Decision for dispute CAC-UDRP-101582

Case number	CAC-UDRP-101582
Time of filing	2017-07-07 09:21:33
Domain names	bluestarinternational.com

Case administrator

Organization	Iveta Špiclová (Czech Arbitration Court) (Case admin)

Complainant

Organization	BLUE STAR LIMITED

Complainant representative

Organization	Sachin Gupta and Associates

Respondent

Name	- Owen - Purcell -

OTHER LEGAL PROCEEDINGS

The Complainant declares that there are no other legal proceedings that have been commenced or terminated in connection with or relating to the disputed domain name. The Panel is not aware of any such proceedings.

IDENTIFICATION OF RIGHTS

The Complainant has registered a number of trademarks consisting of and relating to the phrase BLUE STAR, under the law of India (e.g. 1281293 in class 42, engineering services; 281416 in class 11, installation etc) and elsewhere (e.g. Community Trade Mark 2502920 in the EU, in respect of BLUE STAR and its logo). The information provided in the Complaint is at times imprecise (e.g. the renewal certificates do not always identify the mark in question), and renewal information is missing in some cases (e.g. the CTM), but an overall conclusion that the Complainant has rights in the mark BLUE STAR is possible. The Panel has had recourse to relevant databases in order to make this finding.

FACTUAL BACKGROUND

Blue Star Limited, the Complainant, is a company registered under Indian law, active in the fields of engineering and manufacturing. The Complainant registered <BLUESTARINDIA.COM> on 4 February 1999 and continues to operate a website at that address, regularly updated with content concerning its operations. The Complainant has provided extensive evidence regarding its advertising of its activities, within which reference is regularly made to <BLUESTARINDIA.COM>.

The Respondent is identified as an individual, with an address in London, United Kingdom, by the Complainant in an

Amended Complaint. The disputed domain name was registered on 9 September 2007.

PARTIES CONTENTIONS

No administratively compliant Response has been filed.

The Panel notes that an e-mail sent to postmaster@bluestarinternational.com was successfully relayed, but that a notice sent to the email address obtained from the Registrar was returned undelivered. It is not known whether written notice was delivered, but the Respondent did not access the online platform.

The Complainant contends that the criteria set out in the UDRP have been met and asks, for the reasons discussed elsewhere in this decision, that the disputed domain name be transferred from the Respondent to it.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy).

As noted above, the Complainant has registered various marks in relation to BLUE STAR.

On the other hand, the Complainant makes an expansive and not wholly persuasive case regarding the uniqueness of the phrase and the existence of common law rights. The Complainant appears unaware of the great number of other marks containing the text BLUE STAR in a range of industries and trademark classes around the world.

On balance, the addition of the text 'INTERNATIONAL' to the phrase 'BLUE STAR' to form the domain name <BLUESTARINTERNATIONAL.COM> does have the potential to be confusingly similar to the mark BLUE STAR, especially in light of the demonstrably transnational activities of the Complainant. This is consistent with the established jurisprudence under the UDRP, e.g. WIPO D2017-0287 <ALLIANZKENYA.COM> and CAC 101406 <JCDECAUXINTERNATIONAL.COM> (the latter concerning the string INTERNATIONAL added to a trademark).

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant has not, to the satisfaction of the Panel, shown the Respondent to have no rights or legitimate interests in respect of the disputed domain name (within the meaning of paragraph 4(a)(ii) of the Policy).

The Complainant has made a number of assertions that, in the opinion of the Panel, are not supported by evidence. The Complainant contends that 'It is obvious that the Respondent is a cyber squatter' and refers to the use of an identity protection service, as was indeed the case at the point in time that the original (unamended) Complaint was made. However, identity protection services can be used for a number of purposes, legitimate or illegitimate. On the other hand, using of identity protection service in connection with not responding to the complaint can be seen as an indication of bad faith (see paragraph 3.6 of the WIPO Jurisprudential Overview 3.0 for more details). Next, the Complainant contends that the Respondent 'has registered the same simply to sell it to the Complainant or its competitors', but the Complaint does not contain any evidence of this nature. Indeed, as set out under bad faith, below, the Complaint is erroneous in the observations it makes on the use of the disputed domain name. This line of argument must therefore be dismissed.

The Panel notes that a UK registered company (03480123) by the name of BLUESTAR INTERNATIONAL appears active in the same field ('media representation services') as the material presented on the website at the disputed domain name, over the period of 10 years, and can reasonably conclude that the website is and has been operated by this company. The sources for this finding are the database of UK registered companies (Companies House) and the Internet Archive. Although the Respondent has not participated in the proceedings, this is at least evidence pointing towards the applicability of paragraphs 3(c)(i), that is, use in connection with a bona fide offering.

The Panel therefore concludes that the Complainant has not provided sufficient information to demonstrate, on the balance of probabilities, that the Respondent has no rights or legitimate interests in the disputed domain name.

BAD FAITH

The Complainant has not, to the satisfaction of the Panel, shown the disputed domain name has been registered and is being used in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy).

The Complainant's central case is that registration was 'primarily for the purpose of disrupting the business of the Complainant' and that no content has been provided by the Respondent. Once more, allegations regarding 'blackmail' and the like are made without a scintilla of evidence, and must be disregarded by the Panel as unfounded and wholly speculative.

The most relevant aspect of paragraph 4(a)(iii) of the Policy appearing to be relevant is that set out in paragraph 4(b)(iv) of the Policy: that the Respondent has 'intentionally attempted to attract, for commercial gain, Internet users to [the] web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of [the] web site or location or of a product or service on [the] web site or location'. This appears to be the strongest case, once the unfounded material is set aside.

The Panel notes that a website is in fact in operation at the disputed domain name (identified in the first instance by the screenshot provided by the Case Administrator during the process of attempting to contact the Respondent, and verified thereafter). The website currently provides basic information on activity in the field of marketing / brand management and includes examples of work, and a contact form. There is no evidence that a user would draw any association with the very different activities of the Complainant.

The Complainant has argued that '(it) then searched Internet Archive Wayback Machine in order to find out the period since when the website has come into operation and was further surprised to see that there has been no activity on the impugned domain name since its inception'. An annex sets out the purported results of this search. However, the Internet Archive Wayback Machine does contain records of the activity at the disputed domain name, including websites of various designs concerning the activities of Blue Star International (the UK marketing company) throughout this period. This submission is therefore dismissed as having been made in error.

PROCEDURAL FACTORS

The Panel is satisfied that all procedural requirements under UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

The Panel notes that a certain volume of material not relevant to UDRP proceedings was included in the Complaint, for instance concerning the ISO certification of its manufacturing facilities. Complainants are reminded that an effective Complaint need not be a lengthy Complaint.

Notice is taken of the general principle, under rules 10 and 15, that limited research by a Panel is appropriate where resource is made to publicly accessible databases; see WIPO Jurisprudential Overview 3.0, paragraph 4.8; see further WIPO D2016-0362 <GEKKO.COM> (use of Internet Archive).

PRINCIPAL REASONS FOR THE DECISION

The Panel has reviewed the Complaint, supplemented by its own investigations where there was an inconsistency between the Complaint and other aspects of the Case File, or where the Complaint omitted information that could be obtained from official databases. The Panel finds that, contrary to the assertion of the Complainant, a website is and has been operation at the disputed domain name throughout the period of registration, providing what appears to be accurate information regarding the activities of a company with the same name as that used in the disputed domain name. There is no evidence of bad faith whatsoever, and indeed a very wide range of uses of the phrase BLUE STAR in commerce can be observed - by the Complainant, by (it appears) the Respondent, and by many others.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Rejected

AND THE DISPUTED DOMAIN NAME(S) IS (ARE) TO BE

1. **BLUESTARINTERNATIONAL.COM**: Remaining with the Respondent

PANELLISTS

Name	**Dr Daithi Mac Sithigh**

DATE OF PANEL DECISION 2017-08-20

Publish the Decision