

ADMINISTRATIVE PANEL DECISION

Barry Callebaut AG and Barry Callebaut Belgium NV v. Michael James, Mike J inc

Case No. D2025-1570

1. The Parties

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

The Respondent is Michael James, Mike J inc, United States of America (“United States”).

2. The Domain Name and Registrar

The disputed domain name <barry-callesbaut.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 April 17, 2025. On April 22, 2025, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 23, 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 Complainants on April 24, 2025, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainants to submit an amendment to the Complaint. The Complainants filed an amended Complaint on April 28, 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 April 30, 2025. In accordance with the Rules, paragraph 5, the due date for Response was May 20, 2025. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 21, 2025.

The Center appointed Peter Burgstaller as the sole panelist in this matter on May 26, 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 First Complainant was incorporated in 1994 headquartered in Switzerland, and the Second Complainant was incorporated in 1989 headquartered in Belgium (Annex 5 to the Complaint). The Complainants are part of the Barry Callebaut Group ("Group"), a leading manufacturer of high-quality chocolate, established in 1996 (Annexes 3 and 5 to the Complaint).

The Group runs subsidiaries around the world and has a sales revenue in 2023/24 of more than CHF 10 billion (Annexes 4, and 7 to the Complaint).

The Complainants own or have rights in numerous trademark registrations for BARRY CALLEBAUT, inter alia:

- Swiss trademark registration, Reg. No. 453449, registered July 28, 1998;
- International trademark registration, Reg. No 702211, registered September 4, 1998, designated in numerous jurisdictions, including United Kingdom, , China, and the European Union;
- International trademark registration, Reg. No 1296836, registered December 8, 2015, designated in numerous jurisdictions, such as Mexico, China, and the European Union;
- United States trademark registration, Reg. No 2 320 385, registered February 22, 2000 (Annex 6 to the Complaint).

The Group addresses its main business website under the domain name <barry-callebaut.com> and has a strong online presence (Annexes 3 and 9 to the Complaint).

The disputed domain name was registered March 6, 2025. At the time of filing the Complaint the disputed domain name resolved to a website displaying pay-per-click ("PPC") advertisement links (Annex 12 to the Complaint); furthermore, there is an active Mail Exchange ("MX") records for the disputed domain name (Annex 13 to the Complaint).

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 BARRY CALLEBAUT trademark is well-known and the disputed domain name contains the BARRY CALLEBAUT trademark almost in its entirety, simply including a letter "s" in "callebaut" which does not prevent a finding of confusing similarity; further, the disputed domain name is a misspelling of the Complainants' trademark BARRY CALLEBAUT.

Because of the widespread use of the Complainants' trademark, the Complainants submit that it is inconceivable that the Respondent was aware of their trademark when registering the disputed domain name, and that there would be no legitimate use for the disputed domain name; this is supported by the fact that the disputed domain name misspells the Complainants' trademark. Hence, it is clear that the Respondent had the Complainants and their business in mind when registering and using the disputed domain name as it is explicable only as a deliberate misspelling of the Complainants' trademark.

Further, the Complainants have never licensed, or authorized the Respondent to use the BARRY CALLEBAUT trademark.

The Complainants also note that the disputed domain name resolved to a website where the Respondent is using the disputed domain name to display multiple PPC advertisement links that redirect the Internet users to third-party websites. Further, the Complainants note the Respondent's activation of MX records for the disputed domain name.

B. Respondent

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

6. Preliminary Procedural Issue: Consolidation of Multiple Complainants

The Panel notes that the present Complaint has been filed by multiple Complainants who have submitted a request for consolidation of their respective complaints.

UDRP panels have articulated principles governing the question of whether a complaint filed by multiple complainants may be brought against (one or more) respondents. These criteria encompass situations in which (i) the complainants either have a specific common grievance against the respondent, or the respondent has engaged in common conduct that has affected the complainants' individual rights in a similar fashion; (ii) it would be equitable and procedurally efficient to permit the consolidation; or in the case of complaints brought (whether or not filed by multiple complainants) against more than one respondent, where (i) the domain names or the websites to which they resolve are subject to common control, and (ii) the consolidation would be fair and equitable to all parties.

In order for the filing of a single complaint brought by multiple complainants or against multiple respondents which meets the above criteria to be accepted, such complaint would typically need to be accompanied by a request for consolidation which establishes that the relevant criteria have been met. The onus of establishing this, falls on the filing party/parties, and where the relevant criteria have not been met, the complaint in its filed form would not be accepted. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.11.

The Panel is satisfied that the Complainants each have rights in the mark BARRY CALLEBAUT as set out in the Factual Background section above. The Panel notes that the Complainants assert that they have been the target of common conduct by the Respondent and that as there is a common grievance on the part of each of them and a single disputed domain name so it would be procedurally efficient to deal with all matters in the one proceeding, given the almost identical facts. The Respondent has not filed a Response and thus did not oppose on that issue.

The Panel finds that the Complainants have established that they have a common grievance against the Respondent which would affect their individual rights on substantially the same basis. The Respondent has not indicated that it would suffer any prejudice from consolidation of the complaints and no potential prejudice is apparent to the Panel. The Respondent has not otherwise contested the request for consolidation. In all of these circumstances, the Panel considers that it is procedurally efficient to allow the Complainants to proceed with the single Complaint as filed and its content that such consolidation is fair and equitable to all of the Parties. With regard to the remedy sought by the Complainants, the Panel notes that, if the Complaint succeeds, the Complainants have specifically requested that the disputed domain name be transferred to the First Complainant.

7. Discussion and Findings

According to paragraph 4(a) of the Policy, the Complainants must prove that:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainants have rights; and
- (ii) the Respondent has no rights or legitimate interests with respect to 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 Complainants' trademark and the disputed domain name. [WIPO Overview 3.0](#), section 1.7.

The Complainants submitted evidence, which incontestably and conclusively establishes rights in the mark BARRY CALLEBAUT.

In the present case the disputed domain name <barry-callesbaut.com> is confusingly similar to the BARRY CALLEBAUT mark in which the Complainants have rights since it only includes the letter "s" in "callebaut" and adds a hyphen between the terms "barry" and "callebaut".

It has long been established under UDRP decisions that a misspelling of a trademark, here, the mere inclusion of the letter "s" in "callebaut" and the insertion of a hyphen between "barry" and "callebaut", do not prevent a finding of confusing similarity under the first element of the Policy because the relevant trademark remains recognizable within the disputed domain name ([WIPO Overview 3.0](#), section 1.9).

Finally, it has also long been held that generic Top-Level Domains ("gTLDs") are generally disregarded when evaluating the confusing similarity between a disputed domain name and a trademark. [WIPO Overview 3.0](#), section 1.11.

Based on the available record, 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.

While 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 often impossible 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. 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 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, since they have never assigned, granted, licensed, sold, transferred or in any way authorized the Respondent to register or use the BARRY CALLEBAUT trademark in any manner. The Respondent did not reply and hence has not rebutted the Complainants' contentions.

Further, the Complainants focus on the fact that its trademark is distinctive and well known in the field of chocolate and cocoa products; moreover, the trademark BARRY CALLEBAUT is registered in a variety of jurisdictions around the world and provides suitable evidence of its reputation, adding that it is inconceivable that the Respondent would not have been aware of this when registering the disputed domain name.

Finally, the nature of the disputed domain name, comprising the Complainants' mark in its entirety together with an obvious misspelling of the word "callebaut", indicates an awareness of the Complainants and their mark and there is a risk that Internet users will not notice the subtle misspelling and may be confused as to the relationship between the Respondent's website and the Complainants' trademark.

Based on the available record, the Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

As stated in many decisions rendered under the Policy both conditions, registration and use in bad faith, must be demonstrated; consequently, the Complainants must show that:

- the disputed domain name was registered by the Respondent in bad faith, and
- the disputed domain name is being used by the Respondent in bad faith.

(i) The Complainants have established rights in the registered trademark BARRY CALLEBAUT, long before the registration of the disputed domain name. Further, the trademark BARRY CALLEBAUT is distinctive and well known in the field of chocolate and cocoa products.

The disputed domain name incorporates the Complainants' distinctive registered trademark almost entirely, together with an obvious and intentional misspelling of the Complainants' BARRY CALLEBAUT mark.

These facts strongly indicate that the Respondent must have been aware of the Complainants' business and trademark when registering the disputed domain name.

Therefore, the Panel is convinced that the disputed domain name was registered in bad faith by the Respondent.

(ii) The Complainants put forward evidence that the disputed domain name resolved to a website which contained PPC advertisement links.

In doing so, the Respondent intentionally attempted to attract Internet users to its website for commercial gain, by creating a likelihood of confusion with the Complainants' trademarks as to the source, sponsorship, affiliation or endorsement of its website according to paragraph 4(b)(iv) of the Policy – this constitutes bad faith registration and use of the disputed domain name.

The bad faith use of the disputed domain name is also supported by the fact that the disputed domain name has active MX records, as shown in the MX records lookup, which indicates a possible use for email services.

Based on the available record, the Panel finds the third element of the Policy has been established.

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-callesbaut.com> be transferred to the First Complainant.

/Peter Burgstaller/

Peter Burgstaller

Sole Panelist

Date: June 9, 2025