

ADMINISTRATIVE PANEL DECISION

CBOCS Properties, Inc. v. Huade Wang

Case No. D2022-3768

1. The Parties

The Complainant is CBOCS Properties, Inc., United States of America (“United States”), represented by Dinsmore & Shohl LLP, United States.

The Respondent is Huade Wang, China.

2. The Domain Names and Registrar

The disputed domain names <crackerbarrelreward.com> and <mycrackerbarrelreward.com> are registered with Dynadot, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 7, 2022. On October 10, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On October 11, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on October 20, 2022, 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 October 25, 2022.

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 October 27, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 16, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 20, 2022.

The Center appointed Benjamin Fontaine as the sole panelist in this matter on December 6, 2022. 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 operates a nationwide chain of restaurants and retail gift shops across the United States. The Complainant has more than 660 locations in 45 States, and is one of the largest restaurant chains in the United States.

For the purpose of the Complaint, the Complainant relies on, among other, the following trademark registrations:

- United States trademark CRACKER BARREL Old Country Store (fig.) No. 1142958, registered on December 9, 1980;



- United States trademark CRACKER BARREL Old Country Store (fig.) No. 5279780, registered on September 5, 2017.



These trademarks have been used in the United States for over fifty years. In support of its activities, the Complainant is the owner in particular of the domain name <crackerbarrel.com>. Besides, on September 8, 2022, namely two days before the registration of the disputed domain names by the Respondent, the Complainant registered the domain names <crackerbarrelrewards.com> and <mycrackerbarrelrewards.com>.

The disputed domain names <crackerbarrelreward.com> and <mycrackerbarrelreward.com> were indeed registered on September 10, 2022, through a privacy shield service. After the Complaint was filed, the Registrar notified to the Center that the disputed domain name was held by an individual with an address in China.

5. Parties' Contentions

A. Complainant

The arguments of the Complainant on the three elements of the Policy can be summarized as follows:

On the first element of the Policy, the Complainant argues that the disputed domain names are confusingly similar to its trademarks and in particular to the expression CRACKER BARREL. It adds that "The Disputed Domain Names are both sufficiently similar to the Cracker Barrel Marks that a reasonable internet user would assume that the domain names and any associated web sites are somehow affiliated with Complainant, if they were not mistaken outright for Complainant's website and/or the Cracker Barrel Marks. This situation

establishes a clear case of confusion”.

On the second element of the Policy, the Complainant claims that the Respondent has no rights or legitimate interest over the disputed domain names. It highlights that the Respondent is not known by any of these domains, that the Respondent has apparently not registered any trademark over these domains, nor has been authorized to use the Complainant’s trademarks. The Complainant also indicates that “Respondent is not making a legitimate noncommercial or fair use of any of the Disputed Domain Names, nor is Respondent using those domain names in connection with a *bona fide* offering of goods or services. Instead, Respondent appears to be making virtually no use of the domain names at all. Each of the Disputed Domain Names connects the user to what appears to be a parking page that features the particular domain name at the top, followed by search links for topics such as “Employee Rewards,” “Apply Visa Credit Card,” “Card Apply,” and other similar topics”.

Finally, on the third element of the Policy, the Complainant argues that the Respondent has registered and used the disputed domain names in bad faith. Its allegation is supported by the following factors: first, the Respondent almost certainly had knowledge of the Complainant’s trademarks over CRACKER BARREL at the time of registration of the disputed domain names, given the longstanding goodwill of the Complainant’s trademark CRACKER BARREL; second, the Respondent has engaged in a pattern of bad faith conduct by registering multiple trademark-abusive domain names; third, the disputed domain names are likely to be used to attract users to the Respondent’s own website for commercial gain; fourth, the Respondent has attempted to conceal his identity through a privacy protection service.

Regarding in particular prior cases in which the Respondent has already been involved, in 2022, the Complainant has cited for example the following: *Ferring B.V. v. Privacy Protection / huade wang* (“*Ferring II*”), WIPO Case No. [D2022-2249](#); *Ferring B.V. v. Privacy Protection, ID: 5372808-ER / Huade Wang* (“*Ferring I*”), WIPO Case No. [D2022-0982](#); *AXA SA v. Huade Wang*, WIPO Case No. [D2022-1289](#); *Sodexo v. Huade Wang*, WIPO Case No. [D2022-1446](#); *J. Crew International, Inc. v. shilei and Huade Wang*, WIPO Case No. [D2022-1580](#)

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy requires that the Complainant prove all of the following three elements in order to be successful in these proceedings:

- (i) the disputed domain names are 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 names; and
- (iii) the disputed domain names were registered and are being used in bad faith.

A. Identical or Confusingly Similar

The Complainant, under the first requirement of paragraph 4(a) of the Policy, needs to establish that the disputed domain names are identical or confusingly similar to a trademark or a service mark in which it has rights. As per the Center’s practice, this first criterion is perceived primarily as a standing requirement for the Complainant.

The Complainant has shown that it holds rights over the trademark CRACKER BARREL.

The disputed domain names include the Complainant's trademark CRACKER BARREL, combined with the terms "my" – for one of the disputed domains - and "reward". These additions do not prevent the Complainant's trademark from being immediately recognizable in the disputed domain name. See section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"): "Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element. The nature of such additional term(s) may however bear on assessment of the second and third elements."

Hence, the first criteria element set out in paragraph 4(a) of the Policy is satisfied.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a non-exclusive list of circumstances that may indicate the Respondent's rights or legitimate interests in the disputed domain name. These circumstances are:

- i. before any notice of the dispute, the Respondent's use of, or demonstrable preparations to use, the disputed domain names or a name corresponding to the disputed domain names in connection with a *bona fide* offering of goods or services; or
- ii. the Respondent (as individuals, businesses, or other organizations) has been commonly known by the disputed domain names, in spite of not having acquired trademark or service mark rights; or
- iii. the Respondent is making a legitimate noncommercial or fair use of the disputed domain names, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Respondent, in not responding to the Complaint, has failed to invoke any of the circumstances, which could demonstrate, pursuant to paragraph 4(c) of the Policy, any rights or legitimate interests in the disputed domain names. This entitles the Panel to draw any inferences from such default as it considers appropriate, pursuant to paragraph 14(b) of the Rules. Nevertheless, the burden of proof is still on the Complainant to make at least a *prima facie* case against the Respondent under the second UDRP element.

In that sense, and according to the evidence submitted, the Complainant has made a *prime facie* case against the Respondent which has not been commonly known by the disputed domain names and is not affiliated with the Complainant nor has it been licensed or otherwise permitted to use any of the Complainant's trademarks or to register domain names incorporating any of those trademarks.

Moreover, the nature of the disputed domain names carries a high risk of implied affiliation that cannot constitute fair use.

Under these circumstances and absent evidence to the contrary, the Panel finds that the Respondent does not have rights or legitimate interests with respect to the disputed domain names.

C. Registered and Used in Bad Faith

In order to prevail under the third element of paragraph 4(a)(iii) of the Policy, the Complainant must demonstrate that the disputed domain names have been registered and are being used in bad faith.

Paragraph 4(b) of the Policy lists a number of circumstances which, without limitation, are deemed to be evidence of the registration and use of a domain name in bad faith. These are:

- (i) circumstances indicating that [a respondent has] registered or acquired a disputed domain name primarily for the purpose of selling, renting, or otherwise transferring the disputed domain name to the complainant or to a competitor of the complainant, for valuable consideration in excess of [the respondent's]

documented out-of-pocket costs directly related to the disputed domain name; or

(ii) [the respondent has] registered the disputed domain name in order to prevent the complainant from reflecting the complainant's trademark or service mark in a corresponding domain name, provided that [the respondent has] engaged in a pattern of such conduct; or

(iii) the respondent has registered the disputed domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the disputed domain name, [the respondent has] intentionally attempted to attract, for commercial gain, Internet users to [the respondent's] website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of [the respondent's] website or location or of a product or service on [the respondent's] website or location.

Indisputably, the disputed domain names were specifically designed to target the Complainant. Not only do they reproduce the trademark CRACKER BARREL, but they also fully imitate two domain names registered by the Complainant just a couple of days prior to the registration of the disputed domain names: the Complainant registered the domain names <crackerbarrelrewards.com> and <mycrackerbarrelrewards.com> on September 9, 2022, and the Respondent registered the disputed domain names <crackerbarrelreward.com> and <mycrackerbarrelreward.com> on September 10, 2022. All these domain names are identical but for the deletion of the final letter "s", a difference which is hardly noticeable. This cannot be coincidental.

Also, due to the reputation of the Complainant's trademark, the Respondent is likely to attract unfairly Internet users to its own website or to conduct illegal activities such as phishing. The Panel cannot foresee any possible legitimate use of the disputed domain names, particularly in view of the mirroring of the Complainant's domain names mentioned above.

This is further confirmed by the fact that the Respondent has attempted to conceal his identity, and has already been involved in numerous cases of cybersquatting.

All these elements are sufficient in this case to consider that the disputed domain names were registered, and are being used - at least passively - in bad faith.

Accordingly, the third criteria element set out in paragraph 4(a) of the Policy is also satisfied.

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 names <crackerbarrelreward.com> and <mycrackerbarrelreward.com> be transferred to the Complainant.

/Benjamin Fontaine/

Benjamin Fontaine

Sole Panelist

Date: December 27, 2022