

## **ADMINISTRATIVE PANEL DECISION**

### **Avago Technologies International Sales Pte. Limited v. Barkat Choudhry Case No. D2023-4220**

#### **1. The Parties**

The Complainant is Avago Technologies International Sales Pte. Limited, Singapore, represented by Quarles & Brady LLP, United States of America (“United States”).

The Respondent is Barkat Choudhry, United States.

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

The disputed domain name <broadcomsolution.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 October 10, 2023. On October 11, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 11, 2023, 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 (Registration Private, Domains by Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 13, 2023, 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 October 17, 2023.

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 October 24, 2023. In accordance with the Rules, paragraph 5, the due date for Response was November 13, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 15, 2023.

The Center appointed Alistair Payne as the sole panelist in this matter on November 24, 2023. 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 global technology company that produces semiconductor and infrastructure software solutions as well as computer and communications hardware and software design, and technology consulting services. The Complainant, through its affiliates, licensees, predecessors, and/or successors, asserts that it began using its BROADCOM trade mark at least as early as November 7, 1994. It owns several United States trade mark registrations for the BROADCOM mark including United States trade mark registration number 2392925, registered on October 10, 2000.

The disputed domain name was registered on March 1, 2023, and resolves to a website which appears to offer IT solutions and services including cloud services, cyber security, and various software design and support services although the website appears to be still in development. Although the headquarters are stated to be in "Loss Angless California St", the telephone number has a United Kingdom IDD code, and the contact email address is stated as "hello@email.com".

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

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

The Complainant contends that it has satisfied each of three elements required under the Policy for a transfer of the disputed domain name.

The Complainant submits that it owns registered trade mark rights in the BROADCOM mark as outlined above and that the disputed domain name wholly incorporates its mark and is therefore confusingly similar to it. The Complainant says that the addition of the descriptive term "solution" is not a distinguishing element in the disputed domain name and does not prevent a finding of confusing similarity.

The Complainant confirms that the Respondent is not a licensee of the Complainant nor is the Respondent otherwise authorised to use the Complainant's BROADCOM mark for any purpose. It asserts that the Respondent is not commonly known as "Broadcom Solution" and does not offer any *bona fide* goods or services at the website to which the disputed domain name resolves, including the Respondent's purported web development, digital marketing, and/or call center services, but rather it says that the Respondent's purported services are illegitimate and a scam. It notes that the website does not provide a physical address, that the blog posts have the same date and that the "Book Now" link is inactive.

Even if the Respondent is offering *bona fide* goods or services under the disputed domain name, the Complainant says that the Respondent has no legitimate interest in the disputed domain name because the Respondent is intentionally trading on the goodwill attaching to the Complainant's trade mark in order to attract Internet users looking for the Complainant's goods and/or services to the Respondent's website for its own commercial gain. The Complainant maintains that simply by registering the disputed domain name incorporating the Complainant's trade mark in its entirety and then purportedly offering related services, the Respondent has demonstrated a knowledge of with the Complainant's well-known brand and business. None of this, says the Complainant, is consistent with the Respondent having rights or legitimate interests in the disputed domain name.

The Complainant notes that the Respondent registered the disputed domain name almost three decades after the Complainant's first use of the BROADCOM mark. It says that in these circumstances and considering that the Respondent's website offers services related to the Complainant's services, then the Respondent must have been aware of the Complainant's mark and business and purposefully registered the disputed domain name to take unfair advantage of the goodwill associated with the Complainant's BROADCOM trade mark.

As far as use in bad faith is concerned, the Complainant submits that the Respondent does not appear to offer any *bona fide* goods or services from the website to which the disputed domain name resolves. As noted above, it says that the lack of *bona fide* contact details and the fact that various elements of the website are inactive, or incomplete, is not consistent with a *bona fide* offering of goods and services. Even if the Respondent was offering *bona fide* services, the Complainant says that in the circumstances it is apparent that the Respondent has registered and used the disputed domain name in bad faith to intentionally attract for commercial gain Internet users to its website by creating a likelihood of confusion with the Complainant's BROADCOM mark in terms of paragraph 4(b)(iv) of the Policy.

The Complainant also submits that the Respondent's use of a privacy service to mask its identity further reinforces an inference of bad faith.

## **B. Respondent**

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

## **6. Discussion and Findings**

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

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trade mark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trade mark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the entirety of the Complainant's BROADCOM mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms such as "solution" may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Based on the available record, the Panel finds the first element of the Policy has been established.

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

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult task of "proving a negative", requiring information that is often primarily within the knowledge or control of the

respondent. As such, where a complainant makes out 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 (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

The Complainant has submitted that the Respondent is not a licensee of the Complainant nor is the Respondent otherwise authorized to use the Complainant's BROADCOM mark for any purpose. It has also asserted that the Respondent is not commonly known by the terms "broadcom solution" or related terms and does not offer any *bona fide* goods or services at the website to which the disputed domain name resolves, including the Respondent's purported web development, digital marketing, and/or call center services. The Complainant has noted that the website does not provide a physical address, that the blog posts have the same date and that the "Book Now" link is inactive.

The Complainant has also submitted that even if the Respondent is offering *bona fide* goods or services under the disputed domain name, that it has no legitimate interest in the disputed domain name because the Respondent is intentionally trading on the goodwill attaching to the Complainant's trade mark in order to attract Internet users looking for the Complainant's goods and/or services at the Respondent's website for its own commercial gain. There is nothing on the record to suggest that the Respondent is making a legitimate noncommercial or fair use of the disputed domain name.

Having reviewed the available record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant's *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

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

The disputed domain name was registered in 2023, decades after the Complainant's first use and registration of the BROADCOM mark. The BROADCOM mark is distinctive and enjoys a considerable goodwill and reputation in the United States. The Respondent, based in that jurisdiction, has used the disputed domain name incorporating the BROADCOM mark, to resolve to a website from which it appears to offer IT goods or services, and the Panel finds it more likely than not that the Respondent was aware of the Complainant's mark when it registered the disputed domain name.

Under paragraph 4(b)(iv) of the Policy there is evidence of registration and use of the disputed domain name in bad faith where the Respondent has used the disputed domain name to intentionally attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's trade marks as to the source, sponsorship, affiliation, or endorsement of the website.

It is apparent that the Respondent has registered and used the disputed domain name containing the Complainant's BROADCOM mark to intentionally attract for commercial gain Internet users to its website, from which it purports to offer IT goods and services, by creating a likelihood of confusion with the Complainant's BROADCOM mark as to the ownership or endorsement or affiliation of the website to which the disputed domain name resolves in terms of paragraph 4(b)(iv) of the Policy. The Panel notes from an independent search that the Complainant operates the domain name <broadcomsolutions.com>. The fact that the disputed domain name differs from the Complainant's domain name <broadcomsolutions.com> only by the omission of the letter "s" on the word "solution" and that the Respondent has used a privacy service to mask its identity only reinforces the Panel's view of the Respondent's bad faith.

Based on the available record and absent of any response from the Respondent, the Panel finds that the Complainant has established the third element of the Policy.

## **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 <broadcomsolution.com> be transferred to the Complainant.

*/Alistair Payne/*

**Alistair Payne**

Sole Panelist

Date: December 6, 2023