

ADMINISTRATIVE PANEL DECISION

Barry Callebaut AG and Barry Callebaut Belgium NV v. sumeyye yuksel
Case No. D2023-0713

1. The Parties

The Complainants are Barry Callebaut AG, Switzerland, and Barry Callebaut Belgium NV, Belgium, represented by Adlex Solicitors, United Kingdom.

The Respondent is sumeyye yuksel, Netherlands.

2. The Domain Name and Registrar

The disputed domain name <barrv-callebaut.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 February 16, 2023. On February 16, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 16, 2023, 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 (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 24, 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 27, 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 March 3, 2023. In accordance with the Rules, paragraph 5, the due date for Response was March 23, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on April 13, 2023.

The Center appointed Taras Kyslyy as the sole panelist in this matter on April 18, 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 Complainant is part of the Barry Callebaut international group of companies manufacturing chocolate and cocoa products having around 12,000 employees operating in over 40 countries and over 60 production facilities and 23 chocolate academy centers worldwide, including in China, Canada, Brazil, India, Japan, Ivory Coast, Germany and the Russian Federation, and headquartered in Switzerland. The annual sales of the Complainant's group constituted approximately USD 7.1 billion in the year 2019/20. The Complainant's group has won various awards including the Food Ingredients Excellence Awards in 2011 and 2013 and the 2022 Ruby Award for Supplier Innovation at the Sweets & Snacks Expo Awards Ceremony.

The Complainant owns registrations for BARRY CALLEBAUT trademark in various jurisdictions including, for instance, Swiss trademark registration No. 453449, registered on July 28, 1998.

The Complainant's group has operated its main website at "www.barry-callebaut.com" since approximately 1997.

Marketing of the Complainant's trademark has included print media advertising, promotional brochures, attending trade fairs including Internationale Süßwarenmesse Cologne, Food Ingredients Europe, Institute of Food Technologists Chicago, and PMCA the United States of America, together with co-sponsorship of the World Chocolate Forum.

The disputed domain name was registered on December 23, 2022 and did not resolve to any active webpage. At the time of this Decision, the disputed domain name resolves to a webpage containing the wording as follows: "Account Suspended This Account has been suspended. Contact your hosting provider for more information." .MX records had been set up for the disputed domain name.

5. Parties' Contentions

A. Complainant

The disputed domain name is identical or confusingly similar to the Complainant's trademark. The disputed domain name differs only by the use of the letter "v" instead of the letter "y" at the end of the word "Barry" thus creating a misspelling of the Complainant's trademark. This has the obvious potential to cause confusion with the Complainant's trademark both visually and phonetically.

The Respondent has no rights or legitimate interests in the disputed domain name. The Complainant has no association with the Respondent and has never authorized or licensed the Respondent to use its trademarks. There is no evidence that the Respondent has ever used the disputed domain name at all. There is no evidence that the Respondent has been commonly known by the name comprised in the disputed domain name.

The disputed domain name was registered and is being used in bad faith. The Complainant has a well-known and highly distinctive trademark. It is inconceivable that the Respondent registered the disputed domain name independently of the Complainant's trademark; the disputed domain name is explicable only as a deliberate misspelling of the Complainant's trademark, no doubt for phishing or similar fraudulent purposes as MX records have been set up for the disputed domain name. The Respondent has concealed its identity through use of a proxy service. It is impossible to conceive of a good faith use of the disputed domain name.

B. Respondent

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

6. Discussion and Findings

A. Consolidation of Complainants

Section 4.11.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#)) summarizes the consensus view of UDRP panels on the consolidation of multiple complainants, in part, as follows:

“In assessing whether a complaint filed by multiple complainants may be brought against a single respondent, panels look at whether (i) the complainants have a specific common grievance against the respondent, or the respondent has engaged in common conduct that has affected the complainants in a similar fashion, and (ii) it would be equitable and procedurally efficient to permit the consolidation.”

The Complainant Barry Callebaut AG holds rights in the relevant trademark registrations, while the Complainant Barry Callebaut Belgium NV is the main trading company for the chocolate. The Complainants are related corporate entities and have a common legal interest sufficient to justify consolidation. There is no reason to require each of them to submit an almost identical complaint against the Respondent with nearly identical facts, legal arguments and requested relief. Moreover, the Respondent will not suffer any prejudice, and consolidation will not affect the Respondent’s rights in responding to the Complaint.

The Panel accepts the above in favor of consolidation referring hereinafter to the Complainants as “the Complainant”.

B. Identical or Confusingly Similar

According to section 1.11.1 of [WIPO Overview 3.0](#) the applicable generic Top-Level Domain (“gTLD”) in a domain name (e.g., “.com”, “.club”, “.nyc”) is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test. Thus, the Panel disregards the gTLD “.com” for the purposes of the confusing similarity test.

According to section 1.9 of the [WIPO Overview 3.0](#) a domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element. The Panel considers the disputed domain name consisting of intentional misspelling of the Complainant’s trademark replacing the “y” letter in the Complainant’s trademark with visually similar “v” letter in the disputed domain name. The Panel also finds that the addition of a hyphen in the disputed domain name does not prevent the confusing similarity with the Complainant’s trademark.

Considering the above the Panel finds the disputed domain name is confusingly similar to the Complainant’s trademark, therefore, the Complainant has established its case under paragraph 4(a)(i) of the Policy.

C. Rights or Legitimate Interests

The Complainant has established *prima facie* that the Respondent has no rights or legitimate interests in the disputed domain name.

Furthermore, the Respondent provided no evidence that it holds rights or legitimate interests in the disputed domain name.

The available evidence do not confirm that the Respondent is commonly known by the disputed domain name, which could demonstrate its rights or legitimate interests (see, e.g., *World Natural Bodybuilding Federation, Inc. v. Daniel Jones, TheDotCafe*, WIPO Case No. [D2008-0642](#)).

The Complainant did not license or otherwise agree for use of its prior registered trademarks by the Respondent, thus no actual or contemplated *bona fide* or legitimate use of the disputed domain name could be reasonably claimed (see, e.g., *Sportswear Company S.P.A. v. Tang Hong*, WIPO Case No. [D2014-1875](#)).

Considering the above the Panel finds the Respondent does not have rights or legitimate interests in the disputed domain name. Therefore, the Complainant has established its case under paragraph 4(a)(ii) of the Policy.

D. Registered and Used in Bad Faith

According to section 3.1.4 of the [WIPO Overview 3.0](#) the mere registration of a domain name that is identical or confusingly similar to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith. The Panel is convinced that the Complainant's trademark is well established through long and widespread use and the Complainant has acquired a significant reputation and level of goodwill in its trademark both in Switzerland and internationally. Thus, the Panel finds that disputed domain name was registered in bad faith. The Respondent knew of the Complainant's trademark at the moment of registration of the confusingly similar disputed domain name.

According to section 3.3 of the [WIPO Overview 3.0](#) from the inception of the UDRP, panelists have found that the non-use of a domain name (including a blank or "coming soon" page) would not prevent a finding of bad faith under the doctrine of passive holding. In this regard the Panel takes into account (i) the high degree of distinctiveness and reputation of the Complainant's trademark, (ii) the failure of the Respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the Respondent's concealing its identity while registering the disputed domain name, and (iv) the implausibility of any good faith use to which the disputed domain name may be put.

Considering the above the Panel finds the disputed domain name was registered and is being used in bad faith. Therefore, the Complainant has established its case under 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, <barrv-callebaut.com> be transferred to the Complainant Barry Callebaut AG.

/Taras Kyslyy/

Taras Kyslyy

Sole Panelist

Date: April 20, 2023