

ADMINISTRATIVE PANEL DECISION

CBOCS Properties, Inc. v. Shilei

Case No. D2022-1190

1. The Parties

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

The Respondent is Shilei, China.

2. The Domain Names and Registrar

The disputed domain names <mycrackerbarrelbebefits.com>, <mycrackerbarrelbenefit.com>, <mycrackerbarrelbenfits.com>, <mycrackerbarrelbenifits.com>, and <wwwmycrackerbarrelbenefits.com> are registered with DNSPod, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on April 5, 2022. On April 6, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On April 7, 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 April 8, 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 in English on April 12, 2022.

On April 8, 2022, the Center transmitted an email communication to the Parties in English and Chinese regarding the language of the proceeding. On April 11, 2022, the Complainant submitted its 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 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 in English and Chinese of the Complaint, and the proceedings commenced on April 19, 2022. In accordance with the Rules, paragraph 5, the due date for Response was May 9, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on May 10, 2022.

The Center appointed Jonathan Agmon as the sole panelist in this matter on May 18, 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, CBOCS Properties, Inc., operates a nationwide chain of restaurants and retail giftshops across the United States. The Complainant has more than 660 locations in 45 states and is one of the largest restaurant chains in the U.S., with more than USD 2.5 billion in annual revenue.

The Complainant and its related entities have been using the CRACKER BARREL marks continuously for over 50 years and is the owner of numerous U.S. federal registrations for trademarks comprising or containing the CRACKER BARREL mark, including but not limited to the following (the "CRACKER BARREL marks"):

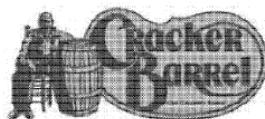


- U.S. Trademark Registration No. 1,142,958 for
December 9, 1980;

- U.S. Trademark Registration No. 1,931,274 for CRACKER BARREL OLD COUNTRY STORE, registered
on October 31, 1995;

- U.S. Trademark Registration No. 2,034,882 for CRACKER BARREL OLD COUNTRY STORE, registered
on February 4, 1997;

- U.S. Trademark Registration No. 2,260,787 for CRACKER BARREL OLD COUNTRY STORE, registered
on July 13, 1999; and



- U.S. Trademark Registration No. 3,305,558 for
October 9, 2007.

, registered on

, registered on

The Complaint states that it is also the owner of the domain name <mycrackerbarrelbenefits.com> which redirects to the Complainant's webpage which allows the Complainant's employees to manage their employee benefits elections.

The disputed domain names were registered on October 20, 2021, and resolved to parking pages with Pay-Per-Click ("PPC") links related to employee benefits.

5. Parties' Contentions

A. Complainant

The Complainant argues that the disputed domain names are confusingly similar to the Complainant's registered CRACKER BARREL marks as the disputed domain names comprise of combinations of the Complainant's CRACKER BARREL mark with various misspellings of the term "benefits" and the addition of the generic Top-Level Domain ("gTLD") ".com".

The Complainant also argues that the Respondent has no rights or legitimate interests in respect of the disputed domain names as it has not licensed or permitted the Respondent to use any of its trademarks or register the disputed domain names. The Respondent is not using the disputed domain names in connection with a *bona fide* offering of goods or services and is not making a legitimate noncommercial or fair use of the disputed domain names.

The Complainant further argues that the disputed domain names were registered and are being used in bad faith as the Respondent was well aware of the Complainant and its CRACKER BARREL marks at the time of registration of the disputed domain names and there is no plausible good faith use to which the disputed domain names can be put to.

B. Respondent

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

6. Discussion and Findings

6.1 Language of the Proceeding

Paragraph 11 of the Rules provides that: "(a) Unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding."

The language of the Registration Agreement for the disputed domain names is Chinese.

The Complainant requested that the language of the proceeding be English.

The Respondent did not comment on the language of the proceeding.

The Panel cites the following with approval:

"Thus, the general rule is that the parties may agree on the language of the administrative proceeding. In the absence of this agreement, the language of the Registration Agreement shall dictate the language of the proceeding. However, the Panel has the discretion to decide otherwise having regard to the circumstances of the case. The Panel's discretion must be exercised judicially in the spirit of fairness and justice to both parties taking into consideration matters such as command of the language, time, and costs. It is important that the language finally decided by the Panel for the proceeding is not prejudicial to either one of the parties in his or her abilities to articulate the arguments for the case." (See *Groupe Auchan v. xmxzl*, WIPO Case No. [DCC2006-0004](#)).

The Panel finds that in the present case, the following should be taken into consideration upon deciding on the language of the proceeding:

- (i) the disputed domain names are comprised of Latin characters, rather than Chinese characters;
- (ii) the webpages which the disputed domain names resolved to are in the English language;
- (iii) the Complainant is unable to communicate in Chinese and may be unduly disadvantaged by having to conduct the proceeding in the Chinese language; and
- (iv) the Respondent appears to be able to understand English and undergo the proceeding in the English language as it was part of several UDRP proceedings where English was the language of the proceeding.

Upon considering the above, the Panel determines that English be the language of the proceeding.

6.2 Substantive Issues

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires the complainant to show that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights.

A registered trademark provides a clear indication that the rights in the mark shown on the trademark certificate belong to its respective owner. The Complainant has provided evidence that it owns the CRACKER BARREL marks.

The differences between the disputed domain names and the Complainant's CRACKER BARREL marks are minor variations of the Complainant's CRACKER BARREL mark with various misspellings of the term "benefits". The disputed domain name <mycrackerbarrelbenfits.com> is confusingly similar to the Complainant's CRACKER BARREL mark, except that with the addition of the term "my" and the omission of the letter "e" between the letters "n" and "f" in the term "benefits". The disputed domain name <mycrackerbarrelbenifits.com> is confusingly similar to the Complainant's CRACKER BARREL mark, except that with the addition of the term "my" and the replacement of the letter "e" between the letters "n" and "f" in the term "benefits" with the letter "i". The disputed domain name <mycrackerbarrelbenefit.com> is confusingly similar to the Complainant's CRACKER BARREL mark, except that with the addition of the term "my" and the omission of the final letter "s" in the term "benefits". The disputed domain name <mycrackerbarrelbebefits.com> is confusingly similar to the Complainant's CRACKER BARREL mark, except that with the addition of the term "my" and the replacement of the letter "n" between the letters "e" and "s" in the term "benefits" with the letter "b". The disputed domain name <wwwmycrackerbarrelbenefits.com> is confusingly similar to the Complainant's CRACKER BARREL mark, except that with the addition of the term "my" and the letters "www" at the beginning.

It is established that where a trademark is recognizable within the disputed domain name, the addition of other terms would not prevent a finding of confusing similarity under the first element. (See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.8). It is further established that the applicable gTLD is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test ([WIPO Overview 3.0](#), section 1.11.1). The addition of a gTLD to a disputed domain name does not avoid confusing similarity as the use of a TLD is technically required to operate a domain name (see *Accor v. Noldc Inc.*, WIPO Case No. [D2005-0016](#); *F. Hoffmann-La Roche AG v. Macalve e-dominios S.A.*, WIPO Case No. [D2006-0451](#); *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#); *L'Oréal v. Tina Smith*, WIPO Case No. [D2013-0820](#); *Titoni AG v. Runxin Wang*, WIPO Case No. [D2008-0820](#); and *Alstom v. Itete Peru S.A.*, WIPO Case No. [D2009-0877](#)).

Each of the disputed domain name consists of the Complainant's CRACKER BARREL mark, the addition of the misspelling term "benefits", the term "www", the term "my", and the gTLD ".com" which in the Panel's view does not prevent a finding of confusing similarity with the Complainant's trademark.

Therefore, the Panel finds that the disputed domain names are confusingly similar to a trademark in which the Complainant has rights and the element under paragraph 4(a)(i) of the Policy is satisfied.

B. Rights or Legitimate Interests

Paragraph 4(a)(ii) of the Policy requires the complainant to show that the respondent has no rights or interests in respect of the disputed domain name. Once the complainant establishes a *prima facie* case that the respondent lacks rights or legitimate interests in the disputed domain name, the burden of production shifts to the respondent to show that it has rights or legitimate interests in respect to the disputed domain name (see [WIPO Overview 3.0](#), section 2.1).

In the present case, the Complainant has demonstrated *prima facie* that the Respondent lacks rights or legitimate interests in respect of the disputed domain names and the Respondent has failed to assert any such rights or legitimate interests.

The Complainant provided evidence that it owns trademark registrations of the CRACKER BARREL marks long before the date that the disputed domain names were registered, and that it is not affiliated with nor has it licensed or otherwise permitted the Respondent to use the Complainant's trademark (see *LEGO Juris A/S v. DomainPark Ltd, David Smith, Above.com Domain Privacy, Transure Enterprise Ltd, Host master*, WIPO Case No. [D2010-0138](#)).

The Complainant also provided evidence that the Respondent is not commonly known by the disputed domain names (see [WIPO Overview 3.0](#), section 2.3). The Complainant also submitted evidence that its registrations and use of the CRACKER BARREL trademarks predate the registrations of the disputed domain names by more than 40 years, and that the disputed domain names are typosquatted versions of the Complainant's own domain name which is further proof that the Respondent has no rights or legitimate interests under the Policy (see *JCDecaux SA v. Pascal Ijeoma, Billcoin Company*, WIPO Case No. [DCO2018-0040](#); *Redbox Automated Retail, LLC d/b/a Redbox v. Milen Radumilo*, WIPO Case No. [D2019-1600](#); *River Light V, L.P., Tory Burch LLC v. Kung Chen Chang, PRIVATE*, WIPO Case No. [D2018-0046](#)).

The Complainant further submitted evidence that the disputed domain names resolved to parking pages with PPC links which past panels have found is not a *bona fide* offering of goods or services or legitimate noncommercial or fair use of the disputed domain name (see *Mayflower Transit LLC v. Domains by Proxy Inc./Yariv Moshe*, WIPO Case No. [D2007-1695](#)).

The Respondent did not submit a Response in the present case and did not provide any explanation or evidence to show rights or legitimate interests in the disputed domain names sufficient to rebut the Complainant's *prima facie* case. In the particular circumstances of the present case, the Respondent's use of the disputed domain names to host parked pages comprising PPC links which appear to generate click-through commissions does not represent a *bona fide* offering of goods or services.

The Panel is therefore of the view that the Respondent has no rights or legitimate interests in respect of the disputed domain names and accordingly, paragraph 4(a)(ii) of the Policy is satisfied.

C. Registered and Used in Bad Faith

The complainant must show that the respondent registered and is using the disputed domain name in bad faith (Policy, paragraph 4(a)(iii)). Paragraph 4(b) of the Policy provides circumstances that may evidence bad faith under paragraph 4(a)(iii) of the Policy.

The Complainant has submitted evidence that the disputed domain names resolved to parked pages comprising PPC links which appear to generate click-through commissions.

In this case, the evidence shows that the Complainant's marks have attained significant goodwill and reputation. The significant goodwill and reputation of the Complainant's marks is evidence that the Respondent is unlikely to have registered the disputed domain names without sight and knowledge of the Complainant's marks and it is implausible that there is any good faith use to which the (typo) disputed domains name may be put to. It is also the Complainant's evidence that the Respondent could not have registered the disputed domain names without prior knowledge of the Complainant's marks as the Respondent's name has no connection with the Complainant's CRACKER BARREL marks which were registered long ago. This is another indicator of bad faith on the part of the Respondent (see *Boursorama SA v. Estrade Nicolas*, WIPO Case No. [D2017-1463](#)).

The Complainant also submitted evidence that the Respondent has been engaging in a pattern of bad faith conduct by registering multiple trademark-abusive domain names of well known third-party marks. The

Respondent did not submit a Response in this proceeding which is a further indication of the Respondent's bad faith, which was considered by the Panel.

In the particular circumstances of the present case, it is clear to the Panel that the Respondent specifically targeted the Complainant and its marks and registered the disputed domain names to divert traffic and benefit commercially from unsuspecting Internet users seeking out the Complainant.

Based on the evidence presented to the Panel, including the confusing similarities between the disputed domain names and the Complainant's marks, the fact that the disputed domain names were used to host parked pages comprising PPC links to generate click-through commissions, the fact that no Response was submitted by the Respondent in response to the Complaint, and the fact that the Respondent has a long history of abusive domain name disputes against third-party trademark owners, the Panel draws the inference that the disputed domain names were registered and are being used in bad faith.

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, <mycrackerbarrelbebefits.com>, <mycrackerbarrelbenefit.com>, <mycrackerbarrelbenfits.com>, <mycrackerbarrelbenifits.com>, and <wwwmycrackerbarrelbenefits.com>, be transferred to the Complainant.

/Jonathan Agmon/
Jonathan Agmon
Sole Panelist
Date: June 1, 2022