

## **ADMINISTRATIVE PANEL DECISION**

Brainly Sp.zo.o v. Registration Private, Domains By Proxy, LLC  
and Beslogic Inc.

Case No. DAI2023-0045

### **1. The Parties**

The Complainant is Brainly Sp.zo.o, Poland, represented by CSC Digital Brand Services Group AB, Sweden.

The Respondent is Registration Private, Domains By Proxy, LLC, United States of America (the "United States"), and Beslogic Inc., Canada, represented by Therrien Couture Joli-Coeur, Canada.

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

The disputed domain name <brainly.ai> is registered with 1API GmbH (the "Registrar").

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on November 14, 2023. On November 16, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 16, 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 (Yannick Bessette of BesLogic Inc) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 28, 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 November 30, 2023. In response to a request for clarification from the Center, the Complainant filed a further amended Complaint on December 4, 2023.

The Center verified that the Complaint together with an 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 December 6, 2023. In accordance with the Rules, paragraph 5, the due date for Response was December 26, 2023. The Response was filed with the Center on December 28, 2023 identifying the Respondent as Beslogic Inc, Canada as the underlying registrant of

the disputed domain name. On January 5, 2024, the Complainant submitted an unsolicited supplemental filing.

The Center appointed Warwick A. Rothnie as the sole panelist in this matter on January 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 was incorporated in 2009. It provides an educational platform primarily for asking and answering questions by students around the world through which students, parents, and teachers can assist others across a range of subjects including English, mathematics, science, and social studies. When the Complaint was filed, the platform also offered tutoring using artificial intelligence (“AI”) as well as live tutor feedback. It appears from Annex 8.3 to the Complaint that the Complainant began promoting tools specifically identified as “AI-powered” tools to its service in or about September 2023.

The Complainant is estimated to have market capital of approximately USD 3 million.

The platform operates from a large number of domain names including, since 2012, <brainly.com>. The platform now features prominently on the landing page promotion of the Complainant’s AI functionality. In November 2020, the Complainant’s platform reported 15,000,000 daily users with 200,000 new registrations daily. The Complaint also includes evidence that the Complainant’s primary website averaged over 19 million visits per month in the period July to September 2023. (It is not immediately clear how this figure is reconciled with the figures from November 2020).

In addition to its online platform, the Complainant has also produced a mobile app for both the iOS and Android platforms. According to the Complaint, there have been more than 100 million downloads of these apps.

In the period July to September 2023, Canada was the second highest country for traffic to the Complainant’s website. In December 2023, the Complainant had 499,288 unique users of its website and mobile apps from Canada.

The Complaint includes evidence that the Complainant is the owner of five registered trademarks:

- (a) United Kingdom Registered Trademark No. UK00912845632, BRAINLY and device (a funnel with the characters A, 8 and π), which was filed on May 2014 and registered on October 23, 2014 in respect of a range of goods and services in International Classes 9, 38, 41, and 42;
- (b) three United States Registered Trademarks Nos 5,104, 981 to 5,104,983, BRAINLY, which were filed on May 11, 2016 and registered in the Principal Register on December 20, 2016 in respect of goods and services in, respectively, International Classes 9, 38, and 41; and
- (c) European Union Trademark (EUTM) No. 018126263, BRAINLY (figurative), which was registered on January 21, 2020 with effect from September 20, 2019 in respect of a range of computer-related, telecommunications and educational and entertainment services in International Classes 9, 38, and 41.

The Complainant also has an International Registration, No. 1688390, BRAINLY, which was registered on September 2, 2022, also for a range a range of computer-related, telecommunications and educational and entertainment services in International Classes 9, 38, and 41. The International Registration designates, amongst other things, Canada. The application for registration in Canada, however, is still pending.

The disputed domain name was registered on February 24, 2022.

When the Complaint was filed it resolved to a parking page bearing in the top left hand corner the GoDaddy trademark. Centered at the top of the page was the heading / text:

“brainly.ai”

“is parked free, courtesy of GoDaddy.com”

“Get this domain”. (From the Panel’s own web-browsing, this is a link to the GoDaddy broker service offering to attempt to purchase the registration. It does not expressly offer the disputed domain name for sale.)

Underneath this text was a panel for “show related topics” which featured what appear to be pay-per-click (PPC) links for “Behaviour Graduate Program”, “Vena Software” and “Transcranial Magnetic Stimulations Tms”.

The Respondent, Beslogic, is a Canadian company based in Montreal, Quebec. According to the Response, it is currently doing business in Canada and the United States. A press release it issued in June 2021 described it as specializing in the development of AI technologies and custom software. According to the press release, the Respondent had been working with Pratt & Whitney Canada since to 2018 to help that company implement agile methodology concepts and best practices in various digital transformation projects.

## **5. Discussion and Findings**

Paragraph 4(a) of the Policy provides that in order to divest the Respondent of the disputed domain name, the Complainant must demonstrate each of the following:

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

Paragraph 15(a) of the Rules directs the Panel to decide the Complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable.

As indicated above, the Complainant has submitted an unsolicited supplemental filing. Apart from documents requested by the Panel pursuant to paragraph 12 of the Rules, neither the Policy nor the Rules expressly provide for supplemental filings. Their admissibility is therefore in the discretion of the Panel bearing in mind the requirements under paragraph 10 of the Rules to ensure that the proceeding is conducted with due expedition and both parties are treated equally, with each party being given a fair opportunity to present its case.

As the Registrar identified the registrant as only Domains By Proxy and the Response disclosed the underlying registrant as a company in Canada and advances arguments based on the Respondent’s presence in Canada, the Panel is prepared to accept the supplemental filing which provides some further information directed to the Complainant’s Canadian market.

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

The first element that the Complainant must establish is that the disputed domain name is identical with, or confusingly similar to, the Complainant's trademark rights.

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.

There are two parts to this inquiry: the Complainant must demonstrate that it has rights in a trademark at the date the Complaint was filed and, if so, the disputed domain name must be shown to be identical or confusingly similar to the trademark.

The Complainant has proven ownership of a number of registered trademarks for BRAINLY in the United States and figurative registrations for BRAINLY in the European Union and the United Kingdom.

In undertaking the comparison, it is usual to disregard the design elements of a trademark under the first element as such elements are generally incapable of representation in a domain name. Where the textual elements have been disclaimed in the registration or cannot fairly be described as an essential or important element of the trademark, however, different considerations may arise. See for example, [WIPO Overview 3.0](#), section 1.10. The figurative elements of the Complainant's trademarks are not so dominating that the verbal element cannot be considered an essential or important part of the trademarks in this case. Accordingly, it is appropriate to apply the usual rule.

It is also appropriate in the present circumstances to disregard the generic Top Level Domain ("gTLD") extension as a functional aspect of the domain name system. [WIPO Overview 3.0](#), section 1.11.

On this basis, the disputed domain name is identical to the Complainant's trademark.

The Respondent contends that this element under the Policy is not satisfied on two grounds. First, it points out that the Complainant operates in the educational field while the Respondent operates in marketing and "AI research and development for businesses". Secondly, the Respondent points out that the Complainant does not have a registered trademark in Canada.

These contentions are misplaced. The second stage of this inquiry simply requires a visual and aural comparison of the disputed domain name to the proven trademarks. This test is narrower than and thus different to the question of "likelihood of confusion" under trademark law. Therefore, questions such as the scope of the trademark rights, the geographical location of the respective parties, the date they were acquired and other considerations that may be relevant to an assessment of infringement under trademark law are not relevant at this stage. Such matters, if relevant, may fall for consideration under the other elements of the Policy. See e.g., [WIPO Overview 3.0](#), sections 1.1.2 and 1.7.

Accordingly, the Panel finds that the Complainant has established that the disputed domain name is identical with the Complainant's trademark and the requirement under the first limb of the Policy is satisfied.

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

The second requirement the Complainant must prove is that the Respondent has no rights or legitimate interests in the disputed domain name.

Paragraph 4(c) of the Policy provides that the following circumstances can be situations in which the Respondent has rights or legitimate interests in a disputed domain name:

- (i) before any notice to [the Respondent] of the dispute, [the Respondent's] use of, or demonstrable preparations to use, the [disputed] domain name or a name corresponding to the [disputed] domain name in connection with a bona fide offering of goods or services; or
- (ii) [the Respondent] (as an individual, business, or other organization) has been commonly known by the [disputed] domain name, even if [the Respondent] has acquired no trademark or service mark rights; or
- (iii) [the Respondent] is making a legitimate noncommercial or fair use of the [disputed] domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

These are illustrative only and are not an exhaustive listing of the situations in which a respondent can show rights or legitimate interests in a domain name.

While 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 often impossible 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. 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 Respondent registered the disputed domain name well after the Complainant began using its trademark and also after the Complainant had registered its trademark.

It is not in dispute between the parties that the Complainant has not authorised the Respondent to use the disputed domain name. Nor is the Respondent affiliated with it.

The disputed domain name is not derived from the Respondent's name. Nor is there any suggestion of some other name by which the Respondent is commonly known from which the disputed domain name could be derived. The Respondent does not claim to hold any trademarks for the disputed domain name.

The disputed domain name is not directly descriptive of the services the Respondent provides.

The use of the disputed domain name to generate revenue through PPC links does not qualify as a legitimate noncommercial or fair use for the purposes of paragraph 4(c)(iii) of the Policy, all the more so where some of the PPC links relate to the provision of educational services unrelated to the Complainant's service. See e.g., [WIPO Overview 3.0](#), section 2.9.

These matters, taken together, are sufficient to establish a prima facie case under the Policy that the Respondent has no rights or legitimate interests in the disputed domain name.

The Respondent states it has not used the disputed domain name yet but intends to use it with the aim of offering goods and services in the field of marketing, automation, numeric transformation, and/or human resources. Pointing out that its current business and this proposed use are unrelated to the educational field which the Respondent characterises the Complainant as operating in, the Respondent says it has no intention of targeting students or parents and teachers and registered the disputed domain name without intent to misleadingly divert consumers or tarnish the Complainant's trademark.

The Panel is unable to accept this explanation on the record in this case. First, in the absence of use, paragraph 4(c)(i) requires “demonstrable preparations for use”. As noted in [WIPO Overview 3.0](#), section 2.2, evidence advanced to support such a claim must be assessed pragmatically in light of the circumstances of the case but “clear contemporaneous evidence of bona fide pre-complaint preparations is required”. Mere assertion of a proposed plan is not enough. While the evidence supporting such preparations may be slight,

there must be some supporting evidence. In the present case, however, the Respondent has not advanced any evidence to support its claimed, intended use.

Secondly, accepting that there is evidence supporting the Respondent's claim to be specializing in the development of AI technologies and custom software – for example, through the materials relating to the partnership with Pratt & Whitney, the Respondent is not operating only in Canada but also in the United States, where the Complainant does have registered trademarks in addition to the rights it may have arising from use.

Thirdly, the Respondent states that its business involves developing software using AI related to image enhancement and to consumer services. The Panel is not at all confident that people aware of the Complainant's products in the educational field, of which there appear to be a substantial number around the world, would not link <brainly.ai> with the Complainant. Moreover, the disputed domain name is not geographically limited and the Respondent's development activity appears to fall directly within the scope of the Complainant's Class 9 registrations although in the United States (where the Respondent admits it operates), the registration is more limited to software related to academic and educational fields.

Fourthly, the disputed domain name is parked and providing PPC links, at least some of which appear to take advantage of the association between the Complainant's trademark and the educational field. It may be (the Respondent has not specifically claimed this), that the page and the links are provided by the domain host, GoDaddy. However, it is well-established under the Policy that a registrant is responsible for the use made of the domain name unless the registrant can show that it has taken genuine steps to suppress PPC advertising linked to the Complainant's trademark. See e.g. [WIPO Overview 3.0](#), section 2.9.

Accordingly, the Respondent has not rebutted the prima facie case established by the Complainant and, therefore, the Panel finds the second element of the Policy has been established.

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

Under the third requirement of the Policy, the Complainant must establish that the disputed domain name has been both registered and used in bad faith by the Respondent. These are conjunctive requirements; both must be satisfied for a successful complaint: see e.g., *Burn World-Wide, Ltd. d/b/a BGT Partners v. Banta Global Turnkey Ltd*, WIPO Case No. [D2010-0470](#).

Generally speaking, a finding that a domain name has been registered and is being used in bad faith requires an inference to be drawn that the respondent in question has registered and is using the disputed domain name to take advantage of its significance as a trademark owned by (usually) the complainant.

The Complainant contends that the Respondent can be inferred to have knowledge of the Complainant's trademark as a result of the very long and extensive use of the Complainant's trademark and the fact that the disputed domain name is an exact reproduction of the Complainant's trademark.

The Respondent has not denied knowledge of the Complainant and its trademark. Nor has it explained how it came up with the disputed domain name, which is not directly descriptive of either party's activities or claimed activities.

Rather, the Respondent points out that it uses AI to assist other companies in optimising their processes. The Respondent then says that therefore the Respondent and the Complainant are not competitors and so it has not registered the disputed domain name to disrupt the Complainant's business or to give rise to a likelihood of confusion as to source or some sort of sponsorship or association with the Complainant.

In these circumstances, the Panel infers it was likely that the Respondent was aware of the Complainant's use of BRAINLY as a trademark.

The reasons leading to the non-acceptance of the Respondent's claim to rights or legitimate interests in the disputed domain name therefore also lead to findings of registration and use in bad faith.

As "brainly" is not directly descriptive of the services the Respondent is providing, or claims it intends to provide, it appears likely the Respondent intentionally "borrowed" the term from the Complainant.

The Respondent's arguments based on a claimed non-overlap between the Complainant's rights and the Respondent's planned business also cannot be accepted as a matter of principle and on the facts.

As already noted, the Respondent contends that the Complainant did not have a registered trademark in Canada when the Respondent registered the disputed domain name (and still does not). In addition, the Respondent contends that parties operate in such different spheres that there is no risk of confusion or mistaken association.

There may be circumstances where the parties are operating in such different spheres of activity and/or locations that the risk of confusion or misrepresentation is low. However, the global nature of the Internet and the ease with which someone in one country or field can readily access a website or services offered by another person in another country or field has long been recognised under the Policy.

Here, the Respondent does identify the United States as a main part of its business and the Complainant does have a registered trademark in that country albeit more confined in scope than its European Union and United Kingdom registrations. Furthermore, it is clear the Complainant uses its trademark globally. This includes Canada. Further still, as discussed in Section 5B, it seems likely that the significant public who are aware of the Complainant's trademark will associate the disputed domain name with the Complainant.

As the Complainant contends, the exact reproduction of the Complainant's trademark in the disputed domain name gives rise to a high risk of implied affiliation. Although it appears the Complainant only began promoting specific "AI tutor" tools in September 2023, the article "How Artificial Intelligence Enhances Education" published in March 2017 and included in the Complainant's supplemental filing both discusses the increasing significance of AI applications in the education sector and includes a section, "Enhanced crowd-sourced tutoring", specifically discussing the Complainant's use of machine learning algorithms and AI algorithms to improve and personalise its service provision. So, there is not such a clear line of demarcation between the Complainant's broader educational services and the Respondent's activities or proposed activities.

It appears, therefore, that the Respondent has adopted the Complainant's trademark for the disputed domain name with knowledge to take advantage of the correspondence between the disputed domain name and the trademark either (on the Respondent's claimed intended use) in a field likely to give rise to confusion as to source or sponsorship or, alternatively, to generate revenues through PPC advertising. Taking advantage of the Complainant's trademark in this way is generally found under the Policy to constitute registration and use in bad faith. See e.g., *Osuuspankkikeskus Osk v. RegisterFly.com*, WIPO Case No. [D2006-0461](#); *Jafracosmetics, S.A. de C.V. v. Jafraproducts Admin*, WIPO Case No. [D2006-0416](#); *Volkswagen AG v. Andre Machado*, WIPO Case No. [D2020-2247](#) and *Carrefour SA v. Domain Admin, Whois Privacy Corp.*, WIPO Case No. [D2021-0807](#). In the former case, there is also the risk of dilution or blurring of the Complainant's trademark. See e.g., *Hachette Filipacchi Presse v. Domains by Proxy, LLC / Al-Rahim International*, WIPO Case No. [D2014-1635](#). Accordingly, the Panel finds that the disputed domain name has been registered in bad faith under the Policy.

The use of the disputed domain name in connection with PPC advertising for which the Respondent bears ultimate responsibility and in the absence of positive efforts to avoid free-riding constitutes use in bad faith under the Policy. See e.g., [WIPO Overview 3.0](#), section 3.5.

Accordingly, the Complainant has established all three requirements under the Policy.

## 6. 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 <brainly.ai> be transferred to the Complainant.

*/Warwick A. Rothnie/*

**Warwick A. Rothnie**

Sole Panelist

Date: January 29, 2024