



CANADIAN INTERNATIONAL INTERNET DISPUTE RESOLUTION CENTRE
DOMAIN NAME DISPUTE
ADMINISTRATIVE PANEL
DECISION

CIIDRC case number:	15628-UDRP	Decision date: 6 th December, 2021
Domain Name:	< bbdowestafrica.com >; < ddbLAGOS.com >; < casersgroup.com >	
Panel:	Dhandapani Saravanan	
Complainant:	BBDOWestAfrica	
Complainant's representative:	Chidimma Keke	
Respondent:	Abiola Abioye	
Respondent's representative	STEPHEN WILLOUGHBY	

1. PROCEDURAL HISTORY

The procedural history of this case set out in a letter from the Canadian International Internet Dispute Resolution Centre to the Panel is as follows:

Pursuant to the Internet Corporation for Assigned Names and Numbers (ICANN) Uniform Domain Name Policy ("the Policy") and the Rules of ("the Rules") and the CIIDRC Supplemental Rules ("the Supplemental Rules"), Complainant filed a Complaint in English language with the Canadian International Internet Dispute Resolution Centre ("CIIDRC") and elected to have the dispute in question to dealt with by a single member panel.

CIIDRC transmitted by email to the Registrar, Wild West Domains, LLC, a request for registrar verification with the disputed domain names.

The Registrar, Wild West Domains, LLC responded advising of the identity of the Respondent and further informed that the disputed domain names were placed on a Registrar LOCK.

- October 29, 2021 CIIDRC, as Service Provider, confirmed compliance of the Complaint and commencement of the dispute resolution process.
- October 29, 2021 Pursuant to UDRP Rule 4 and Supplemental Rule 5, CIIDRC notified the Respondent of the administrative proceeding and forwarded a Notice of commencement of the administrative proceedings along with the Complaint to the Respondent.
- November 18, 2021 The due date for filing Response by the Respondent and that the Respondent has filed its Response. The Respondent has elected for a Panel consisting of a single-member.
- November 25, 2021 CIIDRC has sent an email to the Panelist seeking his free of conflict and availability to act as Panelist in the UDRP dispute.
- November 25, 2021 Panelist has sent an email to CIIDRC expressing his consent and confirming his availability and free of conflict.
- November 26, 2021 CIIDRC sent an email appointing the undersigned as a single-member Panel.
- November 27, 2021 CIIDRC has sent emails to the Panelist along with the Statement of Acceptance and Declaration of Impartiality and Independence to be submitted; Complaint and Annexes; and Response and Annexes.
- November 29, 2021 Panelist sent an email to CIIDRC along with Statement of Acceptance and Declaration of Impartiality and Independence.
- December 03, 2021 CIIDRC has sent an email to Panelist informing that the Complainant wishes to file additional submissions.

December 03, 2021 Panelist sent an email to the CIIDRC stating that Panelist has considered receiving the additional submission on file and informing CIIDRC to share the same to Respondent enabling them to say their reply submissions within the time prescribed by the CIIDRC.

December 03, 2021 CIIDRC has sent an email to Panelist forwarding the additional submissions of the Complainant.

December 03, 2021 The CIIDRC has sent an email to the Panel forwarding the reply of the Respondent to the additional submissions of the Complainant.

The Domain Name <bbdowestafrica.com> was registered on May 18, 2021.

The Domain Name <ddblago.com> was registered on November 01, 2021

The Domain Name <casersgroup.com> was registered on May 18, 2021

This matter is conducted pursuant to the Uniform Domain Name Dispute Resolution Policy (the Policy) and the Rules for Uniform Domain Name Dispute Resolution Policy (the Rules) of the Internet Corporation for Assigned Names and Numbers (ICANN).

1. FACTS ALLEGED BY THE PARTIES

The Complainant states inter-alia that the Complaint is consolidated because all the three domains are for the agencies that belong to CASERS Group; the Complainant further states that CASERS Group is an investment company that has its sub agencies called BBDOWESTAFRICA and DDBLAGOS and they noticed that their exited staff used their personal emails to replace the registrant contract for their domains and they have lost access; a complaint was raised with change@secureserver.net (Annex 10) and they were referred to raise a domain dispute; on 18th May, the <bbdowestafrica.com> domain expired and they lost access to their email communication system and website (Annex 8b) which has greatly impacted their digital image as clients were unable to reach them and led them to purchase <bbdowestafrica.co> domain to

use as the interim; they have been unable to launch their website due to inability to access <bbdowestafrica.com>; still referencing Annex 10, they were unable to access <ddblago.com> and <casersgroup.com> which would expire on 1st November, 2021 and led to another disruption of services.

2. CONTENTIONS OF THE PARTIES

- **(A) Complainant**

The Complainant submits that:

(i) The Domain Name(s) is/are identical or confusingly similar to a trademark or service mark in which the Complainant has rights:

The domain names in reference were registered by them for the purpose of identifying with their brand on the World Wide Web. BBDO and DDB are a global brand and as the West Africa affiliate these, domain names were registered with the intent to integrate their email system for easy communication with their partners, clients and vendors, for publishing of their website which show cases their services in media and communications (Annex 6 [a-c] and copies of CAC). The domain names were registered to be used for services as referenced in its CAC documents as previously referred.

(ii) The Respondent has no rights or legitimate interests in respect of the domain name(s) that is/are the subject of the Complaint:

Domain Registrars give a grace period after expiration before making domains available for renewal; they noticed that as soon as their domain expired on 18th May, 2020 the Respondent renewed it which showed that this was a pre-planned; they actively were communicating with <bbdowestafrica.com> till the disruption (Annex. 8B) that shows integration with Microsoft 365; they are still actively using <casersgroup.com> however once it expires on the 1st of November, 2020 they would not be able to renew and thereby losing access to email communication with their clients; they have lost access to <ddblago.com> and unable to integrate it with Microsoft 365; all the domain names were fully registered and functional by the

Complainant until they noticed the hijack on the 18th and have not been able to access any of the domains.

(iii) The domain name(s) has been registered and being used in bad faith:

The domain <bbdowestafrica.com> as can be seen in Annex. 1 was due to expire on the 18th of May, 2021 and it got renewed same day however, they do not have access to it thereby validating that this was renewed by someone else; they also are unable to have access to <casersgroup.com> which is due to expire on the 1st of November, 2021.

(iv) Additional submissions of the Complainant:

There is no contract / documentation that mentioned where they awarded the respondent the right to purchase a domain for them and hold onto it; during the dispute on MIMECAST payment, there was no time they were informed that their access to the corporate domains were in their custody; they did write them a letter of disengagement and this information was withheld; the portal carries the name of a former staff and Head of IT who is Abiola, hence, how then does it mean the portal was not owned by their organization.

• **(B) Respondent**

The Respondent submits that:

(i) OTA Network Solution is a sister company to NOL Freedom Limited. OTA Network Solution was engaged by DDB Lagos to provide the following service respectively; A. Technical support for their Microsoft Exchange system (This commenced on 2007) B. Email security service (This was added to the item A in 2013). OTA Network registered the said domains to ensure the complainant can communicate using their Microsoft Exchange system. While the email security service was backend and provided by Mimecast/Groovies. A copy of the service contract attached. DDB Lagos Email Security contract runs from 23rd of March of previous year to 22nd of March, of the next year. Part of the contract reads that "*in the event that the client needs to terminate the service, the service provider needs to be informed 30 days before the present contract expires. Payment for the service shall be fully paid before the new term begins but not*

later than 30 days after the new term begins". On Feb 2020, the respondent wrote to DDB Lagos to confirm if their contract should be renewed and they said yes. Mr. Abioye Abioye who was IT Manager then and also Bolatan Adewunmi. Both acted in the capacity for DDB Lagos (they were staff of DDB Lagos). While they also informed them of downgrading their total user count from 80 to 70 users count. The present term expires on 23-March, 2020, and their operational manager Jonathan oyovwevotu reached out to the Respondent to renew their service that payment for the subscription would be made when full office operation resumed as this was in the heat of the covid-19 pandemic. As a service oriented company and considering the Respondent's past business relationship, the Respondent took his word as a bond from DDB Lagos. The same Jonathan Oyovwevotu pleaded for more time to enable their new management team settle down and also their intention to engage a new firm to commence providing MS Exchange support service. He requested the Respondent to provide all information required by the new team to take over which the Respondent did while assuring that payment for Email Security service would be made. The invoiced amount was \$7,755.30 while 50% of that was paid after so many reminders emails/calls were made in June 29, 2020 but defaulted to pay the balance. (emails correspondences were attached). While the Respondent's sister company (OTA Network Solution) can technically hold on to the domain names if need be because they registered the domain names as part of their recommended solution when they commenced providing MS-Exchange support in 2007 to DDB Lagos. The complainant would recollect that their official namespace was lagos.ddb.com. This was a child domain to the franchise business they were affiliated to in the USA. Due to the constituency downtime being experienced and the reluctance of ddb.com DNS administrator in effecting any DNS record creation/modification hence the creation of ddblagos.com and casersgroup.com. The Respondent is willing to persuade their sister company to release the domains, provided DDB Lagos is willing to pay for the damages they have incurred such as the remaining unpaid subscription and compensation for their reputation that was marred with their service provider (Mimecast/Groveis) as they have lost some business opportunities since they were unwilling to extend or grant OTA Network Solution any credit facility to them and poor response to their business information enquiries. While the Respondent acknowledge DDB Lagos has the right to

determine service or technology partners they associate with but need to do so in-line with the SLA guiding such relationships and not totally ignoring service provider notification/reminder for payment. This is impunity which is not in line with professional business ethics. Instead of communicating with their sister company, to ensure they continue to use their bbdowestafrica.com domain, they went to register a new namespace, all in the attempt to avoid paying for services they have enjoyed. After all, they operate in a contract based business domain and know better the approach to disengage from a service provider if they do not want to continue the business relationship. The domain names are property of NOL FREEDOM /OTA NETWORK SOLUTION, these were registered by NOL FREEDOM /OTA NETWORK SOLUTION. CASERS GROUP cannot lay credence to the domain names, and they did not register the domain name. Apart from the three disputed domain names in reference, the Respondent has also included another domain name <bbdowestafricalagos.com>

(ii) The Respondent has rights or legitimate interests in respect of the domain name(s) that is/are the subject of the Complaint.

The domain names were registered to provide and ensure DDB Lagos and their other companies can communicate seamlessly on the internet with their clients as long as it is OTA Network Solution that is providing the technical support and email security service. This the Respondent has kept faith to it. Since the domain was registered by them and it is a tool in delivering their service to their client nor have they violate any law by renewing it.

(iii) Additional Submissions:

It is understandable that Mrs. Chidimma was not in the organization when the Respondent had an engagement with the firm hence, the Respondent will excuse her. The Respondent hold no grudge for wanting to change their service provider while they are willing to offer Complainant the white flag of releasing the domains however, payment for services incur/enjoyed should be paid for in full. It is unethical to use a service and refusing to pay for it. The domain name <ddblagos.com> and <casersgroup.com> were part of their resolution to their email communication challenge. The namespaces were registered, email security and continuity

service were subscribed to and their on-premise mail server was changed from Mdaemon Server to Microsoft Exchange Server / Active Directory. They acknowledged the right of DDB to disengagement OTA Network from however they smell some foul play when they reminded DDB management of the need to complete the payment for the current term of MIMECAST subscription and Mr. Jonathan Oyovwevotu suddenly went mute. The Complainant's new IT Manager named Joy Emedom was not forthcoming with a position on the payment of the Respondent's balance even after providing support to her when their newly engaged consultant was lost of what to do. The domain was registered as part of Respondent's resolution to resolve email challenges with the firm hence the need to use the details of their IT manager for the Whois database in the event that someone needs to communicate with them due to activities that might result from the use of the domain namespace.

- **(C) Remedy Sought**

The Complainant requests the Panel that the Domain Names **<bbdowestafrica.com>; <ddblago.com>; and <casersgroup.com>** be transferred to the Complainant.

3. DISCUSSION AND FINDINGS

3.1 Requirements

In accordance with Paragraph 4 of the Policy, the onus is on the Complainant to prove:

1. That the Domain Name is Identical or Confusingly Similar to a trademark or service mark in which the Complainant has rights;
2. That the Registrant has no rights or legitimate interests in the Domain Name; and
3. That the Domain Name has been registered and being used in bad faith.

The Panel will consider each of these requirements in turn.

3.2 Analysis

4.2.1 That the Domain Names are Identical or Confusingly Similar to a Mark in which the Complainant has Rights

i) Paragraph 4(a)(i) of the Policy requires the Complainant to prove that the disputed Domain Name is identical and confusingly similar to a trade mark or service mark in which complainant has rights. The requirements are in two folds. The first requirement is that the Complainant should have right in a particular trademark or service mark and that the second requirement is that the domain name in reference should be identical or confusingly similar to such trade mark or service mark. According to the Complainant that CASERS Group is an investment company that has its sub agencies called BBDOWESTAFRICA and DDBLAGOS. Annex. 6 (a-c) being CAC documents filed by the Complainant proves that they registered the companies under the name and style of "BBDOWESTAFRICA Limited", "CASERS INVESTMENT LIMITED" and "DDB CASERS LIMITED". The domain names in dispute are **<bbdowestafrica.com>; <ddblago.com>; <casersgroup.com>**. All the three domain names entirely consist of the business name of the Complainant's sub agencies, i.e., BBDOWESTAFRICA, DDBLAGOS falling under its group head being CASERS. The domain names in reference resolves and designates to the business names of the Complainant. Further, the Respondent is not identified by the names in reference under the disputed domain names.

(ii) As the disputed domain names **<bbdowestafrica.com>; <ddblago.com>; <casersgroup.com>** composes **<bbdowestafrica>; <ddblago>; <casersgroup> and <.com>**. **<bbdowestafrica>; <ddblago>; <casersgroup>** are identical to the Complainant's trademark or service mark and **<.com>** is a generic code top-level domain name (gTLD) suffix. It is non-distinctive and is incapable of differentiating the Disputes Domain Names from Complainant's trademark or service mark.

(iii) Based on the **<bbdowestafrica>; <ddblago> and <casersgroup>** being trademarks or service marks of the Complainant, the Panel finds that the Disputes Domain Names are identical or confusingly similar to the Complainant's trademark or service mark.

(iv) Accordingly, the Panel is satisfied that the Complainant has complied with Paragraph 4(a)(i) of the Policy.

4.2.2 That the Respondent has No Rights or Legitimate Interest in the Domain Name

(i) According to the Complainant all the domains are for the agencies that belong to CASERS Group.

(ii) According to the Respondent the OTA Network Solution is a sister company to NOL Freedom Limited which OTA Network Solution was engaged by Lagos to provide the services, such as, technical support for the Complainant's Microsoft Exchange System and Email Security Services and that OTA Network registered the domain names in reference to ensure that the Complainant can communicate using their Microsoft Exchange System on the strength of Complainant's Email security contract for the period between 23rd of March of previous year to 22nd March of the next year. Further, as per the Respondent, the contract reads that "*in the event that the client needs to terminate the service, the service provider needs to be informed 30 days before the present contract expires. Payment for the service shall be fully paid before the new term begins but not later than 30 days after the new term begins*". According to the Respondent the invoiced amount was \$7,755.30 while 50% of that was paid after so many reminders emails/calls were made in June 29, 2020 but the Complainant defaulted to pay the balance. Having said, the Respondent is willing to offer Complainant the white flag to persuade their sister company to release the domains provided the Complainant is willing to pay for the damages that they have incurred such as the remaining unpaid subscription and compensation for their reputation that was marred with their service provider as they have lost some business opportunities since they were unwilling to extend or grant OTA Network Solution any credit facility to them and poor response to their business information enquires. According to the Respondent the domain names are property of NOL Freedom/OTA Network Solution as those were registered by them and CASERS Group cannot lay credence to the domain name and they did not register the domain name.

(iii) Admittedly, the domain names were registered by the Respondent as it is a tool in delivering their services to the Complainant. The registration of domain names composing the trademark or service mark of the Complainant was for the sole purpose of rendering service to

the Complainant based on a contract. It is the specific case of the Complainant that there is no contract / documentation awarding the respondent the right to purchase a domain in their name and hold onto it. The respondent has also expressed its willingness to release the domains provided they are suitably compensated. Even according to the Respondent, they can technically hold on to the domain names, if need be, as they registered the domain names as part of their recommended solution when they commenced providing MS – Exchange support in 2007 to DDB Lagos. The claim of technical hold cannot be pitted against the legal rights or legitimate interests. If at all, the remedy of Respondent towards the claim of compensation lies elsewhere. Hence, this Panel is of the considered view that the Respondent cannot have any ownership much less any co-ownership over the disputed domain names.

(iv) Based on the pleadings and records, the Respondent does not have rights or legitimate interests in the disputed domain names as the Respondent's current use is neither an example of a bonafide offering of goods and services nor is there an legitimate non-commercial or fair use of the disputed domain names as such there is no evidence that Paragraph 4(c)(i) or 4(c)(iii) of the Policy apply.

(v) Accordingly, the Panel is satisfied that the Complainant has complied with Paragraph 4(a)(ii) of the Policy.

4.2.3 That the Respondent has Registered and Used the Domain Name in Bad Faith

1. The Uniform Domain Dispute Resolution Policy of ICANN describe the evidence of registration and use in bad faith as follows:

4 b. Evidence of Registration and Use in Bad Faith.

For the purposes of Paragraph 4(a)(iii), the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or

(ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your 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 your web site or location or of a product or service on your web site or location.

(v) In the preceding paragraphs in 4.2.1 and 4.2.2 this Panel has held that the Domain Names are identical or confusingly similar to a mark in which the Complainant has Rights and that the Respondent has no rights or legitimate interest in the Domain Names. This Panel had also further specifically observed that the Respondent is ready and willing to compromise the domain names if their monetary demand is fulfilled by the Complainant. Under 4(b) (i) of the Policy if the circumstance indicate that the acquisition of domain name is for the purpose of selling, renting or otherwise transferring the domain name registration to the Complainant who is the owner of the trademark or service mark for valuable consideration in excess of the

documented out-of-pocket costs directly relating to the domain name shall be the evidence of the registration and use of a domain name in bad faith. In the case on hand, the Respondent has not only demanded the compensation from the Complainant for transferring the domain name registrations but also caused disruption in the business of the Complainant who had, due to expiry of domain name <bbdowestafrica.com>, lost access to their email communication system and website. Such monetary claim to compromise the domain names is the evidence of Registration and use in bad faith.

(vi) On the information before the Panel being pleadings and documents, this Panel finds that the Respondent has registered and used the Disputed Domain Names in bad faith.

(vi) Accordingly, this Panel is satisfied that the Complainant has complied with Paragraph 4(a)(iii) of the Policy.

4. DECISION and ORDER

For the above reasons, in accordance with Paragraph 4 of the Policy, Paragraph 15 of the Rules, and Rule 10 of the Supplemental Rules, the Panel orders that the Disputed Domain Names <bbdowestafrica.com>; <ddblajos.com>; <casersgroup.com> be transferred to Complainant.

DHANDAPANI SARAVANAN
Single Member Panel
6th December, 2021

