

ADMINISTRATIVE PANEL DECISION

Barrett Steel Limited v. allen allen

Case No. D2023-2899

1. The Parties

The Complainant is Barrett Steel Limited, United Kingdom (“UK”), represented by DWF LAW LLP, UK.

The Respondent is allen allen, India.

2. The Domain Name and Registrar

The disputed domain name <berrattsteel.com> is registered with GMO Internet Group, Inc. d/b/a Onamae.com (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on July 6, 2023. On July 6, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 7, 2023, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

On July 12, 2023, the Center transmitted an email communication to the Parties in English and Japanese regarding the language of the proceeding. On July 13, 2023, the Complainant submitted a request that English be the language of the proceeding. The Respondent did not comment on the language of the proceeding.

The Center verified that the 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 in English and Japanese of the Complaint, and the proceedings commenced on July 18, 2023. In accordance with the Rules, paragraph 5, the due date for Response was August 7, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 8, 2023.

The Center appointed Masato Dogauchi as the sole panelist in this matter on August 31, 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, registered on October 14, 1992, is the UK's largest independent steel stockholder and steel supplier. The Complainant's group consists of 44 steel stockholding companies and divisions operating from 27 locations across the UK and serving customers worldwide.

The history of the Complainant's use of the mark BARRETT STEEL in the UK in relation to steel stockholding and steel supply dates back to 150 years. The Complainant has acquired goodwill and reputation in the mark BARRETT STEEL. In addition, the Complainant has registered BARRETT STEEL trademark as follows:

- UK Registration for BARRETT STEEL, No. UK00003409685, registered on October 11, 2019.

The disputed domain name was registered on June 19, 2023, which does not resolve to a website or other online presence. On June 21, 2023, an employee of the Complainant was contacted by email from an employee of one of the Complainant's customers. According to the email, the employee of the Complainant's customer received suspicious emails dated June 20 and 21, 2023 from the email address of "[...].@berrattsteel.com", using the name of the Complainant's employee in the email address, which requested GBP 58,185.75 payment to be made by the Complainant, and these emails were purported to have been sent by the Complainant's employee.

5. Parties' Contentions

A. Complainant

The Complainant's contentions are divided into three parts as follows:

First, the Complainant asserts that the disputed domain name is confusingly similar to its BARRETT STEEL trademark, since the second part of the disputed domain name is a reproduction of the Complainant's trademark with the second and fifth letters, "a" and "e", swapped. Such common, obvious, or intentional misspelling of the Complainant's trademark should be considered to be confusingly similar. And, the first part of the disputed domain name, the generic Top-Level Domain ("gTLD") ".com", should be disregarded under the confusing similarity test.

Second, the Complainant asserts that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant confirms that there is no business relationship or affiliation between the Complainant and the Respondent to justify the use by the Respondent of the Complainant's trademark or similar mark. The Complainant contends that the Respondent is not commonly known by the mark BARRETT STEEL or similar name and is unlikely therefore to have acquired any rights or legitimate interest in respect of the disputed domain name. According to the Complainant, there is no evidence of the Respondent making a *bona fide* offering of goods or services or a legitimate noncommercial or fair use of the disputed domain name. The Complainant contends that the assertion of the Complainant should be admitted, since the Respondent has not submitted any evidence demonstrating rights or legitimate interests in the disputed domain name.

Third, the Complainant asserts that the disputed domain name has been registered and is being used in bad faith. The Complainant contends that, since the Complainant's mark has been widely known for about 150 years, the registration of the disputed domain name should have been made with full knowledge of the

Complainant, its business and its established reputation in its mark. With regard to the bad faith use, the Complainant contends that the fact that the disputed domain name has been used as an email address for sending the emails which impersonated an employee of the Complainant and attempted to mislead a customer of the Complainant for commercial gain should be considered to show that the disputed domain name is being used in bad faith.

B. Respondent

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

6. Discussion and Findings

6.1. Preliminary Issue: Language of the Proceeding

In respect of the language to be used in the administrative proceeding, in accordance with the Rules, paragraph 11(a), the language of the administrative proceeding shall be, in principle, the language of the registration agreement. However, the same provision allows the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding.

In the present case, the Registrar has confirmed that the language of the Registration Agreement is Japanese. However, the Panel determines that the language of this proceeding shall be English rather than Japanese on the following grounds:

- the Complainant requested to that effect;
- the Respondent surely has become aware of this case filed by the Complainant and did not reply to the notification in both English and Japanese sent by the Center that the Respondent was invited to indicate its objection, if any, to the Complainant's request for the language of the proceeding being English by the specified due date;
- the disputed domain name is not in Japanese script;
- the emails sent from the address of "[...].@berrattsteel.com" were written in English; and
- the use of the Japanese language would produce undue burden on the Complainant in consideration of the absence of a Response from the Respondent, and would unnecessarily delay the proceeding.

6.2. Substantive Matters

In accordance with the Rules, paragraph 15(a), a panel shall decide a case on the basis of the statements and documents submitted and in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable. Since the Respondent has not made any arguments in this case, the following decision is rendered on the basis of the Complainant's contentions and other evidence submitted by the Complainant.

In accordance with the Policy, paragraph 4(a), in order to qualify for a remedy, the Complainant must prove each of the following:

- (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 in bad faith.

A. Identical or Confusingly Similar

The Panel finds that the Complainant has rights in the BARRETT STEEL trademark. The last part of the disputed domain name is “.com”. This represents one of the gTLDs, which is irrelevant in the determination of the confusing similarity between the disputed domain name and the BARRETT STEEL trademark.

The word “berrattsteel” is found in the first part of the disputed domain name, which is different from the Complainant’s BARRETT STEEL trademark in that the second and fifth letters, “a” and “e”, swapped. This is a typical example of typosquatting. See section 1.9 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”).

Therefore, the Panel finds that the disputed domain name, being a typosquatted version of the Complainant’s BARRETT STEEL trademark, is confusingly similar to the trademark in which the Complainant has rights.

The above requirement provided for in paragraph 4(a)(i) of the Policy is accordingly satisfied.

B. Rights or Legitimate Interests

The Panel finds that there is no evidence that shows the Respondent is commonly known by the name Berratt Steel, and that the Respondent is not affiliated with the Complainant or has been authorized or licensed to use the Complainant’s BARRETT STEEL trademark. And it is found that the disputed domain name has been used as an email address from which fraudulent emails have been dispatched. Since the Respondent did not reply to the Complainant’s contentions in this proceeding, the Panel finds on the available record that the Complainant has established an un rebutted *prima facie* case that the Respondent has no rights or legitimate interests in respect of the disputed domain name. See section 2.1 of the [WIPO Overview 3.0](#).

The above requirement provided for in paragraph 4(a)(ii) of the Policy is accordingly satisfied.

C. Registered and Used in Bad Faith

With regard to the requirement that the Respondent registered the disputed domain name in bad faith, since the Complainant is a globally known steel stockholder and steel supplier, it is highly unlikely that the Respondent would not have known of the Complainant’s right in the trademark at the time of registration of the disputed domain name. And, the way of the use of the disputed domain name also points to the Respondent’s knowledge of the Complainant and its BARRETT STEEL trademark. Therefore, it is found that the Respondent registered the disputed domain name in bad faith.

On the other hand, with regard to the requirement that the Respondent is using the disputed domain name in bad faith, the fact that the disputed domain name has been used as an email address from which fraudulent emails have been dispatched is enough to show that the Respondent’s use of the disputed domain name is in bad faith.

The Respondent did not reply to the Complaint in this proceeding.

The Panel finds that the disputed domain name has been registered in bad faith and is being used in bad faith. The above requirement provided for in paragraph 4(a)(iii) of the Policy is accordingly satisfied.

In conclusion, all three cumulative requirements as provided for in paragraph 4(a) of the Policy are determined to be 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 name <berrattsteel.com> be transferred to the Complainant.

/Masato Dogauchi/

Masato Dogauchi

Sole Panelist

Date: September 14, 2023