

ADMINISTRATIVE PANEL DECISION

Barry Callebaut AG, Barry Callebaut Belgium NV v. Xpo Web
Case No. D2024-5023

1. The Parties

The Complainants are Barry Callebaut AG, Switzerland (“Complainant 1”), and Barry Callebaut Belgium NV, Belgium (“Complainant 2”, and jointly the “Complainant”), represented by Adlex Solicitors, United Kingdom.

The Respondent is Xpo Web, Portugal.

2. The Domain Name and Registrar

The disputed domain name <barry-caliebaut.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 December 5, 2024. On December 5, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 6, 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, Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on December 6, 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 December 9, 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 December 10, 2024. In accordance with the Rules, paragraph 5, the due date for Response was December 30, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on January 2, 2025.

The Center appointed Olga Zalomiy as the sole panelist in this matter on January 8, 2025. 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 a Swiss manufacture of high-quality chocolate and cocoa products, Barry Callebaut international group of companies (the "Group"). The Complainant owns a number of trademark registrations for the BARRY CALLEBAUT trademark, such as:

- Swiss trademark registration No. 453449 for the word mark BARRY CALLEBAUT, registered on July 28, 1998;
- Swiss trademark registration No. 561861, for the word and design mark BARRY CALLEBAUT, registered on September 6, 2007.

The Group has operated its main website at "www.barry-callebaut.com" since 1997.

The Respondent registered the disputed domain name on August 12, 2024. The disputed domain name does not direct to an active website.

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 its BARRY CALLEBAUT trademark, as the only difference between them is a single letter.

The Complainant maintains that it has no association with the Respondent and has not granted authorization for the Respondent to use its trademarks. The Complainant argues that there is no evidence to suggest that the Respondent is commonly known by the disputed domain name. The Complainant contends that the Respondent has neither engaged in noncommercial nor fair use of the disputed domain name, as it has not been actively used.

The Complainant alleges that the Respondent has demonstrated a pattern of bad faith behavior, citing prior findings of bad faith registration and use of a domain name. Additionally, the Complainant argues that the Respondent's passive holding of the disputed domain name supports a finding of bad faith, given the following circumstances: a) the distinctiveness and fame of the Complainant's trademark; b) the partially fraudulent intent evident in the Respondent's typo-squatted domain name; c) the improbability of any good faith use of the disputed domain name by the Respondent.

B. Respondent

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

6. Discussion and Findings

6.1. Procedural Issue – Consolidation of the Complainants

The Complainant 1 and the Complainant 2 filed a joint Complaint against the Respondent and requested consolidation of their disputes against the Respondent. Paragraph 10(e) of the Rules grants a panel the power to consolidate multiple domain name disputes. Multiple complainants may file a single complaint against a respondent if the complainants establish that: “(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.” WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ([“WIPO Overview 3.0”](#)), section 4.11.1.

Here, the Complainant 1 and the Complainant 2 are part of the Barry Callebaut international group of companies, a leading global manufacturer of chocolate and cocoa products. The Complainant 1 owns the group’s trademark portfolio, while the Complainant 2 serves as the group’s primary trading entity for chocolate. The Respondent registered and is using the disputed domain name, which is confusingly similar to the Complainant 1’s trademark, and is utilized by the Complainant 2. Therefore, the Respondent’s actions have impacted both Complainants giving rise to a shared grievance. Allowing consolidation is equitable and promotes procedural efficiency. Moreover, the Respondent, despite having ample opportunity, did not object to the consolidation or demonstrate any potential prejudice it might suffer as a result. Therefore, the Panel concludes that consolidation is appropriate in this case.

6.2. Substantive Issues

Pursuant to paragraph 4(a) of the Policy, to succeed in this proceeding, the Complainant must prove each of the following elements with respect to the disputed domain name:

- (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 a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the mark is recognizable 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. It is well-established that “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”. [WIPO Overview 3.0](#), section 1.9. Here, the disputed domain name includes the Complainant’s BARRY CALLEBAUT trademark with the second letter “l” of the second word replaced with the letter “i”. The inclusion of the generic Top-Level Domain (“gTLD”) “.com” is typically disregarded in the context of the confusing similarity assessment, being a technical requirement of registration. [WIPO Overview 3.0](#), section 1.11.

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.

The evidence on record shows that the Respondent is not commonly known by the disputed domain name. The Respondent is not making legitimate noncommercial or fair use of the disputed domain name or uses it for bona fide offering of goods or services, because the disputed domain name does not direct to an active website. The Respondent has not been authorized by the Complainant to use the Complainant’s distinctive trademark in a domain name. Finally, the passive holding of the disputed domain name, which currently does not resolve to an active website, does not grant the Respondent any rights or legitimate interests under the circumstances of this case.

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 the disputed domain name incorporating the Complainant’s trademark many years after the Complainant’s first trademark registration. The Respondent’s lack of rights or legitimate interests in the disputed domain name, the absence of a credible explanation for choosing the disputed domain name, reputation of the Complainant’s trademark indicate that the disputed domain name was registered in bad faith.

Panels have found that the non-use of a domain name 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, the composition of the disputed domain name, and the provision of the false or incomplete contact details by the Respondent when registering the disputed domain name (the courier service was not able to dispatch the Center’s Written Notice), 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 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 <barry-caliebaut.com> be transferred to the Complainant 1.

/Olga Zalomiy/

Olga Zalomiy

Sole Panelist

Date: January 22, 2025