

ADMINISTRATIVE PANEL DECISION

Blue Yonder Group, Inc. v. Hasan Ahmed
Case No. D2024-2663

1. The Parties

The Complainant is Blue Yonder Group, Inc., United States of America (the “United States”), internally represented.

The Respondent is Hasan Ahmed, Bangladesh.

2. The Domain Name and Registrar

The disputed domain name <blueyonder-inc.com> is registered with Metaregistrar BV (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 28, 2024. On July 1, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 1, 2024, 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 (John Doe) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 5, 2024, 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 10, 2024.

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 July 15, 2024. In accordance with the Rules, paragraph 5, the due date for Response was August 4, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 13, 2024.

The Center appointed Nayiri Boghossian as the sole panelist in this matter on August 15, 2024. 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 offers goods and services such as computer software, business consultancy and database management related to supply and demand chains. The Complainant provides its services under the trademark BLUE YONDER and owns many trademark registrations such as:

- United States registration No. 5251202, registered on July 25, 2017;
- European Union registration No. 12084836, registered on January 20, 2014;
- European Union registration No. 18115791, registered on May 22, 2020.

The Complainant owns a number of domain names incorporating the trademark BLUE YONDER such as <blueyonder.com>, <blueyonder.io> and <blueyonder.ai>.

The disputed domain name was registered on December 17, 2023, and resolves to a webpage displaying the Complainant's trademark, logo and similar text as that found in Complainant's website.

5. Parties' Contentions

A. Complainant

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

Notably, the Complainant contends that the domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights. The Complainant contends that the disputed domain name is virtually identical to the Complainant's official domain name blueyonder.com as it incorporates the Complainant's trademark in its entirety.

The disputed domain name is a virtual clone of the Complainant's website with unauthorized use of the Complainant's trademark. Also, images and text from the Complainant's website is being used.

The Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name. There is no record of the Respondent offering goods or services using the name BLUE YONDER. The Respondent is using the disputed domain name in order to divert customers away from the Complainant. It has replaced the Contact links so that customers submit communication to the Respondent. As such, the Respondent is attempting to mislead customers into believing that the Respondent or the domain name is affiliated with the Complainant.

The Complainant contends that the disputed domain name is registered and is being used in bad faith. Bad faith is evidenced through cloning most of the Complainant's website. The Respondent had actual knowledge of the Complainant's trademark. The cloning demonstrates the Respondent's intent to mislead consumers into mistakenly contacting Respondent. Even the copyright notices were maintained. The "Contact" page was changed.

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 trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

The Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the 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 here, "-inc" 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.

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.

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.

The Panel notes that the disputed domain name resolves to a website using the Complainant's mark, logo, images and text. Panels have held that the use of a domain name for illegal activity here, claimed impersonation/passing off, can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

The Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

In the present case, the Panel notes that the Respondent is attempting to pass off as the Complainant by using the latter's trademark, logo, images and text on its website, and by replicating the overall structure and feel of the Complainant's website.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

Panels have held that the use of a domain name for illegal activity here, claimed, impersonation/passing off, constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy. 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 <blueyonder-inc.com> be transferred to the Complainant.

/Nayiri Boghossian/

Nayiri Boghossian

Sole Panelist

Date: August 26, 2024