, Cayman Islands, United Kingdom, represented by McDermott Will & Emery LLP, United States of America.

The Respondent is Believe Edjeba, bullish, Nigeria.

2. The Domain Name and Registrar

The disputed domain name <bullishcryptofx.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 November 1, 2022. On November 1, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 1, 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 (Privacy Service Provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 2, 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 November 7, 2022. On November 2, 2022, the Center received an informal email from the Respondent inquiring about among others, the meaning of our communications.

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 November 8, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 28, 2022. The Respondent did not submit any formal response. Accordingly, the Center notified the Commencement of Panel Appointment Process on December 1, 2022.

The Center appointed Miguel B. O'Farrell as the sole panelist in this matter on December 7, 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 December 7 and 9, 2022, the Center received communications from the Respondent claiming that someone has hacked his email address.

4. Factual Background

The Complainant, Bullish Global, is an international blockchain-based cryptocurrency exchange and testing technology company offering financial services, for digital assets and currencies under the name and trademark BULLISH since 2021.

The Complainant owns registrations and pending applications for the BULLISH mark in more than 20 jurisdictions covering financial services, blockchain-based cryptocurrency trading and exchange services, and related software products, including the following:

United Kingdom Trademark Registration No. 00003601614 BULLISH, registered on November 19, 2021, with effective date February 26, 2021, in classes 9, 36, and 42;

Russian Federation Trademark Registration No. 824860 BULLISH, registered on August 17, 2021, with priority date August 26, 2020, in classes 9, 36, and 42;

Mexican Trademark Registration No. 2325822 BULLISH, registered on November 18, 2021, and filed on February 25, 2021, in class 36;

Brazilian Trademark Registration No. 922195323 BULLISH, registered on January 25, 2022, and filed on February 26, 2021, in class 36;

The Complainant also owns the domain name <bullish.com> registered since 2020 which relocates to a website in which the Complainant provides Internet users with information about its financial services for the digital sector and other goods and services.

The disputed domain name was registered on August 1, 2022, and currently (at the time of drafting the Decision) resolves to an inactive webpage. However, in the light of screenshots produced by the Complainant, it was used at one time for a website to advertise and promote a financial crypto-currency trading platform similar to the Complainant's offerings.

5. Parties' Contentions

A. Complainant

The Complainant claims that the BULLISH marks have been written about in the press, including reputable financial companies such as the Financial Times, Bloomberg, Forbes, The Washington Post, among others and attaches samples of media articles discussing the Complainant and the BULLISH marks.

As a result of extensive use and promotion, the BULLISH marks have become distinctive and well recognized globally and have enjoyed such distinctiveness and notoriety since long prior to the date on which the Respondent registered the disputed domain name.

In 2021, reports on a proposed merger with Far Peak Acquisition stated that Bullish was being valued in USD 9 billion and the Complainant adds an article discussing this valuation.

The disputed domain name is confusingly similar to the BULLISH marks in which the Complainant has rights, and the Respondent has no rights or legitimate interests in the disputed domain name, which was registered and is being used in bad faith.

The Respondent is neither affiliated with, nor has it been licensed or permitted to use the Complainant's BULLISH mark or any domain names incorporating the BULLISH mark.

The Respondent is not commonly known by the disputed domain name nor is it making a legitimate noncommercial fair use of the disputed domain name. Rather, the Respondent has previously used the disputed domain name to (i) hold itself out as the Complainant; (ii) to advertise and promote a financial crypto-currency trading platform that competed, or had the potential to compete, directly with the Complainant's offerings; (iii) to fraudulently collect personal information from Internet users.

The former website associated with the disputed domain name contained false information in an attempt to dupe Internet viewers as to the legitimacy of the Respondent's business. In particular, the Respondent included links to its "License" and "Certificate of Trade" that referenced governmental bodies that do not exist, as a "Certificate of Incorporation of Private Limited Company" stating "The Registrar of Companies for United State (sic) of America hereby certifies that BULLISHCRYPTOFOX is this day incorporated under the Companies Act 2006 as a private company" among others and adds a copy of the referenced document to the Complaint.

Furthermore, as shown in Annex T to the Complaint, the website at the disputed domain name previously featured a pop-up box that solicited personal information, which suggests that the Respondent was using the BULLISH mark to trick consumers into providing personal information to the Respondent.

The Respondent used the disputed domain name to falsely pose as the Complainant for financial gain, to trade off the reputation and goodwill associated with the Complainant's BULLISH marks, and to misleadingly divert Internet traffic from the Complainant's official website.

Finally, the Complainant requests the Panel to order that the disputed domain name be transferred to the Complainant.

B. Respondent

The Respondent did not reply to the Complainant's contentions. However, on November 2, 2022, the Center received an informal email from the Respondent inquiring about among others, the meaning of our communications. On December 7 and 9, 2022, the Respondent sent communications to the Center purporting that his email address has been hacked. Considering, that no evidence has been provided in regard to the Respondent's claims of December 7 and 9, 2022, the Respondent has sent these communications after the Response due date, and the Respondent has had successful communications with the Center in relation of these proceedings before the Response's due date, the Panel has decided to not address these late claims.

6. Discussion and Findings

According to paragraph 4(a) of the Policy, for this Complaint to succeed in relation to the disputed domain name, the Complainants must prove each of the following, namely that:

- (i) the disputed domain name is identical or confusingly similar with 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 was registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Panel is satisfied that the Complainant has proved to have rights in the trademark BULLISH.

As set forth in section 1.7 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”) the standing test for confusing similarity involves a reasoned but relatively straightforward comparison between the trademark and the disputed domain name to determine whether the disputed domain name is confusingly similar with the trademark. The test involves a side-by-side comparison of the disputed domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name.

The Panel considers that the disputed domain name is confusingly similar to the Complainant’s BULLISH trademark.

The disputed domain name incorporates the Complainant’s trademark BULLISH in its entirety with the addition of the term “crypto” which is a reference to “cryptocurrency” and the letters “fx”, which certainly do not prevent a finding of confusing similarity.

The “.com” generic Top-Level Domain (“gTLD”) is viewed as a standard registration requirement and is generally disregarded under the first element confusing similarity test, as set forth in section 1.11.1 of [WIPO Overview 3.0](#).

Accordingly, the Panel finds that the disputed domain name is confusingly similar to the trademark BULLISH in which the Complainant has rights and that the requirements of paragraph 4(a)(i) of the Policy are fulfilled.

B. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, a respondent may establish rights to or legitimate interests in a domain name by demonstrating any of the following non-exclusive defenses:

- (i) before any notice to it of the dispute, the 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) the respondent has been commonly known by the domain name, even if it has acquired no trademark or service mark rights; or
- (iii) the respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain, to misleadingly divert consumers.

Although the Policy addresses ways in which a respondent may demonstrate rights or legitimate interests in a disputed domain name, it is well established, as it is put in section 2.1 of [WIPO Overview 3.0](#), that a complainant is required to make out a *prima facie* case that the respondent lacks rights or legitimate interests in the domain name. Once such *prima facie* case is made, the burden of production shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.

There is no evidence in the present case that the Respondent has been commonly known by the disputed domain name, enabling it to establish rights or legitimate interests therein.

Furthermore, there is no evidence in the file to prove any of the circumstances mentioned in paragraph 4(c) of the Policy, nor any other circumstances to suggest that the Respondent has rights or legitimate interests in the disputed domain name.

Likewise, and as further discussed under Section 6.C of this Decision, it does not seem that the Respondent is making any legitimate noncommercial or fair use of the disputed domain name, but rather that it intends to use the disputed domain name for the purpose of deriving unfair monetary advantage by confusing Internet users and leading them to believe that the site to which the disputed domain name relates is an official site of the Complainant.

As established in section 2.5 of [WIPO Overview 3.0](#): “Fundamentally, a respondent’s use of a domain name will not be considered ‘fair’ if it falsely suggests affiliation with the trademark owner; the correlation between a domain name and the complainant’s mark is often central to this inquiry.” Here, the nature of the disputed domain name carries a risk of implied affiliation.

The Panel finds that the Complainant has made out a *prima facie* case, a case calling for an answer from the Respondent. The Respondent has not responded to the Complainant’s contentions, and the Panel is unable to conceive of any basis upon which the Respondent could sensibly be said to have any rights or legitimate interests in respect of the disputed domain name.

The Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name and that the requirements of paragraph 4(a)(ii) of the Policy have been fulfilled.

C. Registered and Used in Bad Faith

The Panel is satisfied that the Respondent must have been aware of the Complainant and the Complainant’s trademark BULLISH mentioned in Section 4 above (Factual Background) when it registered the disputed domain name on August 1, 2022.

In accordance with section 3.1.4 of [WIPO Overview 3.0](#), the Panel considers that the inclusion of the Complainant’s BULLISH trademark in the disputed domain name creates a presumption of bad faith.

The Complainant has submitted evidence to support that the trademark BULLISH mentioned in Section 4 above is widely known and was registered and used well before the Respondent registered the disputed domain name.

The Respondent when registering the disputed domain name has targeted the Complainant’s trademark BULLISH with the intention to confuse Internet users and capitalize on the fame of the Complainant’s name and trademark.

Furthermore, the Complainant’s evidence that the Respondent has used the disputed domain name as a means to confuse users and offer similar services as those offered by the Complainant proves bad faith use by the Respondent. Likewise, the false information used in the former website to which the disputed domain name resolved at one time further confirms the Respondent’s bad faith.

The clear absence of rights or legitimate interests coupled with no credible explanation for the Respondent’s choice of the disputed domain name is also a significant factor to consider that the disputed domain name was registered in bad faith (as stated in section 3.2.1 of [WIPO Overview 3.0](#)).

Pursuant to section 3.3 of [WIPO Overview 3.0](#), the fact that the disputed domain name does not currently resolve to an active website does not prevent a finding of bad faith under the doctrine of passive holding. See also *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#)).

The Panel finds that the Respondent has registered and used 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, <bullishcryptofx.com>, be transferred to the Complainant.

/Miguel B. O'Farrell/

Miguel B. O'Farrell

Sole Panelist

Date: December 11, 2022