

## **ADMINISTRATIVE PANEL DECISION**

Credible Behavioral Health, Inc. v. Amin Mokki, Abdul Quader  
Case No. D2022-4367

### **1. The Parties**

The Complainant is Credible Behavioral Health, Inc., United States of America (“United States”), represented by Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C., United States.

The Respondents are Amin Mokki, Bangladesh and Abdul Quader, Bangladesh.

### **2. The Domain Names and Registrars**

The disputed domain name <crediblebh.pro> (“the first disputed domain name”) is registered with Porkbun LLC and the disputed domain name <crediblebh.vip> (“the second disputed domain name”) is registered with NameSilo, LLC (collectively, the “Registrars”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 16, 2022. On November 17, 2022, the Center transmitted by email to the Registrars requests for registrar verification in connection with the disputed domain names. On November 17 and 18, 2022, the Registrars transmitted by email to the Center their verification responses, disclosing registrant and contact information for the disputed domain names, which differed from the named Respondents (NameSilo, LLC / Unknown Registrant) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 18, 2022, providing the registrant and contact information disclosed by the Registrars, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on November 23, 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 November 25, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 15, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 16, 2022.

The Center appointed Antony Gold as the sole panelist in this matter on December 20, 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 company with its headquarters in Tennessee, United States. It was established in 2000 and provides software for medical practice management, electronic health record-keeping, case management and related functions. The Complainant has operated under the CREDIBLE brand since 2006 and has a website at the domain name <credibleinc.com>, which provides information about the software and services it provides and contains a login page through which existing customers can access its services. The Complainant's website often uses the term "Behavioral Health" in connection with its CREDIBLE products, as in, for example, "Credible Behavioral Health Software" and "Discover the latest Credible Behavioral Health news stories".

The Complainant hosts many events under its CREDIBLE mark, promoting its CREDIBLE-branded services to actual and prospective customers through trade shows, conferences, webinars and other events. It has over 500 customers across the United States.

On September 27, 2021, the Complainant filed a United States Service Mark application for the mark, CREDIBLE, which claims a first use in commerce date of February 2006. The application has not yet proceeded to grant.

The first disputed domain name was registered on November 10, 2020, and the second disputed domain name was registered on November 11, 2020. Both disputed domain names resolve to a website at the second disputed domain name, the home page of which is headed "Credible BH – Official CredibleBH Login to [www.crediblebh.com](http://www.crediblebh.com)". Lower down the home page is a prominent banner; "Credible – Behavioral Health Software". Beneath that is a paragraph which states; "Credible Behavioral Health, also known as CredibleBH, is a platform focused on saving students money with a reliable student loan consolidation feature. There are also attempts to make student loans. Trusted partners work together within the Association of Behavioral Health Agencies to deliver a website based entirely on HCE's proven solution". The "About CredibleBH" section of the Respondent's website includes a section; "Founded in 2000, Credible Behavioral Health, Inc. is an American SaaS company that provides solutions for medical businesses to improve the quality of care and lives for people with mental health issues".

#### **5. Procedural issue – Complaint filed against multiple Respondents**

The Complainant says that the Respondents are the same entity and/or that both disputed domain names are under common control and that it is appropriate for its case in respect of them to be dealt with within the same proceedings under the Policy.

The principles applied by UDRP panels considering requests for consolidation are set out at section 4.11.2 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"). This explains that: "Where a complaint is filed against multiple respondents, panels look at whether (i) the domain names or corresponding websites are subject to common control, and (ii) the consolidation would be fair and equitable to all parties. Procedural efficiency would also underpin panel consideration of such a consolidation scenario." See also *Speedo Holdings B.V. v. Programmer, Miss Kathy Beckerson, John Smitt, Matthew Simmons*, WIPO Case No. [D2010-0281](#).

The fact that the disputed domain names were registered on successive days, that both comprise the term "credible" followed by the letters "bh", as well as the fact that both Respondents are apparently based in the same city in Bangladesh and that the first disputed domain name resolves to a website at the second

disputed domain name, indicates that the Respondents – if they are in fact truly different individuals – are acting in concert in order to fulfil a common design and that the disputed domain names are under common control. Moreover, the Panel notes that neither Respondent has challenged the Complainant's assertions, as set out in its email to the Center dated November 23, 2022, as to why consolidation is appropriate.

In these circumstances, it is procedurally efficient, as well as fair and equitable to all Parties, for the Complainant's case in respect of both disputed domain names to be dealt with in a single Complaint. The Panel therefore grants the Complainant's request for consolidation and the named Respondents are accordingly referred to below collectively as "the Respondent".

## **6. Parties' Contentions**

### **A. Complainant**

The Complainant says that it has engaged in nearly two decades of continuous, exclusive and highly visible use of the term "Credible" for behavioral health software which has made its mark highly recognizable nationwide with a strong consumer association with the Complainant's CREDIBLE-branded services. In addition, it has filed a service mark application for CREDIBLE.

The disputed domain names are identical or confusingly similar to the Complainant's CREDIBLE mark in that both of them incorporate the Complainant's mark in full followed by the letters "bh", which are a well-known shorthand for the generic term "behavioral health". Supplementing or modifying a trade mark within a domain name by the use of such letters or terms does not prevent a domain name from being found confusing similar to a complainant's mark.

The Complainant says also that the Respondent has no rights or legitimate interests in respect of the disputed domain names. The Respondent is "spoofing", that it improperly seeking traffic from Internet users who are looking for the Complainant's website. The Respondent is not using, nor planning to use, the disputed domain names for a *bona fide* offering of goods and services because many of the seeming links on the Respondent's website are dead ends or link back to other content. Nor is the Respondent making a legitimate noncommercial or fair use of the disputed domain names. Furthermore, so far as the Complainant is aware, the Respondent has never been known by either of the disputed domain names.

Lastly, the Complainant says that the disputed domain names were registered and are being used in bad faith. The Respondent is, by its use of the disputed domain names, attempting to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship or endorsement of its website. The Respondent's website does not appear to offer any legitimate goods or services and includes contradictory statements about student loan financing and content about health-related services.

### **B. Respondent**

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

## **7. Discussion and Findings**

Dealing, first, with the Respondent's failure to file a response to the Complaint, paragraph 14(b) of the Rules provides that if a party, in the absence of exceptional circumstances, does not comply with a provision of, or requirement under, these Rules, the Panel shall be entitled to draw such inferences from this omission as it considers appropriate.

Paragraph 4(a) of the Policy provides that the Complainant proves each of the following three elements in order to succeed in its Complaint:

- (i) the disputed domain names are identical or confusingly similar to a trade mark 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 names; and
- (iii) the disputed domain names have been registered and are being used in bad faith.

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

Whilst the Complainant has provided evidence of its service mark application for CREDIBLE, applications (as opposed to granted marks) do not, in themselves, establish trade mark rights for the purpose of the first element of the Policy. However, the Complainant additionally claims unregistered trade mark rights which, it says, pre-date the date of registration of the disputed domain names in November 2020.

Section 1.3 of the [WIPO Overview 3.0](#) explains that: “To establish unregistered or common law trademark rights for purposes of the UDRP, the complainant must show that its mark has become a distinctive identifier which consumers associate with the complainant’s goods and/or services. Relevant evidence demonstrating such acquired distinctiveness (also referred to as secondary meaning) includes a range of factors such as (i) the duration and nature of use of the mark, (ii) the amount of sales under the mark, (iii) the nature and extent of advertising using the mark, (iv) the degree of actual public (e.g., consumer, industry, media) recognition, and (v) consumer surveys”.

Details of the Complainant’s promotion of its CREDIBLE-branded services are set out in the Factual Background section above, from which it is evident that the Complainant asserts use of its CREDIBLE trading style from 2006. Additionally, the Panel notes that the domain name used by the Complainant, <credibleinc.com>, was registered in August 2005. The Complainant has not specifically focused its submissions concerning its claimed unregistered trade mark rights on the factors set out at section 1.3 of the [WIPO Overview 3.0](#), nor does its evidence clearly set out what CREDIBLE-branded activities had been undertaken by it prior to the date of registration of the disputed domain names in November 2020. However, the fact that the Respondent has (somewhat incongruously in the context of the claimed function of its website) used the term “CredibleBH” to denote behavioral health software, certainly indicates its awareness of the Complainant and its services as at the date of registration of the disputed domain name and provides sufficient affirmation of the source identifying capacity and repute of the Complainant’s CREDIBLE mark as at the date of registration of the disputed domain names. In the light of the above considerations, the Panel accepts that, as at the date of registration of the disputed domain names in November 2020, the term CREDIBLE had become a distinctive identifier in respect of the Complainant’s provision of software for medical practice management and that the Complainant had thereby acquired unregistered rights in this term by this date for the purpose of the first element of the Policy.

When considering whether the disputed domain names are identical or confusingly similar to the Complainant’s CREDIBLE mark, the generic Top-Level-Domains “.pro” and “.vip” are disregarded as they are technical requirements of registration. Each of the disputed domain names comprises the Complainant’s CREDIBLE trade mark in full, followed by the letters “bh”. These last two letters do not prevent the disputed domain names from being found confusingly similar to the Complainant’s mark. As explained at section 1.8 of the [WIPO Overview 3.0](#): “Where the relevant trade mark 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”. See also *LinkedIn Corporation v. Daphne Reynolds*, WIPO Case No. [D2015-1679](#).

The Complainant’s CREDIBLE mark is recognizable within each of the disputed domain names and the Panel accordingly finds that they are confusingly similar to the Complainant’s CREDIBLE mark. The Panel therefore finds that the disputed domain names are confusingly similar to a trade mark in which the Complainant has rights.

## B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides, in summary, that a respondent may demonstrate that it may have rights or legitimate interests in a disputed domain name by demonstrating either that, before any notice to it of the dispute, it has been using or has made demonstrable preparations to use, the domain name in connection with a *bona fide* offering of goods or services or that it has been commonly known by the domain name or that it has been making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

Whilst elements of the website to which the disputed domain names resolve purport (not particularly persuasively) to be a “platform focused on saving students money with a reliable student loan consolidation” there is no evident connection between this purpose and the Respondent’s use of the term “behavioral health” as in, for example, the claim that “CredibleBH Login is an online Behavioral Health (BH) portal that enables students to save more money with CredibleBH student loans”. Moreover, its use of the term “CREDIBLE – Behavioral Health Software” points unequivocally to an awareness by the Respondent of the Complainant and its services and suggests that the disputed domain names were registered in order, in some manner, to take advantage of the Complainant and its CREDIBLE mark. Finally, most of the content of the Respondent’s website (see, for example, the extracts cited in the Factual Background section above) lack any form of coherence or meaning and its purported purpose is opaque.

For these reasons, the Panel finds the Respondent’s website to be a sham, an attempt to create the illusion of a live website, but with no genuine function. Exactly why the Respondent has chosen to produce such a website is unclear, but it may have hoped that the semblance of an operational website would make it more difficult for the Complainant to recover the disputed domain names and/or it may be using its website for fraudulent purposes. Whatever the explanation, a sham website will not serve to provide a respondent with rights or a legitimate interest in a domain name; see *Macmillan Publishers International Limited v. DOMAIN ADMIN, DOMAIN PRIVACY SERVICE FBO REGISTRANT / Bushra Shoaib*, WIPO Case No. [D2022-1825](#).

There is no evidence that the Respondent has been commonly known by either of the disputed domain names and the second circumstance under paragraph 4(c) of the Policy is therefore inapplicable. The third circumstance is also inapplicable; the Respondent has been making a commercial use of each of the disputed domain names and such use is, for the reasons outlined above, not fair.

Once a complainant has made out a *prima facie* case that a respondent lacks rights or legitimate interests in a domain name, the burden of production shifts to the respondent to show that it does have such rights or legitimate interests. In the absence of any response from the Respondent to the Complaint, it has failed to satisfy that burden. The Panel accordingly finds that the Respondent has no rights or legitimate interests with respect to the disputed domain names.

## C. Registered and Used in Bad Faith

The only known use of the disputed domain names has been to resolve to a website, the form and content of which has been described above. The Respondent’s use of the term “Credible BH” in connection with behavioral health software supports a conclusion of an awareness by the Respondent of the Complainant and its products as at the date of registration of the disputed domain names, as well as an intention to take unfair advantage of the Complainant’s repute. As the panel found in *Herbalife International, Inc. v. Surinder S. Farmaha*, WIPO Case No. [D2005-0765](#), “the registration of a domain name with the knowledge of the complainant’s trade mark registration amounts to bad faith”. The Panel therefore finds that the disputed domain names were registered in bad faith.

A sham website of the type created by the Respondent is, in itself, a strong indicator of bad faith use; see *Verizon Trademark Services LLC v. Mohd Daoud*, WIPO Case No. [D2016-1380](#). Moreover, Internet users who are aware of the Complainant are apt to assume from the fact the disputed domain names include the Complainant’s mark coupled with the letters “bh” which are an acronym for “behavioral health”, a term which the Complainant uses in connection with its software, that any website to which they resolve will be operated

by or with the consent of the Complainant. It is not necessary to ascribe a precise motive to the Respondent for its registration of the disputed domain names. As explained at section 3.1.1 of the [WIPO Overview 3.0](#); “If on the other hand circumstances indicate that the respondent’s intent in registering the disputed domain name was in fact to profit in some fashion from or otherwise exploit the complainant’s trademark, panels will find bad faith on the part of the respondent”.

The Respondent’s use of the disputed domain names therefore falls within the circumstance of bad faith set out at paragraph 4(b)(iv) of the Policy sets in that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant’s mark as to the source, sponsorship, affiliation, or endorsement of its website. Moreover, the Respondent has not made any attempt to justify its conduct or to rebut the Complainant’s assertions. The Panel accordingly finds that the disputed domain names are also being used in bad faith.

## **8. 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 names, <crediblebh.pro> and <crediblebh.vip>, be transferred to the Complainant.

*/Antony Gold/*

**Antony Gold**

Sole Panelist

Date: January 3, 2023