

ADMINISTRATIVE PANEL DECISION

Barry Callebaut AG, Barry Callebaut Belgium NV v. Bence Harvorth
Case No. D2024-2524

1. The Parties

Complainants are Barry Callebaut AG (“Complainant 1”), Switzerland, and Barry Callebaut Belgium NV (“Complainant 2”), Belgium, represented by Adlex Solicitors, United Kingdom.

Respondent is Bence Harvorth, United Kingdom.

2. The Domain Name and Registrar

The disputed domain name is <barry-callbaut.com> which is registered with EuroDNS S.A. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 20, 2024. On June 20, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 21, 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 those in the Complaint (Redacted for Privacy). The Center sent an email communication to Complainants on June 21, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting Complainants to submit an amendment to the Complaint. Complainants filed an amended Complaint on June 24, 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 Respondent of the Complaint, and the proceedings commenced on June 27, 2024. In accordance with the Rules, paragraph 5, the due date for Response was July 17, 2024. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on July 18, 2024.

The Center appointed Gerardo Saavedra as the sole panelist in this matter on July 29, 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.

4. Factual Background

Complainants are part of the Barry Callebaut international group of companies (the “Group”), headquartered in Switzerland and engaged in the manufacture of chocolate and cocoa products and the supply of cocoa-based ingredients, and nut and fruit-based food ingredients and decorations, to food manufacturers and food service businesses. Complainant 1 is the Group’s holding company, while Complainant 2 is the main trading company for chocolate within the Group.

Complainant 1 has rights over the BARRY CALLEBAUT mark for which it holds International registration No. 702211, registered on September 4, 1998, in classes 29 and 30. Complainant 1 also has rights over the BARRY CALLEBAUT figurative mark for which it holds Swiss registration No. 453449, registered on July 28, 1998, in classes 29 and 30; and over another BARRY CALLEBAUT figurative mark for which it holds Swiss registration No. 561861, registered on September 6, 2007, in classes 5, 29 and 30.

The disputed domain name was registered on April 30, 2024. By the time the Complaint was filed, the disputed domain name did not resolve to an active website.

5. Parties’ Contentions

A. Complainant

Complainants contend that they have satisfied each of the elements required under the Policy and request that the disputed domain name be transferred to Complainant 1. Complainants’ assertions may be summarized as follows.

The Group, established in 1996 following the merger of the French entity Cacao Barry and the Belgian entity Callebaut, is one of the world’s leading manufacturers of high-quality chocolate and cocoa products with more than 12,000 employees operating in over 40 countries and with over 60 production facilities and 23 chocolate academy centers worldwide.

Complainant 1 owns an extensive international portfolio of registered marks for the term “Barry Callebaut”. The Group has operated its main website at “www.barry-callebaut.com” since approximately 1997, which has had approximately 16.3 million page views between March 2019 and February 2023. The Group’s marketing of its BARRY CALLEBAUT marks has included print media advertising, promotional brochures, and presence at trade fairs. The Group has won various awards including the Food Ingredients Excellence Awards in 2011 and 2013, and the 2022 Ruby Award for Supplier Innovation at the Sweets & Snacks Expo Awards Ceremony. As a result, the BARRY CALLEBAUT mark has acquired substantial reputation and goodwill such that it is recognised by the public as distinctive of Complainants’ business.

The disputed domain name is confusingly similar to the BARRY CALLEBAUT mark. It differs only by the removal of the letter “e”, creating a misspelling of said mark, thus having the obvious potential to cause confusion with Complainants’ mark both visually and phonetically.

Complainants have no association with Respondent and have never authorised or licensed Respondent to use their marks. There is no evidence that Respondent has been commonly known by the disputed domain name. There is no website available under the disputed domain name, and there is no evidence that Respondent has ever used the disputed domain name at all.

As at May 8, 2024, MX records had been set up for the disputed domain name to enable email communications. On that same date Complainants' sent an email to the Registrar asking that the disputed domain name be suspended in view of its likely use for fraudulent purposes. Afterwards, as at June 19, 2024, Respondent apparently had cancelled said MX records.

Registration of the disputed domain name is clearly explicable only as a misspelling of Complainants' highly distinctive BARRY CALLEBAUT mark. The evidence points to registration of the disputed domain name for fraudulent purposes, namely that email MX records were configured for the disputed domain name. Removal of such MX records after Complainants' communication to the Registrar is an admission by Respondent that its previous use of the disputed domain name was illicit.

The distinctiveness and fame of Complainants' mark, and the implausibility of any good faith use to which the disputed domain name may be put, are indicative of the disputed domain name passive holding in bad faith.

B. Respondent

Respondent did not reply to Complainants' contentions.

6. Discussion and Findings

Paragraph 15(a) of the Rules instructs the Panel to "decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable".

As regards having multiple complainants filing a single complaint, although the Policy uses the term "complainant" throughout, it does not preclude the filing of a single complaint by several persons. The Panel considers that it is appropriate to have both Complainant 1 and Complainant 2 as Complainants in this procedure since both belong to the same group and have shown a common grievance against Respondent (see section 4.11.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)")).

The lack of response from Respondent does not automatically result in a favorable decision for Complainants ([WIPO Overview 3.0](#), section 4.3). The burden for Complainants, under paragraph 4(a) of the Policy, is to show: (i) that the disputed domain name is identical or confusingly similar to a trademark or service mark in which either Complainant has rights; (ii) that 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 Complainant 1 has shown rights in respect of a trademark or service mark for the purposes of the Policy ([WIPO Overview 3.0](#), section 1.2.1).

The disputed domain name almost identically reproduces the BARRY CALLEBAUT mark, adding a hyphen between such terms and omitting the "e" letter in "callebaut". The Panel finds the mark is recognizable within the disputed domain name and that said minor differences in the disputed domain name do not avoid a finding of confusing similarity between them for the purposes of the Policy ([WIPO Overview 3.0](#), sections 1.7, 1.9 and 1.11.1).

The Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

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).

Paragraph 4(c) of the Policy provides a list of circumstances in which Respondent may demonstrate rights or legitimate interests in the disputed domain name. There is no evidence in the case file of any of those, or of any other circumstances giving rise to a possible right to or legitimate interest in the disputed domain name by Respondent, but rather the opposite may be validly inferred.

The nature of the disputed domain name, confusingly similar to Complainants’ mark, represents a serious risk that Internet users will not notice the subtle misspelling as it may mistakenly be seen as effectively impersonating or suggesting some connection to Complainants. In the Panel’s view, the typosquatting nature of the disputed domain name, which almost identically reflects Complainants’ mark and website domain name, cannot confer rights or legitimate interests upon Respondent.¹

The Panel finds Complainants have established a prima facie case that Respondent lacks rights or legitimate interests in the disputed domain name. Respondent has not rebutted Complainants’ 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.

Based on the available record, the Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

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).

Having reviewed the case file, the Panel finds that Respondent’s registration and use of the disputed domain name constitutes bad faith under the Policy. The overall evidence indicates that Respondent’s choice of the disputed domain name was deliberate for its substantial similarity with, and with the likely intention to benefit from, Complainants’ mark and potentially disrupt Complainants’ business or deceive third parties, which denotes bad faith. As noted above, the disputed domain name reflects Complainants’ prior registered BARRY CALLEBAUT mark in its entirety, albeit with just a couple of minor typographical variations, a classic case of typosquatting which has been deemed as a strong indicative of bad faith under a number of UDRP cases.² Further, the addition of a hyphen between “barry” and “callbaut” in the disputed domain name renders it nearly identical to Complainants’ website identifier “www.barry-callebaut.com”, which simply reinforces such bad faith inference.

¹See *Belmont Village, L.P. v. Name Redacted*, WIPO Case No. [D2022-4895](#): “typosquatting is evidence of a lack of rights or legitimate interests in the Disputed Domain Name”.

²See *Redbox Automated Retail, LLC d/b/a Redbox v. Milen Radumilo*, WIPO Case No. [D2019-1600](#): “Typosquatting itself is evidence of relevant bad faith registration and use”. See also *Go Daddy Software, Inc. v. Daniel Hadani*, WIPO Case No. [D2002-0568](#): “Typosquatting is virtually *per se* registration and use in bad faith”.

Although the disputed domain name does not resolve to an active website, it seems to the Panel that there is no basis in the case file to conceive a legitimate use of the disputed domain name by Respondent. Taking into consideration the distinctiveness and widespread use of Complainants' mark and the composition of the disputed domain name, the Panel finds that in the circumstances of this case the passive holding of the disputed domain name does not prevent a finding of bad faith under the Policy.³ Further, the fact that the disputed domain name was configured to send emails, makes the Panel consider that the disputed domain name might potentially be used for fraudulent activities.⁴

Based on the available record, the Panel finds that 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 <barry-callbaut.com> be transferred to Complainant 1 (Barry Callebaut AG).

/Gerardo Saavedra/

Gerardo Saavedra

Sole Panelist

Date: August 12, 2024

³See [WIPO Overview 3.0](#), section 3.3. See also *Ferrari S.p.A. v. Ms. Lee Joohee (or Joo-Hee)*, WIPO Case No. [D2003-0882](#):

"Respondent has provided no evidence or suggestion of a possible legitimate use of the Domain Name. Thus, in the words of Telstra, it is not possible to conceive of any plausible actual or contemplated active use of the Domain Name by the Respondent that would not be illegitimate".

⁴See *Arnold Clark Automobiles Limited v. Registration Private, Domains By Proxy, LLC / Carolina Rodrigues, Fundacion Comercio Electronico*, WIPO Case No. [D2021-3924](#): "the mere presence of mail servers and SPF records represents a severe risk of phishing or other fraudulent and abusive activities [...] it is rather difficult to imagine that mail server attached to disputed domain name would be used for any good faith purposes". See also [WIPO Overview 3.0](#), section 3.4.