

ADMINISTRATIVE PANEL DECISION

British American Tobacco (Brands) Limited v. Garrett Stott
Case No. D2022-3636

1. The Parties

The Complainant is British American Tobacco (Brands) Limited, United Kingdom, represented by Demys Limited, United Kingdom.

The Respondent is Garrett Stott, United Arab Emirates.

2. The Domain Name and Registrar

The disputed domain name <bat-tr.com> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 30, 2022. On September 30, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 30, 2022, 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 (Privacy service provided by Withheld for Privacy ehf, Iceland) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 5, 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 amended Complaint on October 6, 2022.

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 October 20, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 9, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 17, 2022.

The Center appointed Federica Togo as the sole panelist in this matter on November 24, 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.

4. Factual Background

The Complainant operates in the field of tobacco products and is the registered owner of several trademarks for BAT, e.g. United Kingdom trademark No. UK00002135480 BAT (word) registered on February 27, 1998 for goods in class 34; European Union Trade Mark registration No. 1548290 BAT (figurative) registered on June 1, 2020 for goods in class 34.

The disputed domain name was registered on August 22, 2022 and resolves to an inactive webpage. It was used to send email correspondence, while pretending to be a Complainant's employee, in order to solicit payment of fraudulent invoices by a Complainant's supplier.

5. Parties' Contentions

A. Complainant

It results from the Complainant's undisputed allegations that the Complainant is a member of the British American Tobacco Group of Companies ("BAT Group") and is the entity within BAT Group which owns the corporate trademarks and domain names. BAT Group is a British multinational cigarette and tobacco manufacturing company headquartered in London and is the largest publicly traded tobacco company in the world. BAT Group was founded in 1902 and now operates in around 180 countries and employs over 95,000 staff.

In addition, the Complainant operates the website at "www.bat.com" in order to promote its products.

The Complainant observes that someone claiming to be an "Engineering Manager" from "BAT Türkiye" emailed a supplier of the Complainant via the disputed domain name. In the email correspondence this entity, posing as the Complainant, discussed payment for industrial equipment and requested payment for said equipment. However, that individual is not employed by or authorized to send communications on the Complainant's behalf – either directly or through its Turkish subsidiary. Equally, that individual is not permitted or authorized to send correspondence through the disputed domain name. The Complainant contends that the email has the hallmarks of a business email compromise phishing scam.

The Complainant further contends that the disputed domain name is confusingly similar to the Complainant's trademark BAT, since it comprises its trademark BAT entirely. The additional adornment "tr" (presumably an abbreviation of "Turkey" or "Türkiye") is descriptive and generic and does nothing to distinguish the disputed domain name from the Complainant's marks.

The Complainant further contends that the Respondent has no rights or legitimate interests in the disputed domain name. According to the Complainant, there is no evidence that the Respondent has been commonly known as "bat" or "bat tr" prior to or after the registration of the disputed domain name. The Respondent is not a licensee of the Complainant and has not received any permission or consent from the Complainant to use its trademarks and company name. The Complainant asserts that the disputed domain name has not been used in connection with any legitimate noncommercial or fair use, without intent for commercial gain, in terms of Policy paragraph 4(c)(iii), as the Complainant observes that the disputed domain name has been used in connection with a business email compromise scam. The Complainant avers that the use of the disputed domain name for criminal activity, including phishing, could never give the Respondent a legitimate interest in the disputed domain name.

Finally, the Complainant contends that the disputed domain name was registered and is being used in bad faith. According to the Complainant, the disputed domain name has been used for the purposes of business email compromise fraud and it was picked precisely because it was confusingly similar to the Complainant's name and marks. The Respondent registered the disputed domain name to ensure that potential victims of the scam would think any email correspondence sent to and from the disputed domain name originated from the Complainant.

B. Respondent

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

6. Discussion and Findings

Paragraph 15(a) of the Rules instructs this Panel to “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”. Paragraph 4(a) of the Policy requires the Complainant to prove each of the following three elements in order to obtain an order that the disputed domain name be transferred or cancelled:

- (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.

The Panel will therefore proceed to analyze whether the three elements of paragraph 4(a) of the Policy are satisfied.

A. Identical or Confusingly Similar

Pursuant to paragraph 4(a)(i) of the Policy, the Complainant must establish rights in a trademark or service mark and secondly establish that the disputed domain name is identical or confusingly similar to a trademark in which the Complainant has rights.

It results from the evidence provided, that the Complainant is the registered owner of various trademark registrations for BAT, e.g. United Kingdom trademark No. UK00002135480 BAT (word) registered on February 27, 1998 for goods in class 34; European Union Trade Mark No. 1548290 BAT (figurative) registered on June 1, 2020 for goods in class 34.

Many UDRP panels have found that a disputed domain name is confusingly similar to a complainant's trademark for purposes of the first element, where the relevant trademark is recognizable within the disputed domain name. Under such circumstances, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element (cf. section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”). This Panel shares the same view and notes that the disputed domain name contains the Complainant's registered trademark BAT in full. The additional element “tr” preceded by a hyphen does not prevent a finding of confusing similarity. Consequently, this Panel is of the opinion that the trademark BAT remains recognizable within the disputed domain name.

Finally, the generic Top-Level Domain (“gTLD”) “.com” of the disputed domain name may be disregarded under the first element confusing similarity test (see [WIPO Overview 3.0](#) at section 1.11.1).

The Panel finds that the Complainant has therefore satisfied paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Pursuant to paragraph 4(a)(ii) of the Policy, the Complainant must secondly establish that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

Paragraph 4(c) of the Policy contains a non-exhaustive list of circumstances which, if found by the Panel to be proved, shall demonstrate the Respondent's rights or legitimate interests in the disputed domain name.

In the Panel's view, based on the undisputed allegations stated above, the Complainant has made a *prima facie* case that none of these circumstances are found in the case at hand and, therefore, that the Respondent lacks rights or legitimate interests in the disputed domain name.

According to the Complaint, which has remained unchallenged, the Complainant has no relationship in any way with the Respondent and did, in particular, not authorize the Respondent's use of the trademark BAT, e.g., by registering the disputed domain name comprising the said trademark entirely.

Furthermore, the Panel notes that there is no evidence showing that the Respondent might be commonly known by the disputed domain name in the sense of paragraph 4(c)(ii) of the Policy.

In addition, no content is displayed on the website to which the disputed domain name resolves. However, it results from the undisputed evidence before the Panel that the disputed domain name has been used for sending fraudulent emails. UDRP panels have categorically held that the use of a domain name for illegal activity can never confer rights or legitimate interests on a respondent (see [WIPO Overview 3.0](#) at section 2.13.1 with further references). In the case at hand, the Complainant submitted substantial evidence of such illegal activities by providing email correspondence sent from an email account under the disputed domain name. This email correspondence has been signed in the name of a person, pretending to be an employee of the Complainant (and/or of a BAT Group's Turkish subsidiary i.e. "BAT Türkiye"). The Panel considers this evidence as sufficient to support the Complainant's credible claim of the Respondent's illegal activity.

Moreover, the nature of the disputed domain name carries a risk of implied affiliation, since the disputed domain name contains the Complainant's trademark BAT followed by a hyphen and the letters "tr", which correspond to the geographical abbreviation for Türkiye. Geographic terms are seen as tending to suggest sponsorship or endorsement by the trademark owner, see [WIPO Overview 3.0](#), section 2.5.1. Moreover, the use of the disputed domain name affirms such risk.

It is acknowledged that once the Panel finds a *prima facie* case is made by a complainant, the burden of production under the second element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain name (see [WIPO Overview 3.0](#) at section 2.1). Since the Respondent in the case at hand failed to come forward with any allegations or evidence, this Panel finds, in the circumstances of this case, that the Respondent has no rights or legitimate interests in the disputed domain name.

The Complainant has therefore satisfied paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

According to paragraph 4(a)(iii) of the Policy, the Complainant must thirdly establish that the disputed domain name has been registered and is being used in bad faith. The Policy indicates that certain circumstances specified in paragraph 4(b) of the Policy may, "in particular but without limitation", be evidence of the disputed domain name's registration and use in bad faith. One of these circumstances is that the Respondent by using the disputed domain name, has intentionally attempted to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of its website or location or of a product or service on its website or location (paragraph 4(b)(iv) of the Policy).

It is the view of this Panel that these circumstances are met in the case at hand.

It results from the Complainant's documented allegations that the disputed domain name does not resolve to an active website, however it has been used for sending fraudulent email correspondence by an individual pretending to be the Complainant's employee. This Panel agrees with the approach taken by previous UDRP panels stating that the use of a domain name for purposes other than to host a website may constitute bad faith. Such purposes include sending fraudulent email, phishing, identity theft, or malware distribution. Many such cases involve the respondent's use of the domain name to send deceptive emails,

e.g., to obtain sensitive or confidential personal information from prospective job applicants, or to solicit payment of fraudulent invoices by the complainant's actual or prospective customers (see [WIPO Overview 3.0](#) at section 3.4). As explained above, it results from the undisputed evidence submitted by the Complainant that the disputed domain name has been used for sending fraudulent email correspondence by an individual pretending to be the Complainant's employee, in order to phish for information and receive undue payment. The use of the disputed domain name in such an illegal scheme additionally demonstrates that the Respondent not only knew of the Complainant, its business and marks, but also attempted to pass itself off as the Complainant.

In the light of the above, the Panel finds that the disputed domain name has been registered and is being used in bad faith pursuant to paragraph 4(a)(iii) of the Policy.

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 disputed domain name <bat-tr.com> be transferred to the Complainant.

/Federica Togo/

Federica Togo

Sole Panelist

Date: December 8, 2022