

## **ADMINISTRATIVE PANEL DECISION**

Barry Callebaut AG, Barry Callebaut Belgium NV v. metal mojoh  
Case No. D2023-0714

### **1. The Parties**

The Complainants are Barry Callebaut AG, Switzerland (“First Complainant”) and Barry Callebaut Belgium NV, Belgium (“Second Complainant”), represented by Adlex Solicitors, United Kingdom.

The Respondent is metal mojoh, Nigeria.

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

The disputed domain name <barry-callebaut.com> (“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 16, 2023. On February 16, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On February 16, 2023, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that 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 February 22, 2023. In accordance with the Rules, paragraph 5, the due date for Response was March 14, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 16, 2023.

The Center appointed Nicholas Smith as the sole panelist in this matter on March 31, 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 Complainants are part of the Barry Callebaut group of companies (“Group”), headquartered in Switzerland and established in 1996 following a merger of the French firm Cacao Barry and the Belgian firm Callebaut. Since 1996 the Group has manufactured chocolate and cocoa products under a trade mark consisting of the words “Barry Callebaut” (the “BARRY CALLEBAUT Mark”). The Group has more than 12,000 employees operating in over 40 countries worldwide, maintaining over 60 production facilities generating annual sales of approximately USD 7.1 billion in the 2020 financial year.

The First Complainant is the owner of trade mark registrations in numerous jurisdictions for the BARRY CALLEBAUT Mark including Swiss trade mark registration No. 453449 registered on July 28, 1998 for goods in classes 29 and 30. The Second Complainant is the main trading company in the Group and is therefore the primary user of the BARRY CALLEBAUT Mark.

The Domain Name was registered on December 16, 2022. The Domain Name does not, and there is no evidence that it ever has resolved to an active webpage as it resolves to a webpage maintained by the Registrar. As of February 9, 2023, MX records had been set up for the Domain Name indicating that it could be used to send emails.

#### **5. Parties’ Contentions**

##### **A. Complainant**

The Complainants make the following contentions:

- (i) that the Domain Name is confusingly similar to the Complainants’ BARRY CALLEBAUT Mark;
- (ii) that the Respondent has no rights nor legitimate interests in respect of the Domain Name; and
- (iii) that the Domain Name has been registered and is being used in bad faith.

The Complainants are the owners of the BARRY CALLEBAUT Mark, being the owners of trade marks registered in numerous jurisdictions for the BARRY CALLEBAUT Mark. The Domain Name consists of a minor misspelling of the BARRY CALLEBAUT Mark, adding the letter “i” and the “.com” generic Top-Level Domain (“gTLD”).

There are no rights or legitimate interests held by the Respondent in respect of the Domain Name. The Complainants have not granted any license or authorization for the Respondent to use the BARRY CALLEBAUT Mark and the Respondent is not commonly known by the Domain Name. The Respondent does not use the Domain Name for a *bona fide* purpose or legitimate noncommercial purpose. Rather the Domain Name has never been used in any active way.

The Respondent has registered and uses the Domain Name in bad faith. Given the fame of the BARRY CALLEBAUT Mark and the nature of the Domain Name, being a minor misspelling (also known as typosquatting) of the BARRY CALLEBAUT Mark, there are no plausible circumstances under which the Respondent could legitimately use the Domain Name other than in bad faith. In such circumstances, the Respondent’s passive holding of the Domain Name amounts to use of the Domain Name in bad faith.

##### **B. Respondent**

The Respondent did not reply to the Complainants’ contentions.

## 6. Discussion and Findings

### A. Consolidation of Multiple Complainants

The WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#)) provides at section 4.11.1, in respect of the issue “Multiple complainants filing against a single respondent” that:

“Paragraph 10(e) of the UDRP Rules grants a panel the power to consolidate multiple domain name disputes. At the same time, paragraph 3(c) of the UDRP Rules provides that a complaint may relate to more than one domain name, provided that the domain names are registered by the same domain-name holder.

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 present proceeding involves two Complainants bringing a single complaint against a common Respondent. The Complainants have made a request for consolidation and bear the onus of establishing that such a consolidation is justified.

The Panel is satisfied, based on the material filed, that the Complainants have a specific common grievance against the Respondent, in that the Complainants have a common legal interest as related entities that hold and use the BARRY CALLEBAUT Mark. The Panel has considered whether it would be equitable and procedurally efficient to permit the consolidation.

The Panel finds that it is equitable and procedurally efficient to grant the Complainants’ request for consolidation.

### B. Identical or Confusingly Similar

To prove this element the Complainants must have trade or service mark rights and the Domain Name must be identical or confusingly similar to the Complainants’ trade or service mark.

The Complainants have rights in the BARRY CALLEBAUT Mark, with registrations for the BARRY CALLEBAUT Mark as a trade mark in Switzerland and various other jurisdictions.

Disregarding the “.com” gTLD as a necessary technical requirement of the Domain Name, the Domain Name is confusingly similar to the BARRY CALLEBAUT Mark since it wholly incorporates the BARRY CALLEBAUT Mark, and adds the letter “i” (and a hyphen) which creates a minor difference that would be easy for an Internet user to overlook. Consequently, the requirement of paragraph 4(a)(i) of the Policy is satisfied.

### C. Rights or Legitimate Interests

To succeed on this element, a complainant may make out a *prima facie* case that the respondent lacks rights or legitimate interests in the disputed domain name. If such a *prima facie* case is made out, the respondent then has the burden of demonstrating rights or legitimate interests in the domain name.

Paragraph 4(c) of the Policy enumerates several ways in which a respondent may demonstrate rights or legitimate interests in a disputed domain name:

“Any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate your rights or legitimate interests to the domain name for purposes of paragraph 4(a)(ii):

(i) before any notice to you of the dispute, your 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) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or

(iii) you are 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 is not affiliated with the Complainants in any way. It has not been authorized by the Complainants to register or use the Domain Name or to seek the registration of any domain name incorporating the BARRY CALLEBAUT Mark or a mark similar to the BARRY CALLEBAUT Mark. There is no evidence that the Respondent is commonly known by the Domain Name or any similar name.

There is no evidence that the Respondent has used or made demonstrable preparations to use the Domain Name in connection with a *bona fide* offering of goods or services or for a legitimate noncommercial use. In fact there is no evidence of any demonstrable preparations to use the Domain Name at all.

The Panel finds that the Complainants have established a *prima facie* case that the Respondent lacks rights or legitimate interests in the Domain Name. The Respondent has chosen not to respond to the Complaint and thus has failed to provide any evidence of rights and legitimate interests in the Domain Name. The Panel finds that the Respondent has no rights or legitimate interests in respect of the Domain Name under paragraph 4(a)(ii) of the Policy.

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

For the purposes of paragraph 4(a)(iii) of the Policy, 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 the Domain Name in bad faith:

- (i) circumstances indicating that the respondent has registered or has 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 the complainant, for valuable consideration in excess of its documented out-of-pocket costs directly related to the domain name; or
- (ii) the respondent has 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 the respondent has engaged in a pattern of such conduct; or
- (iii) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, the respondent 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 the respondent's website or location or of a product or service on the respondent's website or location (Policy, paragraph 4(b)).

The Panel finds on the balance of probabilities that the Respondent was aware of the Complainants and their reputation in the BARRY CALLEBAUT Mark at the time the Respondent registered the Domain Name. The coined BARRY CALLEBAUT Mark has been used for over 20 years and has a considerable reputation in the field of chocolate (and related products). There is no obvious reason, nor has the Respondent offered

an explanation, for the Respondent to register a domain name that consists of a minor misspelling of the coined BARRY CALLEBAUT Mark unless there was an intention to create a likelihood of confusion between the Domain Name and the Complainants and their BARRY CALLEBAUT Mark. The registration of the Domain Name in awareness of the BARRY CALLEBAUT Mark and in the absence of rights or legitimate interests in this case amounts to registration in bad faith.

The Panel finds that the passive holding of the Domain Name does not prevent a finding that the Domain Name is being used in bad faith. See section 3.3 of [WIPO Overview 3.0](#). Moreover, the Panel is prepared to infer, based on the conduct of the Respondent, including the passive holding of the Domain Name, the activation of MX servers indicating that the Domain Name could be used for sending emails, the nature of the Domain Name itself, being a minor misspelling of a well-known mark, the failure by the Respondent to participate in this proceeding or otherwise provide any explanation of its conduct in registering a domain name that is confusingly similar to the BARRY CALLEBAUT Mark and the lack of any apparent legitimate reason for the registration and use of the Domain Name, that the Domain Name is most likely being held pending use in a bad faith manner that would take advantage of confusion between the Domain Name and the BARRY CALLEBAUT Mark.

Accordingly, the Panel finds that the Respondent has registered and is using the Domain Name in bad faith 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 Domain Name, <barriy-callebaut.com>, be transferred to the Complainants.

*/Nicholas Smith/*

**Nicholas Smith**

Sole Panelist

Date: April 6, 2023