

ADMINISTRATIVE PANEL DECISION

Cbocs Properties, Inc. v. 权中俊 (Quan Zhong Jun)
Case No. D2023-1088

1. The Parties

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

Respondent is 权中俊 (Quan Zhong Jun), China.

2. The Domain Name and Registrar

The disputed domain name <crqckerbarrel.com> is 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 March 10, 2023. On March 13, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 16, 2023, 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 (Redacted For Privacy) and contact information in the Complaint. The Center sent an email communication to Complainant on March 16, 2023, 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 in English on March 20, 2023.

On March 16, 2023, the Center transmitted an email communication to the Parties in English and Chinese regarding the language of the proceeding. On March 24, 2023, Complainant confirmed its request that English be the language of the proceeding. 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 Respondent in English and Chinese of the Complaint, and the proceedings commenced on March 27, 2023. In accordance with the Rules, paragraph 5, the due date for Response was April 16, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on April 18, 2023.

The Center appointed Yijun Tian as the sole panelist in this matter on April 24, 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

A. Complainant

Complainant, Cbocs Properties, Inc., is a company incorporated in the USA. Complainant owns all of the intellectual property used by Cracker Barrel Old Country Store, Inc., which operates a nationwide chain of restaurants and retail gift shops across the USA. Complainant has more than 660 locations in 45 states, and is one of the largest restaurant chains in the USA, with more than USD 2.5 billion in annual revenue (Annex 4 to the Complaint). Complainant and its related entities have used the CRACKER BARREL name continuously for over 50 years, and continues to use these marks today.

Complainant has exclusive rights in the CRACKER BARREL marks. Complainant is the owner of over 50 existing U.S. federal registrations for trademarks comprising or containing the CRACKER BARREL name, including but not limited to the following (the "CRACKER BARREL marks"): U.S. Trademark Registration No. 1,142,958 for CRACKER BARREL OLD COUNTRY STORE, registered on 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; U.S. Trademark Registration No. 3,305,558 for CRACKER BARREL OLD COUNTRY STORE, registered on October 9, 2007, and U.S. Trademark Registration No. 3,900,702 for CRACKER BARREL, registered on January 4, 2010.

Complainant also operates domain names that contain the CRACKER BARREL mark in its entirety, such as <crackerbarrel.com> (registered in 1998), which is used to promote the company's restaurant and retail shop, as well as other products and services. (Annexes 6-7 to the Complaint).

B. Respondent

Respondent is 权中俊 (Quan Zhong Jun), China.

C. The Disputed Domain Name

The disputed domain name <crqckerbarrel.com> was registered on April 25, 2022, long after the CRACKER BARREL marks were registered. The disputed domain name resolves to a pay-per-click ("PPC") website in English, which contains links for goods/services that compete with Complainant, including links labelled "Rewards Program", "Gift Cards", and "Lunch Delivery".

5. Parties' Contentions

A. Complainant

Complainant contends that the disputed domain name is confusingly similar to Complainant's Cracker Barrel Marks, and in particular the mark CRACKER BARREL. The disputed domain name is identical to Complainant's mark with the exception of the fact that the letter "a" in Cracker has been replaced with the letter "q". It is well-established that a domain name which is plainly a misspelling of an existing trademark is confusingly similar to that mark.

Complainant contends that Respondent has no rights or legitimate interests in respect of the disputed domain name.

Complainant contends that the disputed domain name was registered and is being used in bad faith.

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

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

6.1. Language of the Proceeding

The language of the Registration Agreement for the disputed domain name is Chinese. Pursuant to the Rules, paragraph 11(a), in the absence of an agreement between the parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement. From the evidence presented on the record, no agreement appears to have been entered into between Complainant and Respondent to the effect that the language of the proceeding should be English. Complainant filed initially its Complaint in English, and has requested that English be the language of the proceeding for the following main reasons:

- (a) The content of the web page to which the disputed domain name resolves is in English (Annex 3 to the Complaint).
- (b) The disputed domain name is a typographical variation on the English-language phrase "Cracker Barrel", which indicates that Respondent has familiarity with the English language.
- (c) Requiring Complainant to submit English translations of its Complaint and annexes into Chinese would subject Complainant to significant and disproportionate expense and cause undue delay and inconvenience.
- (d) Complainant has been able to identify over a dozen other domain name proceedings involving Respondent, all but one of which have been conducted in English.

Complainant notes that despite being advised of the opportunity in Chinese, Respondent did not object to Complainant's request to hold the proceedings in English, nor made any submissions with respect to the language of the proceeding.

Paragraph 11(a) of the Rules allows the panel to determine the language of the proceeding having regard to all the circumstances. In particular, it is established practice to take paragraphs 10(b) and (c) of the Rules into consideration for the purpose of determining the language of the proceeding. In other words, it is important to ensure fairness to the parties and the maintenance of an inexpensive and expeditious avenue for resolving domain name disputes (*Whirlpool Corporation, Whirlpool Properties, Inc. v. Hui'erpu (HK) electrical appliance co. Ltd.*, WIPO Case No. [D2008-0293](#); *Solvay S.A. v. Hyun-Jun Shin*, WIPO Case No. [D2006-0593](#)). The language finally decided by the panel for the proceeding should not be prejudicial to either one of the parties in its abilities to articulate the arguments for the case (*Groupe Auchan v. xmxzl*, WIPO Case No. [DCC2006-0004](#)). Section 4.5.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") further states:

"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." ([WIPO Overview 3.0](#), section 4.5.1; see also *L'Oreal S.A. v. MUNHYUNJA*, WIPO Case No. [D2003-0585](#)).

On the record, Respondent appears to be located in China and is thus presumably not a native English speaker, but considering the following aspects, the Panel has decided that the language of the proceeding shall be English: (a) the disputed domain name <crqckerbarrel.com> is registered in Latin characters, particularly in English (e.g. misspelled English word "cracker" and English word "barrel"), rather than Chinese script; (b) the generic Top-Level Domain ("gTLD") of the disputed domain name is ".com", so the disputed domain name seems to be prepared for users worldwide, particularly English speaking countries; (c) the webpages which the disputed domain names resolved to are in the English language; (d) the Center has notified Respondent of the language of the proceeding in both Chinese and English, and Respondent has indicated no objection to Complainant's request that English be the language of the proceeding; (e) the Center also notified Respondent in both Chinese and English of the Complaint, and informed Respondent that it would accept a response in either English or Chinese, but Respondent chose not to file any response.

Considering these circumstances, the Panel finds that the choice of English as the language of the present proceeding is fair to both Parties and is not prejudicial to either one of the Parties in its ability to articulate the arguments for this case. Having considered all the matters above, the Panel determines under paragraph 11(a) of the Rules that English shall be the language of the proceeding, and the decision will be rendered in English.

6.2. Substantive Issues

Paragraph 4(a) of the Policy requires that Complainant must prove each of the following three elements to obtain an order that the disputed domain name should be cancelled or transferred:

- (i) the disputed domain name registered by Respondent is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (ii) 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.

On the basis of the evidence introduced by Complainant and in particular with regard to the content of the relevant provisions of the Policy, paragraphs 4(a) - (c), the Panel concludes as follows:

A. Identical or Confusingly Similar

The Panel finds that Complainant has rights in the CRACKER BARREL marks acquired through registration. The CRACKER BARREL marks have been registered in the USA since 1980.

The disputed domain name <crqckerbarrel.com> differs from Complainant's trademark CRACKER BARREL and the most distinct part of Complainant's trademark CRACKER BARREL OLD COUNTRY STORE ("cracker barrel"), by only one letter – Respondent has changed the spelling of "cracker barrel" by one letter (replacing the letter "a" with the letter "q"). This does not prevent a finding of confusing similarity between Complainant's registered trademarks and the disputed domain name (*Walgreen Co. v. Lin yanxiao / Linyanxiao*, WIPO Case No. [D2016-1605](#)).

Previous UDRP panels have consistently held that a domain name may be identical or confusingly similar to a trademark for purposes of the Policy “when the domain name includes the trademark, or a confusingly similar approximation, regardless of the other terms in the domain name” (*Wal-Mart Stores, Inc. v. Richard MacLeod d/b/a For Sale*, WIPO Case No. [D2000-0662](#)).

Further, as to “typosquatting”, section 1.9 of the [WIPO Overview 3.0](#) states: “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.”

As the disputed domain name is a one letter typographical error of Complainant’s CRACKER BARREL marks, the Panel finds the disputed domain name must be considered a prototypical example of typosquatting.

Thus, the Panel finds that the disputed domain name is confusingly similar to Complainant’s CRACKER BARREL marks. The Panel therefore holds that the Complaint fulfils the first condition of paragraph 4(a) of the Policy.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances any of which is sufficient to demonstrate that Respondent has rights or legitimate interests in the disputed domain name:

- (i) before any notice to Respondent of the dispute, the use by Respondent of, or demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services; or
- (ii) Respondent has been commonly known by the disputed domain name, even if Respondent has acquired no trademark or service mark rights; or
- (iii) Respondent is making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish Complainant’s trademarks at issue.

The overall burden of proof on this element rests with Complainant. However, it is well established by previous UDRP panel decisions that once a complainant establishes a *prima facie* case that the respondent lacks rights or legitimate interests in a domain name, the burden of production shifts to the respondent to rebut the complainant’s contentions. If the respondent fails to do so, the complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy. (*Danzas Holding AG, DHL Operations B.V. v. Ma Shikai*, WIPO Case No. [D2008-0441](#); [WIPO Overview 3.0](#), section 2.1 and cases cited therein).

According to the Complaint, Complainant owns all of the intellectual property used by Cracker Barrel Old Country Store, Inc., which operates a nationwide chain of restaurants and retail gift shops across the USA. Complainant has more than 660 locations in 45 states, and is one of the largest restaurant chains in the USA, with more than USD 2.5 billion in annual revenue. Complainant and its related entities have used the CRACKER BARREL name continuously for over 50 years, and continues to use these marks today. As mentioned above, Complainant has rights in the CRACKER BARREL marks including in the USA since at least 1980, which long precedes Respondent’s registration of the disputed domain name (in 2022).

Moreover, Respondent is not an authorized dealer of CRACKER BARREL-branded products or services. The Panel finds that Complainant has established a *prima facie* case that Respondent has no rights or legitimate interests in the disputed domain name and thereby shifts the burden to Respondent to produce evidence to rebut this presumption (*The Argento Wine Company Limited v. Argento Beijing Trading Company*, WIPO Case No. [D2009-0610](#); *Do The Hustle, LLC v. Tropic Web*, WIPO Case No. [D2000-0624](#); *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#)).

Based on the following reasons the Panel finds that Respondent has no rights or legitimate interests in the disputed domain name:

- (a) There has been no evidence adduced to show that Respondent is using the disputed domain name in connection with a *bona fide* offering of goods or services. Respondent has not provided evidence of a legitimate use of the disputed domain name or reasons to justify the choice of the term “crqcker barrel”, a misspelling of Complainant’s CRACKER BARREL trademark, in the disputed domain name. There has been no evidence to show that Complainant has licensed or otherwise permitted Respondent to use the CRACKER BARREL marks or to apply for or use any domain name incorporating the CRACKER BARREL marks.
- (b) There has been no evidence adduced to show that Respondent has been commonly known by the disputed domain name. There has been no evidence adduced to show that Respondent has any registered trademark rights with respect to the disputed domain name. Respondent registered the disputed domain name in 2022, long after the CRACKER BARREL marks became widely known. The disputed domain name is confusingly similar to Complainant’s CRACKER BARREL marks; and
- (c) There has been no evidence adduced to show that Respondent is making a legitimate noncommercial or fair use of the disputed domain name. By contrast, the disputed domain name resolves to a PPC website in English, which contains links for services that compete with Complainant, including links labelled “Rewards Program”, “Gift Cards”, and “Lunch Delivery”. It seems that Respondent is making profits through the Internet traffic attracted to the website under the disputed domain name. (See *BKS Bank AG v. Jianwei Guo*, WIPO Case No. [D2017-1041](#); *Pet Plan Ltd. v. 权中俊 and 李金梁 (Li Jin Liang)*, WIPO Case No. [D2020-3358](#).)

The Panel finds that Respondent has failed to produce any evidence to rebut Complainant’s *prima facie* showing on Respondent’s lack of rights or legitimate interests in the disputed domain name. The Panel therefore holds that the Complaint fulfils the second condition of paragraph 4(a) of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy sets out four circumstances which, without limitation, shall be evidence of the registration and use of the disputed domain name in bad faith, namely:

- (i) circumstances indicating that Respondent has registered or acquired the disputed domain name primarily for the purpose of selling, renting, or otherwise transferring the disputed domain name registration to Complainant who is the owner of the trademark or service mark or to a competitor of Complainant, for valuable consideration in excess of Respondent’s documented out-of-pocket costs directly related to the disputed domain name; or
- (ii) Respondent has registered the disputed domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that Respondent has engaged in a pattern of such conduct; or
- (iii) Respondent has registered the disputed domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the disputed domain name, Respondent has intentionally attempted to attract, for commercial gain, Internet users to Respondent’s website or other online location, by creating a likelihood of confusion with Complainant’s mark as to the source, sponsorship, affiliation, or endorsement of Respondent’s website or location or of a product or service on the website or location.

Upon the evidence of the circumstances in this case, it is adequate to conclude that Respondent has registered and used the disputed domain name in bad faith.

(a) Registered in Bad Faith

The Panel finds that Complainant has a widespread reputation in the CRACKER BARREL marks with regard to its products and services. As mentioned above, Complainant has registered its CRACKER BARREL marks in the USA since 1980. It is not conceivable that Respondent would not have had actual notice of Complainant's trademark rights at the time of the registration of the disputed domain name (in 2022). This has been reinforced by the fact that the disputed domain name incorporates a misspelling of Complainant's CRACKER BARREL trademark.

Moreover, Respondent has chosen not to respond to Complainant's allegations. According to the UDRP decision in *The Argento Wine Company Limited v. Argento Beijing Trading Company, supra*, "the failure of the Respondent to respond to the Complaint further supports an inference of bad faith". See also *Bayerische Motoren Werke AG v. (This Domain is For Sale) Joshuathan Investments, Inc.*, WIPO Case No. [D2002-0787](#).

Thus, the Panel concludes that the disputed domain name was registered in bad faith.

(b) Used in Bad Faith

Respondent has used the website resolved by the disputed domain name for displaying PPC links to third-party commercial websites. Thus, the Panel concludes that Respondent is currently using the confusingly similar disputed domain name with the intention to attract, for commercial gain, Internet users to Respondent's website.

Given the reputation of the CRACKER BARREL marks, the Panel finds that the public is likely to be confused into thinking that the disputed domain name has a connection with Complainant, contrary to the fact. There is a strong likelihood of confusion as to the source, sponsorship, affiliation or endorsement of the website to which the disputed domain name resolves. In other words, Respondent has, through the use of a confusingly similar disputed domain name, created a likelihood of confusion with the CRACKER BARREL marks. Moreover, as mentioned above, Respondent redirects Internet users to third parties' websites via the PPC links on the website at the disputed domain name, presumably for commercial gain.

The Panel, therefore, concludes that the disputed domain name was registered and is being used by Respondent in bad faith.

In summary, Respondent, by choosing to register and use the disputed domain name, which is confusingly similar to the CRACKER BARREL marks, intended to ride on the goodwill of these trademarks in an attempt to exploit, for commercial gain, Internet users destined for Complainant. In the absence of evidence to the contrary and rebuttal from Respondent, the choice of the disputed domain name and the conduct of Respondent as far as the website to which the disputed domain name resolves are indicative of registration and use of the disputed domain name in bad faith.

The Panel therefore holds that the Complaint fulfils the third condition of paragraph 4(a) of the Policy.

7. Decision

For all 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 <crqckerbarrel.com> be transferred to Complainant.

/Yijun Tian/

Yijun Tian

Sole Panelist

Dated: May 15, 2023