

ADMINISTRATIVE PANEL DECISION

Euomarket Designs, Inc. d/b/a Crate & Barrel v. Domain Administrator Case No. D2022-0571

1. The Parties

Complainant is Euomarket Designs, Inc. d/b/a Crate & Barrel, United States of America (“U.S.”), represented by CSC Digital Brand Services Group AB, Sweden.

Respondent is Domain Administrator, Nigeria.

2. The Domain Name and Registrar

The disputed domain name is <crate-andbarrel.com> which is registered with Sav.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 18, 2022. On the same day, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. Also on February 18, 2022, 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. The Center sent an email communication to Complainant on February 23, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on February 28, 2022.¹

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 March 3, 2022. In accordance with the Rules, paragraph 5, the due

¹ The original Complaint was filed against “Privacy Protection”, which appeared as registrant in the corresponding Whois report. The amended Complaint was filed against Respondent, as per the information disclosed by the Registrar.

date for Response was March 23, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent's default on March 24, 2022.

The Center appointed Gerardo Saavedra as the sole panelist in this matter on March 29, 2022. This Panel finds that it was properly constituted. This 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

Complainant is engaged in the retail sale of home furnishings and home décor items through a large chain of stores and online.

Complainant has rights over, *inter alia*: (i) the CRATE AND BARREL mark for which it holds registration No. 1469515 with the United States Patent and Trademark Office ("USPTO"), registered on December 15, 1987, in class 42, with stated date of first use in December 1962; (ii) the CRATE&BARREL figurative mark for which it holds registration No. 1469514 with the USPTO, registered on December 15, 1987, in class 42, with stated date of first use in December 1962; (iii) the CRATE&BARREL mark for which it holds registration No. 2205822 with the USPTO, registered on November 24, 1998, in class 20; and (iv) registration No. 000102145 with the European Union Intellectual Property Office, registered on June 11, 1998, in classes 20, 21, and 24.

Complainant is the registrant of the domain name <crateandbarrel.com>, registered on March 23, 1998.

The disputed domain name was registered on September 3, 2021. At the time the Complaint was filed, the website associated with the disputed domain name included pay-per-click ("PPC") links, and showed the following phrases, among others: "crate-andbarrel.com", "Related searches", "Sofa Sets", "Dining Table Sets", "Sofa Furniture", "Cheap Sofa Sets", "Discount Furniture Store", "Discount Furniture Outlet", and "Search Ads".

5. Parties' Contentions

A. Complainant

Complainant's assertions may be summarized as follows.

The first Crate and Barrel store opened on December 7, 1962, in Chicago, Illinois, U.S. In 1998 Complainant became part of the Otto Group, of Germany, the second largest online retailer worldwide. Today Complainant is a global company with more than 100 store locations in 12 countries across three continents and a number of outlet locations, and employs approximately 8,300 people. Complainant is global online as well offering international shopping and shipping to its customers through its website "www.crateandbarrel.com". In 2014, Crate and Barrel ranked No. 77 on the Internet Retailer 2014 Top 500 Guide, while pursuing a strategy to increase sales and visibility on mobile devices. According to Alexa.com, such Complainant's website has a rank of 1,584 in the U.S. and 8,524 globally and, according to Similarweb.com, Complainant's website received more than 4.5 million unique visitors in April 2017 alone.

The disputed domain name contains Complainant's CRATE AND BARREL mark in its entirety. The addition of a hyphen does nothing to distinguish the disputed domain name from Complainant's mark, and does not diminish the confusing similarity between them. Thus, the disputed domain name should be considered identical and confusingly similar to said Complainant's mark.

The lack of Respondent's rights or legitimate interests in respect of the disputed domain name is evident. Respondent is not commonly known by the disputed domain name. Respondent is not sponsored by or

affiliated with Complainant in any way, and Complainant has not given Respondent permission to use Complainant's marks in any manner, including in domain names.

By the time Respondent registered the disputed domain name, Complainant already had a worldwide reputation in its mark, which is fully adopted in the disputed domain name. Therefore, it is evident that the disputed domain name carries a high risk of implied affiliation with Complainant, which cannot be considered a fair use of the disputed domain name.

Respondent is using the disputed domain name to redirect Internet users to a website featuring links to third-party websites, some of which directly compete with Complainant's business, and also featuring a link "Crate Barrel Furniture" that directly references Complainant and its business.² Presumably, Respondent receives PPC fees from the linked websites that are listed at the disputed domain name's website. As such, Respondent is not using the disputed domain name to provide a *bona fide* offering of goods or services, nor a legitimate noncommercial or fair use.

Respondent knew of and targeted Complainant's mark, and thus Respondent should be found to have registered and used the disputed domain name in bad faith. Complainant and its CRATE AND BARREL and CRATE&BARREL marks are known internationally, with mark registrations across numerous countries. At the time of registration of the disputed domain name, Respondent knew, or at least should have known, of the existence of Complainant's marks and that registration of domain names containing well-known marks constitutes bad faith *per se*. Further, performing searches across a number of Internet search engines for "crate-andbarrel" returns multiple links referencing Complainant and its business.

Respondent is using the disputed domain name to confuse unsuspecting Internet users looking for Complainant's services, and to mislead Internet users as to the source of the disputed domain name and its website. By creating such likelihood of confusion, leading to misperceptions as to the source, sponsorship, affiliation, or endorsement of the disputed domain name, Respondent has demonstrated a nefarious intent to capitalize on the fame and goodwill of Complainant's marks in order to increase traffic to the disputed domain name's website for Respondent's own pecuniary gain, as evidenced by the presence of multiple PPC links posted to said website, some of which directly reference Complainant.

Respondent is currently offering to sell the disputed domain name, which constitutes bad faith. It is well established that seeking to profit from the sale of a confusingly similar domain name that incorporates a third party's mark demonstrates bad faith.³

Respondent has ignored Complainant's attempts to resolve this dispute outside of this administrative proceeding. Failure to respond to a cease-and-desist letter may be considered a factor in finding bad faith registration and use of a domain name.⁴

Respondent, at the time of initial filing of the Complaint, had employed a privacy service to hide its identity, which serves as further evidence of bad faith registration and use.

Complainant requests that the disputed domain name be transferred to Complainant.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

² The screenshot of the disputed domain name's website, Annex 3 of the Complaint, does not show said "Crate Barrel Furniture" link.

³ Complaint Annex 8 shows that at "www.aftermic.com" the disputed domain name is available for sale.

⁴ Complaint Annex 10, cease-and-desist communications sent to the email address associated with the disputed domain name.

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”.

The lack of Response from Respondent does not automatically result in a favorable decision for Complainant (see *Berlitz Investment Corp. v. Stefan Tinulescu*, WIPO Case No. [D2003-0465](#), and section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”).

The burden for Complainant, 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 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

It is undisputed that Complainant has rights over, *inter alia*, the CRATE AND BARREL mark.

Since the addition of a generic Top-Level Domain (“gTLD”), *i.e.* “.com” here, in a domain name is technically required, it is well established that such element may be disregarded where assessing whether a domain name is identical or confusingly similar to a mark. The disputed domain name reflects the CRATE AND BARREL mark in its entirety, albeit without spacing and with the inclusion of a hyphen after the first word. It is clear to this Panel that the CRATE AND BARREL mark is recognizable in the disputed domain name and that the addition of such minor variations in the disputed domain name does not avoid its confusing similarity with said mark (see section 1.7 of the [WIPO Overview 3.0](#)).

Thus, this Panel finds that Complainant has satisfied paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Complainant has alleged and Respondent has failed to deny that Respondent has no rights or legitimate interests in respect of the disputed domain name.

Complainant contends that it has not authorized Respondent to use its marks, that Respondent is not commonly known by the disputed domain name, that Respondent is not affiliated with Complainant, that the disputed domain name carries a high risk of implied affiliation with Complainant, and that Respondent is not using the disputed domain name in connection with any legitimate noncommercial or fair use without intent for commercial gain. The evidence in the file shows that the website linked to the disputed domain name shows apparent PPC links to other websites. The disputed domain name is essentially identical to Complainant’s marks and thus it seems to this Panel that the nature of the disputed domain name, wholly incorporating the Complainant’s CRATE AND BARREL mark, carries a risk of implied affiliation (see sections 2.5.1 and 2.9 of the [WIPO Overview 3.0](#)).

This Panel considers that Complainant has established a *prima facie* case that Respondent has no rights or legitimate interests in the disputed domain name.⁵ In the file there is no evidence of circumstances of the type specified in paragraph 4(c) of the Policy or of any other circumstances giving rise to a possible right to or legitimate interest in the disputed domain name by Respondent.

Based on the aforesaid, this Panel concludes that paragraph 4(a)(ii) of the Policy is satisfied.

C. Registered and Used in Bad Faith

⁵ See *Casio Keisanki Kabushiki Kaisha (Casio Computer Co., Ltd.) v. Jongchan Kim*, WIPO Case No. D2003-0400, and section 2.1 of the WIPO Overview 3.0.

Complainant contends that Respondent's registration and use of the disputed domain name is in bad faith, which Respondent chose not to rebut.

It is uncontested that Complainant's CRATE AND BARREL mark is known internationally. Taking into consideration that Complainant's registration and use of the CRATE AND BARREL mark preceded the creation of the disputed domain name by a number of years, Complainant's international presence, and the content of the website linked to the disputed domain name, this Panel is of the view that Respondent should have been aware of the existence of Complainant's mark and the goods marketed by Complainant at the time Respondent obtained the registration of the disputed domain name.

The use of a domain name for a parking website with apparent links that may generate PPC revenue is not, *per se*, evidence of bad faith. However, in the case at hand, Respondent's bad faith may be deduced from the following facts: (i) the disputed domain name incorporates Complainant's CRATE AND BARREL mark coupled with just minor typographical variations (which, in the case at hand, might be deemed as the practice of "typosquatting" and which has been deemed as a strong indicative of bad faith under a number of UDRP cases);⁶ (ii) Respondent is using Complainant's mark in the disputed domain name without Complainant's authorization; (iii) the risk of implied affiliation of the disputed domain name with Complainant's marks; (iv) the contents of the website linked to the disputed domain name showing apparent sponsored PPC links of products competing with Complainant's;⁷ (v) Respondent's use of a privacy service to hide its name and contact details; and (vi) Respondent's failure to appear at this proceeding, which is indicative that Respondent lacks arguments and evidence to support its holding of the disputed domain name.

In sum, 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 the reputation and goodwill of, Complainant's CRATE AND BARREL mark, which denotes bad faith.⁸

In light of the above, this Panel finds that Complainant has satisfied paragraph 4(a)(iii) of the Policy.

7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, this Panel orders that the disputed domain name <crate-andbarrel.com> be transferred to Complainant.

/Gerardo Saavedra/
Gerardo Saavedra
Sole Panelist
Date: April 12, 2022

⁶ See *Amazon.com, Inc. v. Steven Newman a/k/a Jill Wasserstein a/k/a Pluto Newman*, WIPO Case No. D2006-0517: "the practice of typosquatting, in and of itself, constitutes bad faith registration".

⁷ The fact that the website linked to the disputed domain name might be a generic parking page created by a third party does not relieve Respondent from its responsibility for contents appearing on said website. See *Richemont International SA v. Hrach Aghajanyan / "This Domain Name is for sale..."*, WIPO Case No. D2015-0543.

⁸ See *Jafra Cosmetics, S.A. de C.V. and Jafra Cosmetics International, S.A. de C.V. v. Active Vector*, WIPO Case No. D2005-0250: "due to the intrinsically distinctive character of Complainants' trademarks, it is inconceivable that the contested domain name would have been registered and used if it were not for exploiting the fame and goodwill of Complainants' marks by diverting Internet traffic intended for Complainant".