

## **ADMINISTRATIVE PANEL DECISION**

Groupe Lucien Barrière v. Kieran Holmes

Case No. D2024-0807

### **1. The Parties**

The Complainant is Groupe Lucien Barrière, France, represented by SELAS Lexington Avocats, France.

The Respondent is Kieran Holmes, Afghanistan.

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

The disputed domain name <barriereplay.store> (“Disputed Domain Name”) is registered with NameCheap, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 22, 2024. On February 23, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On February 23, 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 (Unknown), and contact information in the Complaint. The Center sent an email communication to the Complainant on February 26, 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 February 27, 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 February 28, 2024. In accordance with the Rules, paragraph 5, the due date for Response was March 19, 2024. The Respondent did not submit any response. A third party sent a communication email to the Center on March 11, 2024. Accordingly, the Center notified the Commencement of Panel Appointment Process on March 20, 2024.

The Center appointed Gabriela Kennedy as the sole panelist in this matter on March 25, 2024. 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.

On March 28, 2024, the Complainant transmitted by email to the Center a request to change the remedy from cancellation of the Disputed Domain Name to a transfer to the Complainant. By Administrative Panel Procedural Order No. 1 dated April 4, 2024, the Panel invited the Respondent to comment on the Complainant's request pursuant to the Rules, paragraphs 10 and 12. The Respondent did not do so by the deadline specified in the order.

#### 4. Factual Background

The Complainant is a French public limited company in the hotel industry established in 1912 which also offers catering and casino services. The Complainant owns various word and figurative trademarks for or containing the term "Barrière" ("Complainant's Trademark").

The relevant trademark registrations include, inter alia, European Union ("EU") Trademark ("EUTM") Registration No. 008563462 for "BARRIERE" registered on June 9, 2010 in Classes 3, 9, 14, 16, 18, 24, 25, 28, 35, 36, 38, 39, 41, 43 and 44; International Trademark Registration No. 1280642 for "BARRIERE" registered on June 29, 2015 in Classes 41, 43 and 44 designating, inter alia, Switzerland,

China, Japan, and Morocco; French Trademark Registration No. 4157833 for " BARRIERE" registered on June 12, 2015 in Classes 3, 4, 9, 16, 18, 24, 25, 28, 35, 36, 39, 41, 43 and 44; EUTM Registration No.

13752324 for " BARRIERE" registered on June 17, 2015 in Classes 3, 4, 9, 16, 18, 24, 25, 28, 35, 36, 39, 41, 43 and 44, and EUTM Registration No. 018894111 for "BARRIERE PLAY" registered on October 7, 2023 in Class 36.

The Complainant's Trademark is also fully incorporated in the Complainant's domain names <groupebarriere.com> registered on October 13, 2004, <casinosbarriere.com> registered on February 20, 2002 and <hotelsbarriere.com> registered on March 27, 2014, each resolving to the Complainant's respective websites.

The Complainant also operates an application called "Barrière Play" which offers a connected gaming experience in a Barrière casino ("Complainant's Application").

The Disputed Domain Name was registered by the Respondent on January 8, 2024. Prior to the filing of the Complaint and as witnessed by a bailiff on February 8, 2024, the Dispute Domain Name resolved to a website (the "Respondent's Website") displaying an online gaming application named "Traffic Escape!" (the "Online Game") download page and linking to the Google Play listing of the Online Game. At the time of the decision, the Disputed Domain Name no longer resolves to any website as a server IP address cannot be located.

#### 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:

(a) The Disputed Domain Name is confusingly similar to the Complainant's Trademark. The Disputed Domain Name is an identical reproduction of the Complainant's Trademark. The only differences between the Disputed Domain Name and the Complainant's Trademark are a generic term "play" and the generic Top-Level Domain ("gTLD") ".store", which may be disregarded.

(b) The Respondent has no rights or legitimate interests in the Disputed Domain Name. The Respondent has not obtained any right or authorisation from the Complainant to use the Complainant's Trademark as part of a domain name. Moreover, the Disputed Domain Name appears to be registered by the Respondent for the fraudulent purpose of impersonating the Complainant and/or misleading Internet users that the Disputed Domain Name and the Online Game is linked to the Complainant and/or the Complainant's Application. This does not constitute a bona fide offering of goods or services or legitimate noncommercial or fair use of the Disputed Domain Name, and the burden is on the Respondent to establish any rights or legitimate interests in the Disputed Domain Name.

(c) Both the Respondent's registration and use of the Disputed Domain Name establish the Respondent's bad faith. Given the distinctiveness, publicity and reputation of the Complainant's Barrière brand, as well as the registrations of the Complainant's Trademark which significantly predate the registration of the Disputed Domain Name, the Respondent must have been or should have been aware of the existence of the Complainant's rights in the Complainant's Trademark when the Respondent registered and used the Disputed Domain Name. The Respondent intended to attract Internet users to the Respondent's Website by impersonating the Complainant, which does not constitute good faith use. It is difficult to conceive of any future use of the Disputed Domain Name that would amount to good faith use, given the lasting reputation of the Complainant's Trademark.

## **B. Respondent**

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

## **6. Discussion and Findings**

Under paragraph 4(a) of the Policy, the Complainant is required to prove each of the following three elements:

- (i) the Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (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 by the Respondent 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 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 the Complainant's Trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the Complainant's Trademark 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 another term, "play", 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 Complainant's Trademark for the purposes of the Policy, especially when such term appears in the name of the Complainant's Application. [WIPO Overview 3.0](#), section 1.8. Furthermore, it is well established that the gTLD, ".store" in this case, may be disregarded. See section 1.11.1 of the [WIPO Overview 3.0](#).

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 Respondent's failure to file a Response may result in the Panel drawing appropriate inferences from such default. The Panel may also accept all reasonable and supported allegations and inferences flowing from the Complainant as true (see *Entertainment Shopping AG v. Nischal Soni, Sonik Technologies*, WIPO Case No. [D2009-1437](#); and *Charles Jourdan Holding AG v. AAIM*, WIPO Case No. [D2000-0403](#)).

The Panel agrees with the Complainant that there is no evidence to show that the Respondent has trademark rights corresponding to the Disputed Domain Name, or that the Respondent has become known by the Disputed Domain Name.

The Respondent would likely not have adopted the Complainant's Trademark if not for the purpose of creating an impression that the Disputed Domain Name and the Online Game are associated with, or originate from, the Complainant.

There is no evidence to suggest that the Respondent's use of, or demonstrable preparations to use the Disputed Domain Name or a name corresponding to the Disputed Domain Name, is in connection with a bona fide offering of goods or services or be regarded as legitimate noncommercial or fair use.

Moreover, the composition of the Disputed Domain Name, which incorporates the Complainant's Trademark with the addition of the term "play", carries a risk of implied affiliation as it effectively impersonates or suggests sponsorship or endorsement by the Complainant or the Complainant's Application. See section 2.5.1 of the [WIPO Overview 3.0](#).

Panels have held that the use of a domain name for illegal activity, such as in this case the impersonation or passing off by the Respondent as the Complainant using the Complainant's Trademark, 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 it is difficult to conceive of any plausible use of the Disputed Domain Name that would amount to good faith use, given that it has incorporated the Complainant's Trademark in its entirety. The Respondent intentionally registered the Disputed Domain Name to attract Internet users to the Respondent's Website for commercial gain by creating a likelihood of confusion with the Complainant's Trademark. See section 3.1 of the [WIPO Overview 3.0](#). Also, as discussed above, the Respondent lacks any rights or legitimate interests in the Disputed Domain Name (see *Washington Mutual, Inc. v. Ashley Khong*, WIPO Case No. [D2005-0740](#)). Further, the Respondent failed to respond to the Complainant's contentions and has provided no evidence of its actual or contemplated good faith use of the Disputed Domain Name.

The Panel moreover notes that the Respondent has likely appropriated the contact details of an unrelated primary school in the United Kingdom to register the Disputed Domain Name (while listing Afghanistan as the "Registrant Country").

Panels have held that the use of a domain name for illegal activity, such as in this case the impersonation or passing off by the Respondent as the Complainant using the Complainant's Trademark, can never confer rights or legitimate interests on a respondent. [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 <barriereplay.store> be transferred to the Complainant.

*/Gabriela Kennedy/*

**Gabriela Kennedy**

Sole Panelist

Date: April 14, 2024