

## **ADMINISTRATIVE PANEL DECISION**

Cracker Barrel Old Country Store, Inc., CBOCS Properties, Inc. v. Domain Administrator, See PrivacyGuardian.org / CB OCS  
Case No. D2022-0627

### **1. The Parties**

The Complainant is Cracker Barrel Old Country Store, Inc. and CBOCS Properties, Inc., United States of America (“United States”), represented by Dinsmore & Shohl LLP, United States.

The Respondent is Domain Administrator, See PrivacyGuardian.org, United States / CB OCS, United States, represented by Schepps Law Offices.

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

The disputed domain name <cbocs.com> (the “Domain Name”) is registered with NameSilo, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 22, 2022. On February 23, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On February 23, 2022, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on February 24, 2022, 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 amendment to the Complaint on March 1, 2022.

The Center verified that the Complaint together with the amendment to the 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 March 3, 2022. In accordance with the Rules, paragraph 5, the due date for Response was March 23, 2022. The Response was filed with the Center on March 23, 2022.

The Center appointed W. Scott Blackmer as the sole panelist in this matter on March 30, 2022. 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.

On April 27, 2022, the Panel issued a Procedural Order requesting any material evidence on the following points raised in the Response:

1 that the Respondent “has been known by CB OCS”;

2 that the Respondent has used, or made preparations to use, the disputed domain name to support “community based outpatient clinics for injured veterans”.

On May 9, 2022, the Panel issued Procedural Order Number 2 at the Respondent’s request, granting both parties an extension of time to respond to the same two points.

#### 4. Factual Background

The Complainant Cracker Barrel Old Country Store, Inc. (“CBOCS”) is a corporation established under the law of the State of Tennessee and headquartered in Lebanon, Tennessee, United States. Founded in 1969, the Complainant has been publicly listed on the NASDAQ stock exchange since 1981. The Complainant’s group operates a nationwide chain of restaurants and retail gift shops with more than 660 locations in 45 states in the United States branded as CRACKER BARREL OLD COUNTRY STORE.

The Complainant CBOCS Properties, Inc. (“CBOCS Properties”) is a wholly owned subsidiary established as a Michigan corporation with a principal place of business in Plymouth, Michigan, United States. CBOCS Properties holds the intellectual property rights, including relevant trademarks, licensed to CBOCS and other members of the group for use in their business. Given their common ownership and interests in the relevant trademarks, the Panel refers to these entities hereafter collectively as the “Complainant”.

The Respondent objects to the inclusion of multiple Complainants. However, panels regularly consolidate complaints in the interests of equity and efficiency in cases such as this where there are common interests and factual circumstances. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 4.11.1.

The Complainant’s group includes several entities using the initials CBOCS in addition to CBOCS Properties, Inc.: CBOCS West, Inc., CBOCS Distribution, Inc., CBOCS Texas, LLC, CBOCS Inc., CBOCS General Partnership, CBOCS Texas Ltd. Partnership, and CBOCS Supply, Inc. While the Complainant’s principal public-facing website is at “www.crackerbarrel.com”, the Complainant uses “cbocs” in the URL for a password-protected internal website for employees to access their online wage statements.

The Complainant’s group generates USD 2.5 billion in annual revenue, with advertising, labelling, and signage displaying registered United States trademarks with the brand CRACKER BARREL OLD COUNTRY STORE. These 41 registered trademarks include the following:

MARK	UNITED STATES REGISTRATION NUMBER	REGISTRATION DATE
CRACKER BARREL OLD COUNTRY STORE (words and design)	1142958	December 9, 1980
CRACKER BARREL OLD COUNTRY STORE (standard characters)	1931274	October 31, 1995
CRACKER BARREL OLD COUNTRY STORE (standard characters)	2034882	February 4, 1997
CRACKER BARREL OLD COUNTRY STORE (standard characters)	2260787	July 13, 1999

Without explicitly claiming CBOCS as a common law mark, the Complaint includes examples of use of the initials CBOCS to refer to the Complainant's goods or services: the Complainant sells a sweatshirt emblazoned with the words, "CBOCS Established 1969"; mobile apps available through Google Play and other app stores have been listed as "Cracker Barrel CBOCS"; and several listings on the ebay.com online auction site show that customers reselling merchandise obtained from the Complainant's retail stores frequently identify the items with the initials "CBOCS", often alongside the words "Cracker Barrel". The Complainant also demonstrates that Internet searches for "CBOCS" return information on the Complainant. Moreover, the online Free Dictionary lists CBOCS as an acronym referring to the Complainant.

The Domain Name was registered in the name of a domain privacy service. After receiving notice of the Complaint in this proceeding, the Registrar identified the underlying registrant as the Respondent CB OCS of Dallas, Texas, United States. According to the Whois database, the Domain Name was created on November 23, 2005. The Respondent does not state when it acquired the Domain Name, only that the Domain Name has been "listed" for the past 17 years. The Respondent states that "over a decade ago" the Domain Name was "involved" in litigation but neglects to include a citation or attachment and does not state that the Respondent was one of the parties in that litigation.

The Domain Name resolves to a landing page with what appear to be pay-per-click ("PPC") links to third-party advertisers, chiefly concerned with online payroll processing. The Internet Archive's Wayback Machine does not have screenshots showing any other use of the Domain Name.

In response to the Panel's Order requesting information about the Respondent's claims to being known by the name "CB OCS" and supporting "community based outpatient clinics for injured veterans", the Respondent furnished a Declaration of Daniel Binari. The Declaration consists of a single paragraph and attaches no supporting documents. The Declaration identifies Mr. Binari as "the director of CB OCS" and states that at the time Mr. Binari registered the Domain Name he was not aware of the entity CBOCS Properties or the Complainant's claim to a CBOCS trademark. The Declaration makes the following additional statements:

"The domain name CBOCS.com has been registered for almost two decades and is used by CB OCS to facilitate support for community based outpatient clinics, by allowing simplified internet addresses (e.g., lake.cbocs.com) using sub-domains, which allows communicating with and connecting to remote computers using those addresses. CB OCS has been known as CB OCS since its inception and the domain name <cbocs.com> was registered by CB OCS in its own name, CB OCS, and CB OCS owns no other domain names."

## **5. Parties' Contentions**

### **A. Complainant**

The Complainant asserts that the Domain Name "incorporates Complainant's CBOCS trademark in its entirety, and does not include any additional wording. Thus, the CBOCS element of the Disputed Domain is identical to Complainant's famous trademark and name."

The Complainant contends that the Respondent has failed to demonstrate that an entity known as "CB OCS" exists, that the Respondent is "commonly known" by this name, or that the Respondent has used the Domain Name for relevant purposes supporting its claim of legitimate interests. The Complainant's reply to the Panel Order attaches evidence that no "CB OCS" company or organization is registered as a taxable entity in the State of Texas, and the name does not appear in search results on the OpenCorporates.com website. The address and telephone number given for "CB OCS" are simply those of the attorney representing the Respondent in this proceeding. The Complainant observes that the Domain Name has been used only for PPC advertising for online payroll services and other offerings unrelated to veterans' services. The Complainant's reply includes information about the United States Veterans Health Administration CBOCS program, which concerns outpatient clinics administered by or under contract with the

Veterans Health Administration. The Complainant points out that the Respondent's submissions do not indicate any relationship with that government agency.

The Complainant argues for a finding of bad faith, as the Respondent registered a Domain Name that "entirely incorporates Complainant's famous CBOCS trademark and name" and used it for PPC advertising, after the Complainant began using its marks and formed CBOCS entities. The Complainant finds further evidence of bad faith in the Respondent's registration of the Domain Name through a domain privacy service and its failure to respond to correspondence from the Complainant.

## **B. Respondent**

The Response, submitted by counsel, furnishes no real information about the Respondent, its business, when it acquired the Domain Name, or its motives for doing so. It challenges the Complainant's standing because the Complainant does not establish trademark rights in "CBOCS". The Respondent claims rights or legitimate interests in the Domain Name with the following reasoning:

"The respondent and registrant of the domain name is, and accordingly has been known as, CB OCS, whose name is the same as the domain name, except for the space. It should be axiomatic that a respondent has a legitimate interest in a domain name that is its own name, and has been registered for the past seventeen (17) years."

The Respondent argues against a finding of bad faith by emphasizing the Complainant's burden of proof. The Respondent notes that the Complainant has not shown that the Respondent tried to sell the Domain Name to the Complainant for an extortionate sum, nor that the Complainant was prevented from registering a domain name corresponding to its marks (as it has waited 17 years to complain about this Domain Name). The Respondent points to Internet search results showing that the United States Department of Veterans Affairs also uses the acronym CBOCS, for "Community-Based Outpatient Clinics". The Response then makes the convoluted statement that the Complainant does not claim that the Respondent is a competitor "nor dispute that the registrant provides services for disabled veterans in support of community based outpatient centers." However, the Response does not actually assert that the Respondent provides any such services or has plans to do so.

The Respondent's Binari Declaration, submitted in reply to the Panel Order, does not reveal when the Respondent acquired the Domain Name but asserts that the Respondent was unaware of the Complainant's claim to a CBOCS mark at that time. The Declaration claims that the Domain Name "is used by CB OCS to facilitate support for community based outpatient clinics, by allowing simplified internet addresses (e.g., lake.cbocs.com) using sub-domains, which allows communicating with and connecting to remote computers using those addresses."

## **6. Discussion and Findings**

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

- (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.

Under paragraph 15(a) of the Rules, "[a] Panel shall decide a 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".

## A. Identical or Confusingly Similar

The Complaint asserts that the Domain Name is “identical or confusingly similar to a trade name in which the Complainant has rights” (emphasis added), citing the Policy, paragraph 4(a)(i). That paragraph of the Policy refers to trademarks and service marks, not trade names. The Complaint refers to its marks collectively as the “CBOCS marks”, but all of the 41 registered marks feature the words CRACKER BARREL OLD COUNTRY STORE not the initials CBOCS. The Complaint concludes that “the CBOCS element of the Disputed Domain is identical to Complainant’s famous trademark and name.” This is somewhat disingenuous. One of the Complainant’s names is CBOCS Properties, Inc., but the Policy is concerned with trademarks and service marks, not corporate names and trade names – unless those also function as a mark. The Complainant’s registered trademark is CRACKER BARREL OLD COUNTRY STORE, not CBOCS. The Panel notes that the Complainant’s website pages assert trademark rights to the CRACKER BARREL OLD COUNTRY STORE “name and logo” and not to CBOCS, which does not appear anywhere on the website with a “TM” symbol asserting unregistered trademark rights. The Complainant does not assert common law trademark rights in CBOCS and does not present a sufficient record here to establish that CBOCS has acquired distinctiveness as a trademark or service mark, with evidence of secondary meaning based, for example, on “(i) the duration and nature of use of the mark, (ii) the amount of sales under the mark, (iii) the nature and extent of advertising using the mark, (iv) the degree of actual public (e.g., consumer, industry, media) recognition, and (v) consumer surveys”. See [WIPO Overview 3.0](#), section 1.3.

However, while the Complainant has not necessarily made an adequate record in this proceeding for recognition of CBOCS as a mark, the Panel finds that the Complainant’s well-established, registered trademark CRACKER BARREL OLD COUNTRY STORE is commonly recognized by its initials “CBOCS”. Other panels have similarly found trademarks recognizable in domain names that partially incorporate the trademark or incorporate an abbreviation of the trademark used as an acronym. See, e.g., *Boursorama SA v. BRS*, CAC Case No. 103657; *Kaporal Groupe v. Redacted for Privacy, Withheld for Privacy Purposes Privacy Service Provided by Withheld for Privacy ehf / Neville Berger*, WIPO Case No. [D2021-3109](#); *Swinburne University of Technology v. Swinner a/k/a Benjamin Robert Goodfellow*, WIPO Case No. DAU2004-003; *Hiawatha National Bank v. Martha Coe*, WIPO Case No. [D2018-1946](#).

The first element of a UDRP complaint “functions primarily as a standing requirement” and entails “a straightforward comparison between the complainant’s trademark and the domain name”. See [WIPO Overview 3.0](#), section 1.7. The Domain Name consists entirely of the initials CBOCS that are commonly used as an abbreviation for the Complainant’s trademark CRACKER BARREL OLD COUNTRY STORE. Thus, the Complainant’s trademark is recognizable in the Domain Name. As usual, the Top-Level Domain “.com” is disregarded as a standard registration requirement. See *id.* section 1.11.2. (See also footnote 1 as to section 1.15 of the [WIPO Overview 3.0](#).)

The Panel finds, therefore, that the Domain Name is confusingly similar to the Complainant’s registered mark for purposes of the Policy, paragraph 4(a)(i), and concludes that the Complainant has established the first element of the Complaint.

## B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy gives non-exclusive examples of instances in which a respondent may establish rights or legitimate interests in a domain name, by demonstrating any of the following:

- (i) before any notice to it of the dispute, the respondent’s use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or
- (ii) that the respondent has been commonly known by the domain name, even if it has acquired no trademark or service mark rights; or
- (iii) the respondent is making a 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.

Because a respondent in a UDRP proceeding is in the best position to assert rights or legitimate interests in a domain name, it is well established that after a complainant makes a *prima facie* case, the burden of production on this element shifts to the respondent to come forward with relevant evidence of its rights or legitimate interests in the domain name. See [WIPO Overview 3.0](#), section 2.1.

The Complainant has established trademark rights, a lack of permissive use, and the Respondent's use of the Domain Name only for PPC advertising links. Thus, the Complainant has made a *prima facie* case, and the burden of production shifts to the Respondent.

The Respondent claims that it "has been known as CB OCS" "since its inception", in the words of the Binari Declaration, but that Declaration offers no detail or supporting evidence concerning the nature of the claimed CB OCS entity.

It is not enough for a respondent to claim that it has a name corresponding to a disputed domain name; it must offer "concrete credible evidence" that it is "commonly known" by that name. [WIPO Overview 3.0](#), section 2.3. The record here is devoid of such proof beyond Mr. Binari's unsupported assertion. He does not describe the formation of a business with such a name or explain what it does or plans to do. He says only that it is possible to use the Domain Name to facilitate support for outpatient clinics by allowing simplified sub-domains – not that the Respondent has done so or made demonstrable preparations to do so.

The Respondent offers no evidence that a CB OCS entity has been established to offer veterans' services and is known to the Veterans Health Administration, veterans, or any other relevant parties. The Domain Name has been registered for 17 years, and there is no sign of any activity associated with the Domain Name but PPC advertising for third parties evidently unrelated to the Respondent and to community-based veteran's outpatient services. This does not establish the Respondent's rights or legitimate interests in the Domain Name. See [WIPO Overview 3.0](#), section 2.9.

The Panel finds that the Respondent has not met the burden of production to establish rights or legitimate interests in the Domain Name and concludes that the Complainant prevails on the second element of the Complaint.

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

The Policy, paragraph 4(b), furnishes a non-exhaustive list of circumstances that "shall be evidence of the registration and use of a domain name in bad faith", including the following (in which "you" refers to the registrant of the domain name):

"(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."

The Complainant's mark is well-known and long-established, and as discussed in connection with the first element of the Complaint, it is readily recognizable by at least a significant market in the United States by its initials "CBOCS". The use of the exactly corresponding Domain Name for PPC advertising is an example of misdirection for commercial gain as contemplated by the Policy, section 4(b)(iv).

The Respondent does not deny prior awareness of the Complainant's mark or the acronym associated with it, although the Respondent denies awareness of the Complainant's claim to common law protection for the CBOCS acronym itself. The Respondent argues that it could conceivably make legitimate use of the Domain Name to provide support to military veterans using "Community-Based Outpatient Support Clinics". But there is no persuasive evidence that the Respondent is an entity with a name corresponding to the Domain Name and has ever engaged in such activities or made demonstrable preparations to do so. What is established is that the Respondent is allowing the Domain Name to be used to generate advertising

revenues for unrelated third parties, using the acronym widely associated with the Complainant's well-known trademark. That is sufficient to establish bad faith within the meaning of the Policy.<sup>1</sup>

The Respondent argues that the Complainant's claims should be dismissed based on the equitable doctrine of laches, contending that it is unfair for the Complainant to neglect its claims for 17 years and then expect the Respondent to establish, in 20 days, proof of legitimate motives for registering and using the Domain Name. The Panel granted the Respondent additional time to marshal evidence concerning its business and the registration and use of the Domain Name. However, as noted in the [WIPO Overview 3.0](#), section 4.17, UDRP panels have typically declined to apply the doctrine of laches as the basis for dismissing complaints outright. This is largely because of the injunctive rather than compensatory nature of the UDRP remedy and the difficulty of monitoring potential trademark abuses online in all their variations. At the same time, panels recognize that complainants bear the burden of proof and normally face greater difficulty establishing the elements of their UDRP case, particularly bad faith, when a domain name was registered many years previously.

In any event, there is no compelling equitable argument for the Respondent in this case. The Respondent has refrained from divulging when it acquired the Domain Name, and the Respondent has made no use of the Domain Name except for PPC advertising (as mentioned in footnote 1, targeting the same use of the term by the Complainant no less – namely its employee payroll services). Thus, there is no evident detrimental reliance on the part of the Respondent, which is usually a key rationale for invoking the equitable doctrine of laches. The Panel finds no persuasive reason to allow the continuing exploitation of the Complainant's mark for PPC advertising. In short, the Respondent's plea for equitable relief rings hollow on these facts.

The Panel finds that the Respondent has registered and used the Domain Name in bad faith within the meaning of the Policy and concludes that the Complainant has established the third element of the Complaint.

## 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, <cboocs.com>, be transferred to the Complainant.

*/W. Scott Blackmer/*

**W. Scott Blackmer**

Sole Panelist

Date: June 17, 2022

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<sup>1</sup> The fact that the PPC algorithm generates links to online payroll services, while the Complainant uses the string "cboocs" precisely for its employee payroll information site, also suggests potential fraud risks with this Domain Name.