

## **ADMINISTRATIVE PANEL DECISION**

### **Barrett Firearms Manufacturing, Inc. v. aretesteroids Case No. D2023-2003**

#### **1. The Parties**

The Complainant is Barrett Firearms Manufacturing, Inc., United States of America (“United States”), represented by PATTERSON INTELLECTUAL PROPERTY LAW, P.C., United States .

The Respondent is aretesteroids, Lucas Harper, United States.

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

The disputed domain name <barrettfirearmstore.com> (the “Disputed Domain Name”) is registered with NameSilo, LLC (the “Registrar”).

#### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 4, 2023. On May 5, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On May 5, 2023, 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 (Domain Administrator, See PrivacyGuardian.org) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 8, 2023 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 11, 2023.

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 23, 2023. In accordance with the Rules, paragraph 5, the due date for Response was June 12, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 13, 2023.

The Center appointed Colin T. O’Brien as the sole panelist in this matter on June 20, 2023. 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 firearms manufacturer founded in 1982. The Complainant has registered the BARRETT mark with the United States Patent and Trademark Office under Registration Numbers 2,783,966, registered on November 18, 2003 and 3,369,360, registered on January 15, 2008. The Complainant has been using the BARRETT trademarks in the United States and around the world for more than 40 years. The Complainant has used the <barrett.net> domain name since May 9, 1996.

The Respondent registered the Disputed Domain Name <barrettfirearmstore.com> on September 25, 2021. The Disputed Domain Name resolves to a website which purports to offer the Complainant's products.

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

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

The Complainant has rights in the BARRETT mark under the following federal trademark registration numbers 2,783,966 for BARRETT (registered on November 18, 2003 for rifles) and 3,369,360 for BARRETT (registered on January 15, 2008 for ammunition for firearms; gun cases; gun parts; hats; jackets; and shirts).

The Disputed Domain Name contains the Complainant's BARRETT mark in its entirety, adds a generic Top-Level Domain ("gTLD"), and adds a generic term of "firearm" and a descriptive term of "store." The Respondent has simply taken the entirety of the Complainant's well-known trademark and has incorporated generic and descriptive terms with the gTLD ".com." The addition of the generic term "firearm" does not avoid a finding of confusing similarity.

The Respondent has no rights or legitimate interests in the domain name. The Respondent is neither a licensee of the Complainant nor is it otherwise authorized to use the BARRETT mark or any of the Complainant's other marks. Accordingly, the Respondent is not authorized by the Complainant to register the disputed domain name, nor is it authorized to utilize active or inactive websites at any domain incorporating the Complainant's BARRETT mark.

The Respondent cannot contend it is commonly known by the disputed domain name. BARRETT is the surname of Barrett Firearms Manufacturing, Inc.'s founder, Ronnie Barrett, and has become synonymous with quality firearm craftsmanship over its more than 40 years of manufacturing firearms. The Respondent's name is not similar to the disputed domain name.

The Respondent likewise cannot argue rights or legitimate interests arising through *bona fide* offering or fair use, the Respondent uses the Disputed Domain Name primarily to impersonate the Complainant and its website in order to solicit unsuspecting Internet visitors who are searching for genuine Barrett 11 Firearms products. Upon checkout at the Website, the customer is prompted to give "Billing Details" and can choose between payment options "Zelle," Wire Transfer, or, for 15% off, Cryptocurrency. There are also multiple hyperlinks located throughout the Website that do not function normally.

At the time the Respondent registered the Disputed Domain Name in September 2021, the Respondent certainly was well aware of the Complainant's trademark. The Respondent's bad faith is clearly established as the Disputed Domain Name was registered in order to impersonate the Complainant by using its trademarks, images, logos, and passages taken from its own website in an attempt to represent that it is an authorized website offering the Complainant's products for sale.

The Respondent's bad faith registration and use of the Disputed Domain Name is further established by the indication that the Website likely is used for purposes of a scam, whereby customers who attempt to make purchases using Zelle, wire transfer, or cryptocurrency receive nothing in return. Instead of the standard Internet checkout consumers are accustomed to (*i.e.*, inputting a debit or credit card number, or e-check), the Website states that the customer will be forwarded Zelle payment information, wire transfer instructions, or cryptocurrency routing instructions (for a 15% discount). Multiple attempts have been made to purchase products from the Website, but no products have been received. Further, the website refuses to provide proof of the confirmation it should receive from the Federal Firearm License dealer that they are required to ship firearms to before there is any confirmation of payment.

## **B. Respondent**

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

## **6. Discussion and Findings**

### **A. Identical or Confusingly Similar**

The Complainant has demonstrated it owns registered trademark rights in the well-known BARRETT mark for firearms and has shown that no other entity has rights in or uses the Complainant's mark. The addition of "firearmstore" does not prevent the Complainant's trademark from being recognizable in the Disputed Domain Name. The generic Top-Level Domain ("gTLD") ".com" is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test. Accordingly, the Disputed Domain Name is confusingly similar to a mark in which the Complainant has rights.

See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.8 and 1.11.1, and *Hoffmann-La Roche AG v. Domain Admin, Privacy Protection Service INC d/b/a PrivacyProtect.org / Conan Corrigan*, WIPO Case No. [D2015-2316](#).

Accordingly, the Disputed Domain Name is confusingly similar to a mark in which the Complainant has rights.

### **B. Rights or Legitimate Interests**

The Complainant has presented a *prima facie* case that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name and has not been commonly known by the Disputed Domain Name. The fact that the Respondent obtained the Disputed Domain Name about 40 years after the Complainant began using its BARRETT mark indicates that the Respondent sought to piggyback on the Complainant's mark for illegitimate reasons.

After a complainant has made a *prima facie* case, the burden of production shifts to a respondent to present evidence demonstrating rights or legitimate interests in the domain name. See, *e.g.*, *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#).

Here, the Respondent has provided no evidence of any rights or legitimate interests in the Disputed Domain Name. Moreover, the evidence provided by the Complainant shows that the Disputed Domain Name resolves to a website seemingly impersonating the Complainant by featuring the Complainant's trademark, logo, and copyrighted images of the Complainant's trademarked goods. While resellers and distributors may have limited rights to use a complainant's trademark for nominative purposes, the lack of any authorization by the Complainant and similarly, the lack of any information on the Disputed Domain Name as to the website's lack of authorization or relation to the Complainant, renders any fair use safe haven inapplicable in this instance. See section 2.8 of the [WIPO Overview 3.0](#).

Irrespective of the Disputed Domain Name satisfying the so-called *Oki Data* test, the nature of the Disputed Domain Name adding the words “firearmstore” to the Complainant’s trademark carries a risk of implied affiliation, especially when considering the impersonating nature of the content exhibited at the Disputed Domain Name, and as such cannot constitute fair use. See section 2.5.1 of the [WIPO Overview 3.0](#).

It is not necessary for the Panel to make any ultimate determination as to the nature of the goods, as the evidence clearly shows the Respondent has attempted to pass itself off as the Complainant. In addition, the Complainant provided evidence of multiple attempts to purchase products from the website to which the Disputed Domain Name resolves, but no products have been received. The Panel finds therefore that such use cannot be qualified as a *bona fide* offering of goods or services or legitimate noncommercial or fair use. See section 2.13 of the [WIPO Overview 3.0](#).

In the absence of any evidence rebutting the Complainant’s *prima facie* case indicating the Respondent’s lack of rights or legitimate interests in respect of the Disputed Domain Name, the Panel finds that the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

### **C. Registered and Used in Bad Faith**

The Panel finds that the Complainant has satisfied its burden of proof in establishing the Respondent’s bad faith in registration and use of the Disputed Domain Name. Paragraph 4(b)(iv) of the Policy states that evidence of bad faith may include a respondent’s use of a domain name to intentionally attempt to attract Internet users, for commercial gain.

Due to the incorporation of the BARRETT mark, it is inconceivable that the Respondent registered the Disputed Domain Name adding the words “firearmstore” and the gTLD “.com” without knowledge of the Complainant. The Disputed Domain Name is used for a website which allegedly claims to sell products identical to those offered by the Complainant and bearing its trademarks, but the Complainant has established that the Respondent’s use is not authorized, nor is affiliated with the Complainant in any way. Further, the Complainant has established that the Respondent is using the Disputed Domain Name to lure Internet users to the website in an effort to steal the Internet user’s information and/or money through false transactions.

The facts establish a deliberate effort by the Respondent to cause confusion with the Complainant for commercial gain. Such an impersonation of the Complainant is sufficient to establish the Respondent’s bad faith (see section 3.1.4 of the [WIPO Overview 3.0](#)). Under these circumstances, the Panel finds no plausible good faith reason for the Respondent’s conduct and concludes that the Disputed Domain Name was registered and used in bad faith.

## **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 <barrettfirearmstore.com> be transferred to the Complainant.

*/Colin T. O'Brien/*

**Colin T. O'Brien**

Sole Panelist

Date: July 5, 2023