

## **ADMINISTRATIVE PANEL DECISION**

British American Tobacco (Brands) Limited v. Elizabeth Atieno  
Case No. D2025-0942

### **1. The Parties**

The Complainant is British American Tobacco (Brands) Limited, United Kingdom, represented by Demys Limited, United Kingdom.

The Respondent is Elizabeth Atieno, Kenya.

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

The disputed domain name <bat-kenya.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 March 7, 2025. On March 7, 2025, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 7, 2025, 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 March 10, 2025, 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 March 14, 2025.

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 17, 2025. In accordance with the Rules, paragraph 5, the due date for Response was April 6, 2025. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on April 7, 2025.



The Center appointed Anita Gerewal as the sole panelist in this matter on April 14, 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 a member of the British American Tobacco Group of Companies (“BAT”) and is the entity within BAT which owns the corporate trademarks and domain names. BAT is a British multinational corporation specializing in the manufacture of tobacco and nicotine products, with its headquarters in London. Established in 1902, the company now operates in approximately 160 countries and employs more than 46,000 people. In 2023, it reported revenues totaling GBP 27,283 million.

BAT operates a local subsidiary in Kenya, British American Tobacco Kenya plc (“BAT Kenya”). BAT Kenya has maintained a presence in the region since 1907 and has been listed on the Nairobi Securities Exchange since 1969. BAT Kenya’s business operations span the entire value chain, including tobacco leaf cultivation, as well as the distribution and sale of finished tobacco products.

The Complainant is the owner of a large global portfolio of trademark registrations, including the following registrations:

- United Kingdom Registration No. UK00000849840 for  in class 34, registered on May 30, 1963
- United Kingdom Registration No. UK00002135480 for BAT (word) in class 34, registered on February 27, 1998
- Benelux Registration No. 60434 for  in class 34, registered on July 1, 1973

The Complainant is also the owner of the domain names <bat.com> and <batkenya.com>.

The disputed domain name was registered on January 6, 2025, and resolves to a website which appears to impersonate BAT Kenya.

#### 5. Parties’ Contentions

According to paragraph 4(a) of the Policy, in order to succeed, the Complainant must establish each of the following elements:

- (i) the disputed domain name is identical or confusingly similar to the trademark or service mark in which the Complainant has rights;
- (ii) the Respondent has no rights or legitimate interest in respect of the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

##### 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 incorporates its BAT marks in its entirety combined with geographical term “kenya”. The Complainant avers that the disputed domain name is identical to the name of its Kenyan subsidiary, BAT Kenya. The geographical term “kenya” is closely related to the Complainant, as the Complainant operates within the country through its local subsidiary, BAT Kenya. The Complainant therefore contends that the additional adornment does nothing to distinguish the disputed domain name from the Complainant’s marks. On the contrary, the Complainant asserts that the inclusion of “kenya” actually adds to the potential for confusion. The Complainant therefore contends that the disputed domain name is confusingly similar to registered trademarks in which the Complainant has Rights in terms of the Policy.

The Complainant contends that the Respondent does not have any rights or legitimate interests in the disputed domain name. The Complainant avers that it has found no evidence that 1) the Respondent has been commonly known as “bat” or “bat kenya” prior to or after the registration of the disputed domain name;

2) the Respondent owns any trademarks incorporating the term “bat”; and 3) the Respondent has ever traded legitimately under the business names “bat” or “bat kenya”. The Complainant has not licensed or otherwise permitted the Respondent to use any of its trademarks or to register a domain name incorporating the Complainant’s marks. The Complainant contends that given the confusing similarity of the disputed domain name to its marks and local subsidiary, there is no conceivable use to which the disputed domain name could be put now, or in the future, that would confer any legitimate interest upon the Respondent.

The Complainant contends that the disputed domain name is confusingly similar to its BAT marks and identical to the name of its local subsidiary, BAT Kenya. As such, the Complainant avers that the disputed domain name falsely suggests affiliation with the Complainant, thus making any use of the disputed domain name not a fair use in terms of the Policy.

With respect to legitimate noncommercial use, the Complainant observes that the disputed domain name leads to a website promoting pricing plans for potential distributors or partners, indicating a commercial purpose. Given the structure of the disputed domain name, the Complainant asserts that the Respondent is deliberately using it for commercial gain by misleadingly diverting consumers and undermining the trademarks involved.

The Complainant also contends that the Respondent cannot claim to be a genuine reseller of the Complainant’s products, and that the Respondent cannot claim nominative fair use as reseller or distributor of the Complainant’s products, citing the Oki Data test (Section 2.8 of the [WIPO Overview 3.0](#)) and giving the following reasons:

- (i) The Respondent is not part of the Complainant’s distribution network, and as such the Complainant’s goods on offer are either counterfeit, “parallel import” or “grey market” goods.
- (ii) While the Respondent’s website appears to only offer the Complainant’s goods, as noted above, the Respondent is not part of the Complainant’s distribution network, and as such the goods on offer are likely to be either counterfeit, “parallel import” or “grey market” goods.
- (iii) The Respondent’s website does not accurately and prominently disclose its relationship (or, more accurately, non-relationship) with the Complainant. On the contrary, the Respondent claims to be the Complainant’s subsidiary BAT Kenya on its website.
- (iv) The Complainant notes that it would be challenging for the Respondent to register enough domain names incorporating the Complainant’s mark to “corner the market”.

The Complainant also contends that the sale of either counterfeit, “parallel import” or “grey market” goods and the Respondent’s impersonation/passing off as the Complainant’s subsidiary can never confer rights or legitimate interests to the Respondent in respect of the disputed domain name.

Further, the Complainant contends that the disputed domain name was registered and is being used in bad faith. The Complainant contends that the misleading use of the Complainant’s BAT marks, omission of any disclaimer that would dispel the confusion regarding the disputed domain name and the associated website, and the Respondent’s passing off as the Complainant’s subsidiary, demonstrate the Respondent’s intention to mislead Internet users into believing that its website is an authorized website.

The Complainant has a reasonable apprehension that the website associated with the disputed domain name is used in relation to the sale of either counterfeit, “parallel import” or “grey market” goods. Therefore, the Complainant avers that any such use, or potential for such use, cannot equate to a good faith use of the disputed domain name. Given that on its website the Respondent is attempting to pass off as the Complainant’s Kenyan subsidiary, BAT Kenya, the Complainant asserts that it is inconceivable that the Respondent did not have the Complainant firmly in mind when it registered the disputed domain name.

Furthermore, the Complainant avers that considering that the Respondent’s contact information which is near identical to the BAT Kenya’s head office, it is more likely than not that the Respondent has provided either stolen or false contact information. As such, the Complainant contends that the Respondent’s use of false or stolen contact information is an additional indication of bad faith.

## **B. Respondent**

The Respondent did not reply to the Complainant's 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 Complainant's 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 Complainant has shown rights in respect of its BAT trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the BAT 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, a hyphen and the geographical term "kenya" may bear on assessment of the second and third elements, the Panel finds the addition of such terms 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 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 Panel observes that the Complainant has no relationship in any way with the Respondent and did not authorize the Respondent's use of the BAT trademark. The Panel also notes that there is no evidence showing that the Respondent might be commonly known by the disputed domain name in the sense of paragraph 4(c)(ii) of the Policy.

Further, the Panel observes that the disputed domain name resolves to a website which uses the Complainant's business name and address in Kenya by offering the same products as the Complainant does. Therefore, the Panel is of the opinion that the Respondent's use of the disputed domain name is in a manner that creates confusion with the Complainant and its trademark rights, which does not support a finding of rights or legitimate interests in the disputed domain name on the part of the Respondent.

The Complainant contends that the Respondent cannot legitimately claim to be a genuine reseller or claim nominative fair use under the Oki Data test ([WIPO Overview 3.0](#), Section 2.8). The Respondent is not part of the Complainant's authorized distribution network, and the goods offered are likely counterfeit, parallel imports, or grey market products. Although the Respondent's website appears to exclusively offer the Complainant's products, it falsely suggests an official affiliation by claiming to be a subsidiary, rather than clearly and accurately disclosing the lack of any relationship. The Panel finds that the conditions set out in the Oki Data test have not been satisfied to establish any rights or legitimate interests.

Panels have held that the use of a domain name for illegal activity such as impersonation/passing off here, can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1. Based on the totality of the circumstantial evidence presented, the Panel finds that there are sufficient grounds to conclude that the Respondent is engaging in illegal activity. The Respondent's unauthorized use of the Complainant's trademark, the offering of goods likely to be counterfeit or unauthorized parallel imports/grey market goods, the false claims of corporate affiliation, and the failure to provide accurate disclosure regarding its relationship with the Complainant collectively point to a pattern of conduct intended to deceive consumers for commercial gain.

Above all, the Panel finds that the disputed domain name carries a high risk of creating an implied affiliation with the Complainant, especially given that one of the Complainant's subsidiaries operates in Kenya under the name "BAT Kenya". [WIPO Overview 3.0](#), 2.5.1.

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.

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.

In the present case, the Panel observes that the general impression created by the website to which the disputed domain name resolves is one of impersonation of the Complainant. The Respondent is offering the Complainant's products bearing the Complainant's trademark without authorization, license, or consent. The Respondent falsely claims to be the Complainant's subsidiary in Kenya, using the Complainant's business name and address to create a misleading impression of affiliation.

The Panel concurs with the Complainant's submissions and finds that the disputed domain name has been used for commercial purposes as it resolves to a website offering pricing plans to potential distributors or partners. The Panel thus finds that the Respondent's use of the disputed domain name is intended to take unfair advantage of the Complainant's reputation and trademarks by misleading Internet users for the Respondent's financial gain. Having regard to the overall circumstances of the case, the Panel finds it more likely than not that the Respondent had, or ought to have had, knowledge of the Complainant's rights, further supporting a finding of bad faith registration and use.

Panels have held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods, impersonation/passing off, or 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.

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 <bat-kenya.com> be transferred to the Complainant.

*/Anita Gerewal/*

**Anita Gerewal**

Sole Panelist

Date: April 28, 2025