

ADMINISTRATIVE PANEL DECISION

Barry Callebaut AG, Barry Callebaut Belgium NV v. Privacy Inc. Customer
7151571251 / Gordon Clowrey
Case No. D2022-1880

1. The Parties

The Complainants are Barry Callebaut AG, Switzerland, and Barry Callebaut Belgium NV, Belgium, represented by Adlex Solicitors, United Kingdom.

The Respondent is Privacy Inc. Customer 7151571251, Canada / Gordon Clowrey, United States of America.

2. The Domain Name and Registrar

The disputed domain name <barrycallebaeut.com> is registered with Google LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 25, 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. On May 26, 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 the named Respondent and contact information in the Complaint.

The Center sent an email communication to the Complainants on May 31, 2022 providing the registrant and contact information disclosed by the Registrar, and inviting the Complainants to submit an amendment to the Complaint. The Complainants filed an amended Complaint on June 1, 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 June 3, 2022. In accordance with the Rules, paragraph 5, the due date for Response was June 23, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 29, 2022.

The Center appointed Nayiri Boghossian as the sole panelist in this matter on July 5, 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 Complainants are part of the Group Barry Callebaut, which is a manufacturer of chocolate and cocoa products. The Group was established in 1996 and has been trading under BARRY CALLEBAUT. The trademark BARRY CALLEBAUT is the Group's house brand. The Complainants own trademark registrations for BARRY CALLEBAUT such as International registration No. 702211, registered on September 4, 1998. The Complainants' official website is "www.barry-callebaut.com".

The disputed domain name was registered on October 4, 2021 and resolves to an inactive website.

5. Parties' Contentions

A. Complainant

The Complainants contend that the disputed domain name is confusingly similar to a trademark or service mark in which the Complainants have rights. The Complainants own registered trademarks and common law rights in its trademark. The disputed domain is simply a misspelling of the Complainants' trademark adding to it the letter "e", ignoring the generic Top-Level Domain ("gTLD") ".com". There's phonetical and visual confusing similarity with the Complainants' trademark.

The Complainants contend that the Respondent has no rights or legitimate interests in the disputed domain name. The Complainants did not authorize the Respondent to use its trademark nor is there an association between the Complainants and the Respondent. There is no evidence that the Respondent has used the domain name, let alone in a noncommercial or fair manner. There is no evidence that the Respondent was commonly known by the disputed domain name.

The Complainants contends that the disputed domain name was registered and is being used in bad faith. This is a case of bad faith passive use. The Complainants' trademark is well-known. The disputed domain name is a misspelling of the Complainants' trademark, likely registered for phishing or other fraudulent purposes. A further evidence of bad faith is the use of a privacy service.

B. Respondent

The Respondent did not reply to the Complainants' contentions.

6. Discussion and Findings

A. Identical or Confusingly Similar

The Complainants own trademark registrations for BARRY CALLEBAUT. The Panel is satisfied that the Complainants have established their ownership of the trademark BARRY CALLEBAUT.

The disputed domain name incorporates the Complainants' trademark BARRY CALLEBAUT in its entirety adding to it the letter "e". This is a typical case of typosquatting, which does not prevent a finding of confusing similarity (WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.9). The generic Top-Level Domain ("gTLD") ".com" can be ignored when assessing confusing similarity as it is viewed as a standard registration requirement.

Consequently, the Panel finds that the disputed domain name is identical or confusingly similar to the trademark of the Complainants and that the Complainants have satisfied paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, a complainant must make at least a *prima facie* showing that a respondent does not have any rights or legitimate interests in the disputed domain name. Once such showing is made, the burden of production shifts to the respondent. In the instant case, the Complainants assert that the Respondent is not authorized by the Complainants to use their trademark, and, moreover, the disputed domain name does not resolve to an active website. Therefore, the Complainants have established a *prima facie* case and the burden of production shifts to the Respondent to show that it has rights or legitimate interests.

The Respondent has not provided any evidence to show that it has any rights or legitimate interests in the disputed domain name. Accordingly, the Complainants have satisfied paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Complainants are the registrant of and have used the trademark BARRY CALLEBAUT, as well as the domain name <barry-callebaut.com>, which is almost identical to the disputed domain name, for over 20 years before the registration of the disputed domain name. Moreover, the disputed domain name contains a typo of the Complainants' trademark. Accordingly, the Respondent must have been fully aware of the Complainants and their trademark when it registered the disputed domain name. Further, typosquatting may be an indication of bad faith (*ESPN, Inc v. XC2*, WIPO Case No. [D2005-0444](#)).

The website to which the disputed domain name resolves is not accessible. This may be a case of passive holding. Based on the submissions in the present proceeding and in the absence of any claims or evidence from the Respondent, the Panel is unable to determine any plausible good faith use of the disputed domain name that could be made by the Respondent. Furthermore, the Respondent's use of a privacy service in the above circumstances supports an inference of bad faith.

Such conduct falls within the concept of registration and use in bad faith of the Policy, and accordingly, the Panel finds that the Complainants have 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, the Panel orders that the disputed domain name <barrycallebaeut.com> be transferred to the Complainants.

/Nayiri Boghossian/

Nayiri Boghossian

Sole Panelist

Date: July 18, 2022