

## **ADMINISTRATIVE PANEL DECISION**

Barrick Gold of North America, Inc. and Barrick Gold Corporation v. Private Whois

Case No. D2024-4772

### **1. The Parties**

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

The Respondent is Private Whois, China.

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

The disputed domain name <barrickinvestment.com> is registered with Cosmotown, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 19, 2024. On November 20, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 22, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on November 22, 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 November 25, 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 November 28, 2024. In accordance with the Rules, paragraph 5, the due date for Response was December 18, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 21, 2024.

The Center appointed Andrea Cappai as the sole panelist in this matter on December 31, 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**

The Complainant Barrick Gold of North America, Inc., together with its parent company, affiliates, and subsidiaries, including Co-Complainant (Barrick Gold Corporation), forms part of one of the largest global conglomerates engaged in gold mining and exploration. The Co-Complainant holds, among others, the following trademark registrations:

- United States Trademark Registration No. 4,578,245 for the word and device mark BARRICK, registered on August 5, 2014, in Classes 37 and 42;
- United States Trademark Registration No. 6,225,225 for the word mark BARRICK, registered on December 22, 2020, in Classes 6, 14, 37, and 42;
- United States Trademark Registration No. 6,592,636 for the word and device mark BARRICK, registered on December 21, 2021, in Classes 14, 37, and 42.

The Complainant, the Co-Complainant and its affiliated entities have continuously used the BARRICK trademark in connection with gold and copper mining, as well as related goods and services, in more than thirteen countries since at least 1983.

Since 1995, Complainant, Co-Complainant and their affiliates have operated the domain name <barrick.com> to promote and advertise mining services, business ventures, and other commercial initiatives under the BARRICK marks.

The disputed domain name was registered on October 22, 2024. Although the disputed domain name does not currently resolve to an active website, it has previously directed users to a site designed to collect information by requesting personal login credentials. Additionally, the disputed domain name has been promoted via various social media posts implying an affiliation with the Complainants.

#### **5. Parties' Contentions**

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

The Complainants contend that they have satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainants contend that the disputed domain name, registered in 2024, is similar to the Complainants' trademark for the purposes of the Policy, differing only by the addition of the term "investment."

The Respondent has no rights or legitimate interests in the disputed domain name, is not commonly known by it, and has not been authorised by the Complainants to use it. The disputed domain name has been promoted in various social media posts falsely affiliating the Respondent with the Complainants. These posts display the Complainants' logo and reference its New York and Toronto Stock Exchange symbols in connection with the Respondent's alleged investment platform. Internet users are led to believe they can trade gold and copper through the Respondent's website, claims which appear to be entirely false.

The disputed domain name has been registered and used in bad faith, with full knowledge of the Complainants' rights, to mislead Internet users for commercial gain and to disrupt the Complainants' business operations.

## **B. Respondent**

The Respondent did not reply to the Complainants' contentions.

## **6. Discussion and Findings**

### **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 Complainants' trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

The Complainants have shown rights in respect of a trademark or service mark 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, such as "investment" 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 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 recognised 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 Complainants have established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainants' 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.

The closeness of the disputed domain name to the Complainants' mark creates the false impression that the disputed domain name is owned by or is affiliated with the Complainants, when this is not the case and is confusing. The Complainants have not authorised the use or registration of this disputed domain name by the Respondent and the Respondent is not commonly known by the disputed domain name. [WIPO Overview 3.0](#), section 2.5.1

The Respondent is not making a legitimate and noncommercial use of the disputed domain name, as the same has been promoted through various social media posts falsely affiliating the Respondent with the Complainants, potentially misleading Internet users into believing they can trade gold and copper through the Respondent's website – a claim that appears to be entirely false.

Panels have held that the use of a domain name for illegal activity, such as impersonation/passing off or other types of fraud can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

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.

In the present case, the Panel notes that the Respondent registered and used the disputed domain name that is confusingly similar to the Complainants' trademark.

The conspicuous connection of the disputed domain name with the Complainants, combined with the use of the term "investment," which suggests the opportunity to invest in the commodities produced by the Complainants – common investment assets – implies the Respondent's "opportunistic bad faith" in breach of the Policy. Given the Complainants' significant market presence, it is evident to the Panel that the Respondent was fully aware of the Complainants' trademark and sought to derive commercial benefit by misleading Internet users through confusion.

Panels have held that the use of a domain name for illegal activity, such as impersonation/passing off and other types of fraud constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

Indeed, the Panel, based on the available records, notes that the disputed domain name was at the very least advertised through various social media posts, and the content of such advertisements clearly indicates that they falsely suggest an affiliation with the Complainants. The ultimate purpose of the activity promoted to Internet users appears to have been to generate profit through the services connected to the disputed domain name, a claim which, based on the information provided by the Complainants, appears unfounded.

The Panel finds that the Complainants have 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 <barrickinvestment.com> be transferred to the Complainant.

*/Andrea Cappai/*

**Andrea Cappai**

Sole Panelist

Date: January 14, 2025