

## **ADMINISTRATIVE PANEL DECISION**

Barracuda Networks, Inc. v. 杨智超 (Yang Zhi Chao)

Case No. D2022-4660

### **1. The Parties**

The Complainant is Barracuda Networks, Inc., United States of America (“United States” or “U.S.”), represented by KXT LAW, LLP, United States.

The Respondent is 杨智超 (Yang Zhi Chao), China.

### **2. The Domain Names and Registrar**

The disputed domain names <barracudanetworkd.com>, <barracudanetwroks.com>, and <barracudannetworks.com> are registered with DNSPod, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint in English was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 5, 2022. On December 6, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On December 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 December 7, 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 amendment to the Complaint in English on December 9, 2023.

Additionally, on December 7, 2022, the Center sent an email in English and Chinese to the Parties regarding the language of the proceeding. The Complainant requested on December 10, 2022 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 amendment to 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 Chinese of the Complaint, and the proceedings commenced on December 13, 2022. In accordance with

the Rules, paragraph 5, the due date for Response was January 2, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on January 3, 2023.

The Center appointed Francine Tan as the sole panelist in this matter on January 10, 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 is the owner of the following registered trade marks in the U.S.:

- Registration No. 4,715,332 for BARRACUDA, registered on April 7, 2015; and
- Registration No. 4,922,692 for BARRACUDA NETWORKS, registered on March 22, 2016.

The Complainant states that it has extensively and prominently used, promoted and advertised its goods and services under the trade marks BARRACUDA and BARRACUDA NETWORKS since as early as December 2002. Further, the Complainant owns the domain names <barracuda.com> and <barracudanetworks.com>, through which goods and services are offered. These domain names have been used for close to 16 years. The Complainant asserts that the BARRACUDA and BARRACUDA NETWORKS trade marks and corresponding domain names have become well known as a result.

The disputed domain names <barracudanetworkd.com>, <barracudanetwroks.com>, and <barracudannetworks.com> were registered on June 18, 2021, and at the time of the filing of the Complaint, resolved to parking pages with Pay-Per-Click ("PPC") links.

#### **5. Parties' Contentions**

##### **A. Complainant**

1. The disputed domain names are confusingly similar to the Complainant's BARRACUDA and BARRACUDA NETWORKS trade marks in which the Complainant has rights. The disputed domain names each incorporate the Complainant's BARRACUDA mark in its entirety. Additionally, the disputed domain names are each nearly identical to the Complainant's BARRACUDA NETWORKS mark with the exception of a misspelling of one letter in each of them.

2. The Respondent has no rights or legitimate interests in the disputed domain names. The Respondent registered the disputed domain names long after the Complainant's registration and use of the BARRACUDA and BARRACUDA NETWORKS marks and domain names. The disputed domain names are identical to the Complainant's <barracudanetworks.com> domain name but for a misspelling in each disputed domain name. The misspellings are an intentional attempt by the Respondent to divert traffic from consumers trying to purchase the Complainant's goods and services by tricking them into believing that they are accessing the Complainant's official website. The Respondent is not and has not been commonly known as "Barracuda", "Barracuda Networks" or by the disputed domain names. The disputed domain names are also not descriptive in nature. The Respondent is not a licensee of the Complainant nor is the Respondent otherwise authorized to use the Complainant's BARRACUDA or BARRACUDA NETWORKS marks for any purpose. The Respondent has no legitimate basis to register the disputed domain names which are confusingly similar to the Complainant's BARRACUDA and BARRACUDA NETWORKS marks and the <barracuda.com> and <barracudanetworks.com> domain names.

3. The disputed domain names were registered and are being used in bad faith. The Respondent's decision to hold the disputed domain names registrations anonymously suggests that the Respondent may have had the intention to sell the disputed domain names to the Complainant or third parties. The Respondent appeared to have registered the disputed domain names primarily for the purpose of selling,

renting, or otherwise transferring the disputed domain names to the Complainant or to the Complainant's competitor(s) for valuable consideration in excess of the Respondent's documented out-of-pocket costs directly related to the disputed domain names. Further, the Respondent appears to have registered the disputed domain names in an attempt to attract Internet users to his websites by creating a likelihood of confusion with the Complainant's marks as to the source, sponsorship, affiliation, or endorsement of the Respondent's websites. The Respondent's misspelling of the term "barracuda networks" in the disputed domain names is an intentional attempt to divert consumer traffic, namely those trying to purchase the Complainant's goods and services by tricking them into believing that they are accessing the Complainant's website. The disputed domain names direct to PPC webpages that list multiple third-party links to different advertisements covering content such as "Internet Security", "Endpoint Security", and "Barracuda Email Security Gateway". All of these subject matter descriptions relate to the Complainant's IT security business; and one of these links even references the Complainant's name and BARRACUDA trade mark.

## **B. Respondent**

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

## **6. Discussion and Findings**

### **6.1 Preliminary Issue: Language of the Proceeding**

The language of the Registration Agreements for the disputed domain names is Chinese. The Complainant requested that the language of the proceeding be English for the primary reason that the circumstances show that the Respondent can understand the English language. In particular:

- (i) The content of the parked pages to which the disputed domain names resolve is in the English language.
- (ii) The disputed domain names are in the English language using Latin script rather than Chinese.
- (iii) The PPC links on the parked pages resolve to third party websites of companies promoting their services in the English language.
- (iv) Prior proceedings involving the same Respondent were conducted in English. The Respondent is a known "typosquatter".
- (v) The Complainant and the Complainant's counsel are based in the U.S. and have not familiarity with the Chinese language.
- (vi) Having to translate the Complainant would unfairly disadvantage and burden the Complainant and delay the proceedings.

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

Paragraph 11(a) of the Rules provides that:

"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."

Section 4.5.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)) states the following:

“Noting the aim of conducting the proceedings with due expedition, paragraph 10 of the UDRP Rules vests a panel with authority to conduct the proceedings in a manner it considers appropriate while also ensuring both that the parties are treated with equality, and that each party is given a fair opportunity to present its case. Against this background, panels have found that certain scenarios may warrant proceeding in a language other than that of the registration agreement. Such scenarios include (i) evidence showing that the respondent can understand the language of the complaint, (ii) the language/script of the domain name particularly where the same as that of the complainant’s mark, (iii) any content on the webpage under the disputed domain name, (iv) prior cases involving the respondent in a particular language, (v) prior correspondence between the parties, (vi) potential unfairness or unwarranted delay in ordering the complainant to translate the complaint, (vii) evidence of other respondent-controlled domain names registered, used, or corresponding to a particular language, (viii) in cases involving multiple domain names, the use of a particular language agreement for some (but not all) of the disputed domain names, (ix) currencies accepted on the webpage under the disputed domain name, or (x) other indicia tending to show that it would not be unfair to proceed in a language other than that of the registration agreement.”

Having considered the relevant factors and interests of the respective Parties, the Panel determines that it would be appropriate for English be the language of the proceeding. The Panel is persuaded that the Respondent would not be prejudiced as he is probably familiar with and understands the English language, taking into account the deliberate misspelling of the Complainant’s trade mark. The Respondent had, moreover, been notified by the Center, in both Chinese and English language, of the commencement of the proceeding, the language of the Registration Agreement, and deadline for filing a Response. He therefore had ample opportunity to object and/or propose to submit his Response in Chinese but did not do so. In the absence of any rebuttal argument or justification therefor by the Respondent, the Panel does not find it procedurally efficient to have the Complainant translate the Complaint into Chinese. This would cause unnecessary delay in the proceeding.

## **6.2 Substantive Issues**

### **A. Identical or Confusingly Similar**

The Complainant has established it has rights in the BARRACUDA and BARRACUDA NETWORKS trade marks. The disputed domain names in essence comprise misspelt versions of the Complainant’s BARRACUDA NETWORKS trade mark. As stated in section 1.9 of the [WIPO Overview 3.0](#), “[a] domain name which consists of a common, obvious or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element”, and “examples of such typos include (i) adjacent keyboard letters, (ii) substitution of similar-appearing characters) ...”.

The generic Top-Level domain “.com” is a technical requirement for domain name registrations and does not have any impact on the issue of the identity or confusing similarity between the disputed domain names and the Complainant’s trade mark.

The Panel accordingly finds that the first element of paragraph 4(a) of the Policy has been satisfied.

### **B. Rights or Legitimate Interests**

The Panel finds that the Complainant has established a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain names. The Complainant’s earlier use and registration of the BARRACUDA and BARRACUDA NETWORKS trade marks predate the registration date of the disputed domain names by several years. The Complainant did not license nor authorize the Respondent to use BARRACUDA and BARRACUDA NETWORKS as a trade mark or in a domain name. Neither is there any evidence that the Respondent is commonly known by the disputed domain names. The use of the disputed domain names which incorporate the Complainant’s trade mark in relation to parking pages with PPC links to, “Internet Security,” “Endpoint Security,” and “Barracuda Email Security Gateway”, does not constitute a legitimate noncommercial or fair use of the disputed domain names within the meaning of paragraph 4(c)(iii) of the Policy. The subject matter reflected on the parking pages correspond to and/or are related to that of

the Complainant's websites at <barracuda.com> and <barracudanetworks.com>. The Respondent's choice of the disputed domain names shows a clear intent to obtain an unfair commercial gain by misleading Internet users, in particular those who may mistype the domain names when looking for the Complainant's official website which operates under the <barracuda.com> and <barracudanetworks.com> domain names.

Having established a *prima facie* case, the burden of production shifts to the Respondent to show that he has rights or legitimate interests in the disputed domain names. No response nor rebuttal evidence to the contrary was presented by the Respondent.

In the circumstances, the Panel concludes that the Respondent has no rights or legitimate interests in the disputed domain names.

The Panel therefore finds that the second element of paragraph 4(a) of the Policy has been satisfied.

### **C. Registered and Used in Bad Faith**

The Panel is persuaded in this case that the Respondent targeted the Complainant's BARRACUDA NETWORKS trade mark. There is no other reason for the Respondent to have registered the disputed domain names, all being misspelt versions of the BARRACUDA NETWORKS trade mark, except for the sole purpose of riding off the reputation and goodwill in, and creating confusion with, the Complainant's trade mark. This is all the more apparent from the fact that the Complainant owns and operates the domain name <barracudanetworks.com>:

"If ... circumstances indicate that the respondent's intent in registering the disputed domain name was in fact to profit in some fashion from or otherwise exploit the complainant's trademark, panels will find bad faith on the part of the respondent. While panel assessment remains fact-specific, generally speaking such circumstances, alone or together, include: (i) the respondent's likely knowledge of the complainant's rights, (ii) the distinctiveness of the complainant's mark, (iii) a pattern of abusive registrations by the respondent, (iv) website content targeting the complainant's trademark, *e.g.*, through links to the complainant's competitors, (v) threats to point or actually pointing the domain name to trademark-abusive content, (vi) threats to "sell to the highest bidder" or otherwise transfer the domain name to a third party, (vii) failure of a respondent to present a credible evidence-backed rationale for registering the domain name, ... Particularly where the domain name at issue is identical or confusingly similar to a highly distinctive or famous mark, panels have tended to view with a degree of skepticism a respondent defense that the domain name was merely registered for legitimate speculation (based for example on any claimed dictionary meaning) as opposed to targeting a specific brand owner." (See section 3.1.1 of the [WIPO Overview3.0](#).)

The Panel finds that there has been bad faith registration and use. The facts and circumstances which support the finding include the following:

- (i) the high degree of reputation of the Complainant's BARRACUDA and BARRACUDA NETWORKS trade marks;
- (ii) the Respondent's likely knowledge of the Complainant's rights in the BARRACUDA and BARRACUDA NETWORKS trade marks;
- (iii) the PPC links on the parking pages to which the disputed domain names resolve, which are related to the Complainant's goods and services provided under the BARRACUDA and BARRACUDA NETWORKS trade marks;
- (iv) the nature of the disputed domain names which wholly incorporate misspelt versions of the BARRACUDA NETWORKS trade mark, and PPC links to third-party websites;
- (v) the Respondent's deliberate typosquatting;

- (vi) the failure of the Respondent to submit a Response, or to provide any explanation for registering the disputed domain names; and
- (vii) the implausibility of any good faith use to which the disputed domain names may be put.

The Panel believes that the Respondent fully appreciated the value associated with the BARRACUDA NETWORKS trade mark, which is why he registered the series of disputed domain names which incorporate misspelt versions of the BARRACUDA NETWORKS trade mark and which are closely similar to the Complainant's <barracudanetworks.com> domain name. He hoped to draw Internet traffic through typographical errors made by Internet users who may be searching for the Complainant's products or services. The Panel therefore concludes that the Respondent has registered and is using the disputed domain names in bad faith.

The Panel therefore finds that the third element of paragraph 4(a) of the Policy has been 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 names <barracudanetworkd.com>, <barracudanetwroks.com>, and <barracudannetworks.com> be transferred to the Complainant.

*/Francine Tan/*

**Francine Tan**

Sole Panelist

Date: January 18, 2023