

ADMINISTRATIVE PANEL DECISION

Barry Callebaut AG, and Barry Callebaut Belgium NV v. Ivan Eliseev
Case No. D2025-1955

1. The Parties

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

The Respondent is Ivan Eliseev, Kazakhstan.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 15, 2025. On May 16, 2025, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 16, 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 May 19, 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 May 21, 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 May 22, 2025. In accordance with the Rules, paragraph 5, the due date for Response was June 11, 2025. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 12, 2025.

The Center appointed Andrea Jaeger-Lenz as the sole panelist in this matter on June 18, 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 companies collectively addressed as the Complainant are part of the Barry Callebaut international group of companies headquartered in Switzerland and engaged in the manufacturing of chocolate and cocoa products. The group to which the Complainant belongs procures, processes and supplies cocoa-based ingredients like cocoa powder, cocoa butter and chocolate to food manufacturers as well as to food service businesses. The group of the Complainant was established in 1996 following a merger of the French company Cacao Barry and the Belgian company Callebaut, see exhibit 3 of the Complaint. It disposes of more than 13,000 employees operating in over 40 countries and maintains more than 62 production facilities, including three in Canada as per exhibit 5 of the Complaint, and 25 chocolate academy centers worldwide as per Annex 3. One of the groups subsidiaries is the company Barry Callebaut Canada Inc. as per exhibit 4 of the Complaint. The Complainant owns numerous trademark registrations worldwide including the following (as per exhibit 7 of the Complaint):

- International Registration No. 702211 BARRY CALLEBAUT (word), registered on September 4, 1998, for goods in Classes 29 and 30, with designations in numerous territories of the world, including Australia, China, the European Union, Kazakhstan or the United Kingdom;
- Canadian trademark No. TMA629253 BARRY CALLEBAUT (word), registered on January 4, 2005, for goods in Classes 29 and 30.

The main website of the group of the Complainant is accessible via the domain names <barry-callebaut.com> or <callebaut.com> (website excerpts in exhibit 14 of the Complaint) with 4.7 million users and 16.3 million page views between March 2019 and February 2023.

The disputed domain name was registered on April 23, 2025 (exhibit 12 of the Complaint). As of 1 May 2025 it redirected to a website displaying the company name Barry Callebaut Canada Inc., purporting to be a leading chocolate and cocoa supplier and advertising chocolate and cocoa solutions for businesses as well citing the Canadian address of the Complainant's Canadian subsidiary (exhibits 5, 13 of the Complaint). MX records had been set up to enable email correspondence (exhibit 15 of the Complaint). As of May 14, 2025, the content had changed to merely stating "402 Please renew your subscription".

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 it relies on its registered trademark rights as well as common law right acquired by virtue of trading and marketing activities. The Complainant claims that the disputed domain name wholly incorporates its BARRY CALLEBAUT trademark. The addition of the terms "canadainc", so the Complainant, fails to dispel a connection between the disputed domain name and the trademark but rather reinforces the link as it reflects the name of the Complainant's Canadian subsidiary. Besides that, the addition merely consists of a geographic term and therefore does not prevent a finding of confusing similarity.

Further, the Complainant claims that the Respondent has no rights or legitimate interests in the disputed domain name. According to the Complainant, the Respondent was never authorized or licensed by it to use the disputed domain name. This use, so the Complainant states, amounts to impersonation which cannot be said to be bona fide use. Rather, the Respondent's use of the disputed domain name is intended to attract and confuse Internet users, which cannot generate rights or legitimate interests.

On registration and use in bad faith, the Complainant finds that the Respondent, by its use as demonstrated, was clearly aware of the Complainant and has proven to be a competitor purporting to offer the same goods and services, intending to disrupt the business of the Complainant. The Respondent, according to the Complainant, set out to create likelihood of confusion by registering the disputed domain name incorporating the Complainant's distinctive trademark and using the same for a website displaying the name of the Complainant and copying the look and feel of the Complainant's website. In addition, the Complainant points to the MX records configured for the disputed domain name which it deems to be evidence of fraudulent purposes.

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 a trademark or service mark for the purposes of the Policy which by far predate the creation of the disputed domain name. [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, "canadainc", 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 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.

Panels have held that the use of a domain name for illegitimate activity, here, claimed impersonation/passing off, 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 has registered the disputed domain name incorporating the entirety of the Complainant's BARRY CALLEBAUT trademark and has used the same, as demonstrated by screenshots in exhibit 13 of the Complaint, to redirect to a website displaying the name and address of the Complainant's Canadian subsidiary and offering chocolate and cocoa related goods and services using the same imagery as the Complainant on its website (as demonstrated by a comparison of exhibit 13 and the Complainant's website at exhibit 14).

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.

Panels have held that the use of a domain name for illegitimate activity, here, claimed impersonation/passing off, 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. Given the circumstances of the case, there is no conceivable other reason for registration and use of the disputed domain name by the Respondent but to confuse Internet users into believing they are dealing with the Complainant and to profit from such misconception as to the origin of the website. Therefore, the Respondent has registered and used the disputed domain name in bad faith.

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 <barrycallebautcanadainc.com> be transferred to the First Complainant, Barry Callebaut AG.

/Andrea Jaeger-Lenz/

Andrea Jaeger-Lenz

Sole Panelist

Date: June 27, 2025