

ADMINISTRATIVE PANEL DECISION

Barrick Gold of North America, Inc. and Barrick Gold Corporation v. Obert Hadebe

Case No. D2024-3345

1. The Parties

The Complainants are Barrick Gold of North America, Inc., United States of America (“United States” or “U.S.”), and Barrick Gold Corporation, Canada (collectively, the “Complainant”), represented by Dorsey & Whitney, LLP, United States.

The Respondent is Obert Hadebe, South Africa.

2. The Domain Name and Registrar

The disputed domain name <barrickzambia.com> is registered with eNom, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 14, 2024. On August 15, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 15, 2024, 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) and contact information in the Complaint. The Center sent an email communication to the Complainant on August 21, 2024, 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 August 21, 2024.

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 August 27, 2024. In accordance with the Rules, paragraph 5, the due date for Response was September 16, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 19, 2024.

The Center appointed Mihaela Maravela as the sole panelist in this matter on September 27, 2024. 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

According to information in the Complaint, the Complainant and other group companies compose one of the largest gold mining operations in the world. The Complainant, and its affiliates and subsidiaries, have used the trademark BARRICK in connection with gold and copper mining and precious metal goods and services in over thirteen countries since at least as early as 1983. The Complainant owns and operates a copper mine in Zambia, Africa.

The Complainant is the holder of a number of trademarks for or including BARRICK, including the U.S. trademark registration No. 4578245 for BARRICK (figurative), registered on August 5, 2014, for classes 37 and 42. The Complainant is also the owner of the domain name <barrick.com>, which it uses since 1995 as its official website to advertise and promote a variety of mining services, business initiatives, and other commercial endeavours involving the BARRICK trademarks.

The disputed domain name was registered on May 21, 2024, and resolves to an “under construction” page indicating that “Something amazing will be constructed here”.

There is no information on the Respondent apart from the data revealed by the Registrar.

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant contends that the disputed domain name is confusingly similar to the Complainant's BARRICK trademarks, as the disputed domain name consists of the Complainant's BARRICK trademark, immediately followed by the geographically descriptive term “zambia” which is where the Complainant conducts business. As such, the Complainant argues that it is the owner and operator of a copper mine located in Zambia, Africa, which was built to service and as a resource for the mine itself.

As regards the second element, the Complainant argues that the Respondent is not a licensee of the Complainant, nor has the Complainant otherwise authorized the Respondent to register the disputed domain name or otherwise use the Complainant's BARRICK trademarks. The disputed domain name resolves to a landing page indicating that the website is currently under construction, and that “something amazing will be constructed here”. Upon information and belief, the Respondent has not been commonly known as BARRICK.

With respect to the third element, the Complainant argues that its use of the BARRICK trademark dates back to at least as early as 1983 and its earliest registration for the BARRICK trademark was on September 18, 2013. Both dates predate the Respondent's registration of the disputed domain name. The Complainant's trademark registrations provide the Respondent with constructive knowledge of the Complainant's ownership of the BARRICK trademarks, especially since the Complainant's trademarks are well-known. The Complainant submits that the fact that the Respondent is not hosting an active website cannot prevent a finding of use in bad faith. The Complainant contends that the Respondent has registered the disputed domain name in bad faith to pass itself off as the Complainant, or at the very least, create an improper affiliation. In addition, the Complainant argues that the email in the contact details of the Respondent is

identical to the contact details of the Respondent in another UDRP proceeding, which suggests that the respective Respondents are working in concert with each other to register and use domain names incorporating the Complainant trademarks for bad faith purposes.

B. Respondent

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

6. Discussion and Findings

No response has been received from the Respondent in this case. Accordingly, the Panel considers it can proceed to determine the Complaint based on the statements and documents submitted by the Complainant as per paragraph 15(a) of the Rules. The applicable standard of proof in UDRP cases is the "balance of probabilities" or "preponderance of the evidence", and the Panel can draw certain inferences in light of the particular facts and circumstances of the case. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.2.

To succeed, the Complainant must demonstrate that all of the elements listed in paragraph 4(a) of the Policy have been satisfied: (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights, (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.

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. [WIPO Overview 3.0](#), section 1.7.

The Complainant has shown rights in respect of the trademark BARRICK for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms here, "zambia" may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

The Panel agrees that the Top-Level Domain ("TLD") ".com" is disregarded in the confusing similarity test, as it does not form part of the comparison as it is a standard registration requirement for technical reasons. [WIPO Overview 3.0](#), section 1.11.1.

The Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or

legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant's *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

There is no evidence showing that the Respondent holds any rights for BARRICK trademarks. The Panel also notes that there is no evidence showing that the Respondent is authorized or licensed to use the trademark BARRICK. The disputed domain name resolves to an "under construction" page indicating that "Something amazing will be constructed here". The Panel considers that the use of the disputed domain name to resolve to an inactive webpage does not represent a *bona fide* offering of goods or services, or a legitimate noncommercial or fair use, given the substantial reputation and goodwill of the Complainant's trademark or capacity to otherwise mislead Internet users.

Also, there is no evidence that the Respondent is commonly known by the disputed domain name within the meaning of paragraph 4(c)(ii) of the Policy.

The Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

According to the unrebuted assertions of the Complainant, its BARRICK trademarks were widely used in commerce well before the registration of the disputed domain name and are well-known. The Complainant's BARRICK trademark is well known in its field of gold and copper mining (e.g., *Barrick Gold of North America, Inc. and Barrick Gold Corporation v. Mui Laurence Zwane*, WIPO Case No. [D2024-1181](#)). The disputed domain name is confusingly similar with the Complainant's trademarks. Given the long use of the Complainant's trademark, the Panel considers that the Respondent more likely than not knew that the disputed domain name included the Complainant's trademark when registering the disputed domain name, especially since the disputed domain name includes "zambia", a country where the Complainant has important mining activity. Registration of the disputed domain name in awareness of the reputed BARRICK mark and in the absence of rights or legitimate interests in this case amounts to registration in bad faith.

Panels 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. [WIPO Overview 3.0](#), section 3.3. Having reviewed the available record, the Panel notes the distinctiveness or reputation of the Complainant's trademark, and the composition of the disputed domain name which incorporates the Complainant's trademark entirely with the addition of "zambia", a country where the Complainant has mining presence and activity, and finds that in the circumstances of this case the passive holding of the disputed domain name does not prevent a finding of bad faith under the Policy. The Panel has not found sufficient evidence in the case file to support a finding of pattern of conduct, as argued by the Complainant.

The Panel finds that the Complainant has established the third element 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 <barrickzambia.com> be transferred to the Complainant.

/Mihaela Maravela

Mihaela Maravela

Sole Panelist

Date: October 11, 2024