

ADMINISTRATIVE PANEL DECISION

Barrick Gold North America Inc. and Barrick Gold Corporation v. Okwuchukwu Godwin

Case No. DCO2023-0015

1. The Parties

The Complainants are Barrick Gold North America Inc., United States of America ("United States") and Barrick Gold Corporation, Canada, represented by Dorsey & Whitney, LLP, United States.

The Respondent is Okwuchukwu Godwin, Nigeria.

2. The Domain Name and Registrar

The disputed domain name <barrickgold.co> (the "Domain Name") is registered with NameCheap, Inc. (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on February 14, 2023. On February 15, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On February 15, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent (Redacted for Privacy, Privacy Service Provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on February 16, 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 February 16, 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 February 17, 2023. In accordance with the Rules, paragraph 5, the due date for Response was March 9, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on March 10, 2023.

The Center appointed Willem J. H. Leppink as the sole panelist in this matter on March 21, 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 following facts are undisputed.

The Complainant¹ is a large gold mining company. The Complainant is active in over thirteen countries all over the world and started its activities at least as early as 1983.

The Complainant is the owner of numerous trademark registrations all over the world, containing the word element BARRICK, including, but not limited to the following registrations:

- United States trademark registration with registration number 4683358 for the word mark BARRICK GOLD, registered on February 10, 2015 for amongst others services related to “mine design and engineering in the field of mine exploration of precious and base metals”;
- United States trademark registration with registration number 4944505 for the word mark BARRICK GOLD, registered on April 26, 2016 for amongst others services related to “gold mining extraction and the mining of silver, copper and base metals”;

The above-mentioned trademarks will hereinafter together be referred to as the “Trademark”.

The Complainant is the owner of the domain name <barrick.com>, which is registered in 1995 and is used to advertise and promote a variety of mining services, business initiatives, and other commercial endeavors involving the Trademark.

The Domain Name was registered on May 23, 2022 and resolves to a website which displays the Trademark in connection with an online cryptocurrency trading and investment platform. The home page which the Domain Name resolves to, states that “barrickgold.co is an International Investment company, officially registered in ESTONIA...[with] direct contracts with professional traders and miners around the world.”. On the “Contact Us” page states that the company is officially registered in the United Kingdom and lists an address in the United Kingdom.

5. Parties’ Contentions

A. Complainant

The Complainant contends the following.

The Domain Name is identical to the Trademark, as the Domain Name consists of the Trademark in its entirety. The mere addition of the country code Top-Level Domain (“ccTLD”) “.co” is also insignificant, and does nothing to remove the likelihood of confusion between the Trademark and the Domain Name.

The Respondent cannot demonstrate it has any rights or legitimate interests in the Domain Name. As of February 1, 2023, the Respondent’s current use of the Domain Name displays the Complainant’s Trademark in connection with an online cryptocurrency trading and investment platform. The home page which the Domain Name resolves to, claims that “barrickgold.co is an International Investment company, officially

¹ The two complainants will be referred to in singular as the “Complainant” when there is no useful purpose in distinguishing between them.

registered in ESTONIA...[with] direct contracts with professional traders and miners around the world". This information appears to be directly conflicting with the address listed under the "Contact Us" page, which says the company is "officially registered in the UK" and lists an address in the United Kingdom. In fact, the address appears to be an old address for a since-dissolved company called "Profit FX Limited" for which there is no clear connection with the Respondent or the Domain Name. By including this address, the Respondent is attempting to add legitimacy to its illegitimate business purpose by listing an address to which it is simply not affiliated.

Furthermore, it appears the Respondent has copied and pasted information that can be found across other "cryptocurrency trading" websites featuring identical information, images, and even statistics. This information is identical to the information which appeared on the webpage behind the domain name <barrickgold.ltd>, which has been subject to a previous UDRP procedure.

The Complainant has no relationship or affiliation with the Respondent or the Domain Name, yet the Respondent is attempting to intentionally confuse potential consumers by misrepresenting such an affiliation. None of the uses identified above is *bona fide* in light of the Complainant's rights in the Trademark.

The Domain Name was registered and is being used in bad faith.

The Respondent registered the Domain Name without any *bona fide* basis for such registration in an attempt to capitalize unfairly on the goodwill of the Complainant's widely recognized Trademark. It is unlikely that the registrant would have selected the Domain Name without knowing the reputation of the Trademark.

B. Respondent

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

6. Discussion and Findings

Pursuant to paragraph 4(a) of the Policy, the Complainant must prove each of the following three elements:

- (i) the 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 Domain Name; and
- (iii) the Domain Name has been registered and is being used in bad faith.

Noting the burden of proof on the Complainant, the Respondent's default (*i.e.*, failure to submit a formal response) would not by itself mean that the Complainant is deemed to have prevailed. The Respondent's default is not necessarily an admission that the Complainant's claims are true. See in this regard WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.3, "In cases involving wholly unsupported and conclusory allegations advanced by the complainant, or where a good faith defense is apparent (*e.g.*, from the content of the website to which a disputed domain name resolves), panels may find that – despite a respondent's default – a complainant has failed to prove its case. Further to paragraph 14(b) of the UDRP Rules however, panels have been prepared to draw certain inferences in light of the particular facts and circumstances of the case *e.g.*, where a particular conclusion is *prima facie* obvious, where an explanation by the respondent is called for but is not forthcoming, or where no other plausible conclusion is apparent".

A. Identical or Confusingly Similar

The Complainant must demonstrate that it has rights in a trademark or service mark and, if so, the Domain Name must be shown to be identical or confusingly similar to that mark.

The Complainant has shown that it has rights in the Trademark.

As set out in the [WIPO Overview 3.0](#), section 1.7, the first element functions primarily as a standing requirement. The threshold test for confusing similarity between the Domain Name and the Trademark involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the Domain Name.

In the light of the foregoing, the Panel finds that the Domain Name is identical to the Trademark. The Domain Name consists of element “barrickgold” and the ccTLD “.co”. The element “barrickgold” is, given the fact that it is technically not possible to reflect a space in a domain name, identical to the Trademark. The addition of the ccTLD does not prevent the finding of identity between the Domain Name and the Trademark.

Therefore, the Panel is satisfied that the first element of the Policy is met.

B. Rights or Legitimate Interests

The Panel has carefully considered the factual allegations that have been made by the Complainant and are supported by the submitted evidence.

In particular, the Respondent has failed to offer the Panel any of the types of evidence set forth in paragraph 4(c) of the Policy from which the Panel might conclude that the Respondent has rights or legitimate interests in the Domain Name, such as:

- (i) use or preparation to use the Domain Name or a name corresponding to the Domain Name in connection with a *bona fide* offering of goods or services prior to notice of the dispute; or
- (ii) being commonly known by the Domain Name (as an individual, business or other organization) even if the Respondent has not acquired any trademark or service mark rights; or
- (iii) making legitimate noncommercial or fair use of the Domain Name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Respondent has failed to invoke any of the circumstances which could demonstrate, pursuant to paragraph 4(c) of the Policy, any rights to and/or legitimate interests in the Domain Name. This entitles the Panel to draw any such inferences from such default as it considers appropriate pursuant to paragraph 14(b) of the Rules. Nevertheless, the burden is still on the Complainant to first make a *prima facie* case against the Respondent.

In that sense, the Complainant indeed indicates that the Respondent is not a licensee of the Complainant, nor has the Complainant otherwise authorized the Respondent to register the Domain Name or otherwise use the Complainant’s Trademark.

Also, the absence of any indication that the Respondent has rights in a term corresponding to the Domain Name, or any possible link between the Respondent and the Domain Name that could be inferred from the details known of the Respondent or the webpage relating to the Domain Name that existed, corroborate with the Panel’s finding of the absence of rights or legitimate interests.

Furthermore, with the website to which the Domain Name resolves, the Complainant has alleged that the Respondent is attempting to add legitimacy to its illegitimate business purpose by listing an address to which it is simply not affiliated. This website is providing different kinds of information with regards to the origin of the Respondent. The home page claims that “barrickgold.co is an International Investment company, officially registered in ESTONIA...[with] direct contracts with professional traders and miners around the world”. This information indeed appears to be directly conflicting with the address listed under the “Contact Us” page, which says the company is “officially registered in the UK” and lists an address in the United

Kingdom. In fact, the address appears to be an old address for a since-dissolved company called "Profit FX Limited" for which there is no clear connection with the Respondent or the Domain Name.

As the Respondent has failed to respond to the Complaint and thus has not taken any steps to rebut the Complainant's *prima facie* plausible arguments, the Panel finds that the Respondent lacks rights to or legitimate interests in the Domain Name.

Therefore, the Panel is satisfied that the second element of the Policy is met.

C. Registered and Used in Bad Faith

The Panel finds that the Domain Name was registered and is being used in bad faith.

The Panel refers to its considerations under section 6.B and adds the following:

In light of the evidence filed by the Complainant, the Panel finds that the Trademark and the Complainant's activities are well known in various parts of the world. On a balance of probabilities and certainly lacking a Response, the Panel also finds it implausible that the Respondent was not aware of the Complainant and the Trademark at the time of registering the Domain Name.

Therefore, the Panel is satisfied that the Domain Name has been registered and used in bad faith seeking to create a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or location or of a product or service on the Respondent's website or location. Further, the Respondent's choice to retain a privacy protection service so as to conceal its true identity supports a finding of bad faith in the circumstances of this case.

Therefore, the Panel is satisfied that the third element of the Policy is met.

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 Domain Name <barrickgold.co> be transferred to the Complainant.

/Willem J. H. Leppink/

Willem J. H. Leppink

Sole Panelist

Date: April 4, 2023