

## **ADMINISTRATIVE PANEL DECISION**

Barrick Gold North America, Inc., Barrick Gold Corporation v. Ryan Jolson,  
barrick Gold

Case No. D2023-1805

### **1. The Parties**

Complainants are Barrick Gold North America, Inc. and Barrick Gold Corporation, United States of America (“U.S.” or “United States”), represented by Dorsey & Whitney, LLP, United States.

Respondent is Ryan Jolson, barrick Gold, United States.

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

The disputed domain name <barrickgold.org> (the “Domain Name”) is registered with NameCheap, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 22, 2023. On April 24, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 24, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent (Privacy Service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to Complainants on April 25, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainants filed an amended Complaint on April 26, 2023.

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 May 2, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 22, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on May 23, 2023.

The Center appointed John C. McElwaine as the sole panelist in this matter on May 26, 2023. The Panel finds that it was properly constituted. The Panel 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**

Barrick Gold of North America, Inc. and Barrick Gold Corporation (hereinafter collectively referred to as "Complainant") are global producers of gold and copper. Relevant to this matter, Complainant owns two distinct categories of trademarks. The first, referred to as the "BARRICK Mark", consists of U.S. Trademark Registration Numbers 4578245, registered August 5, 2014; 6039563, registered April 28, 2020; 6077368, registered June 16, 2020; 6225225, registered December 22, 2020; and 6592636, registered December 21, 2021. The second, collectively referred to as the "BARRICK GOLD Mark", consists of U.S. Trademark Registration Numbers 4683358, registered February 10, 2015, and 4944505, registered April 26, 2016. In addition to its trademarks, Complainant uses the domain name <barrick.com> to market its mining services.

Respondent registered the Domain Name on February 22, 2023. At the time of filing the Complaint, the Domain Name resolved to a website displaying the BARRICK GOLD Mark and an online application for a customer service representative position.

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

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

Complainant alleges that in 1983 it adopted the BARRICK Mark and BARRICK GOLD Mark in connection with its gold and copper mining operation. Since then, Complainant contends these trademarks have achieved substantial goodwill and name recognition in commercial and consumer industries.

As to the first element of the Policy, Complainant alleges it has valid and existing trademark rights in the BARRICK Mark and BARRICK GOLD Mark under its United States registrations. Further, Complainant asserts the Domain Name is identical to the BARRICK GOLD Mark and confusingly similar to the BARRICK Mark.

As to the second element of the Policy, Complainant contends it did not authorize or license Respondent to register or use the Domain Name. Further, Complainant asserts Respondent is unable to show the use of the Domain Name relates to a *bona fide* offering of goods or services, or that Respondent is making legitimate noncommercial or fair use of the Domain Name, without intent for commercial gain. Rather, Complainant asserts Respondent uses the Domain Name for an email phishing campaign where unsuspecting users provide personal information for fraudulent job applications. Specifically, Complainant contends Respondent sent individuals false "Application Reference Number(s)" from the email address "[...].@barrickgold.org". Complainant submitted evidence indicating users were then prompted to input the Reference Number on the website linked to the Domain Name to begin an online application for a fake Customer Service Representative position with Barrick Gold.

As to the third element of the Policy, Complainant asserts Respondent registered and used the Domain Name to attract Internet users to its website by creating a likelihood of confusion with Complainant's website and misleading visitors to believe they are on Complainant's employment application page. Complainant alleges Respondent's purpose of registration and use of the Domain Name was to create confusion or falsely imply affiliation with Complainant's business in bad faith.

##### **B. Respondent**

Respondent did not reply to Complainant's contentions.

## 6. Discussion and Findings

Although Respondent defaulted, to succeed in this UDRP proceeding, paragraph 4 of the Policy requires Complainant to prove its assertions with evidence demonstrating:

- (i) the Domain Name is identical or confusingly similar to a trademark or service mark in which Complainant has rights;
- (ii) Respondent has no rights or legitimate interests in respect of the Domain Name; and
- (iii) the Domain Name has been registered and is being used in bad faith.

Because of Respondent's default, the Panel may accept as true the reasonable factual allegations stated within the Complaint and may draw appropriate inferences therefrom. See *St. Tropez Acquisition Co. Limited v. AnonymousSpeech LLC and Global House Inc.*, WIPO Case No. [D2009-1779](#); *Bjorn Kassoe Andersen v. Direction International*, WIPO Case No. [D2007-0605](#); see also paragraph 5(f) of the Rules ("If a Respondent does not submit a response, in the absence of exceptional circumstances, the Panel shall decide the dispute based upon the complaint"). Having considered the Complaint, the Policy, the Rules, the Supplemental Rules, and applicable principles of law, the Panel's findings on each of the above-cited elements are as follows.

### A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires Complainant to show the Domain Name is identical or confusingly similar to a trademark or service mark in which Complainant has rights. Ownership of a trademark registration is generally sufficient evidence of a complainant's requisite rights in a mark to satisfy 4(a)(i) of the Policy. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.2. On this point, Complainant provided evidence that it is the owner of seven United States trademark registrations for the BARRICK Mark or BARRICK GOLD Mark.

The Domain Name is identical to Complainant's BARRICK GOLD Mark. Respondent's incorporation of Complainant's entire trademark is sufficient to establish the first element. In addition, the Domain Name is confusingly similar to Complainant's BARRICK Mark. The addition of other terms to a trademark in a domain name does not avoid a finding of confusing similarity. See [WIPO Overview 3.0](#), section 1.8 ("Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element."); *Mastercard International Incorporated v. Dolancer Outsourcing Inc.*, WIPO Case No. [D2012-0619](#); *Air France v. Kitchkulture*, WIPO Case No. [D2002-0158](#); *DHL Operations B.V., and DHL International GmbH v. Diversified Home Loans*, WIPO Case No. [D2010-0097](#). In this matter, the Domain Name contains Complainant's BARRICK Mark, as the dominant element, followed by the term "gold". The addition of the term "gold" does not avoid a finding of confusing similarity between the Domain Name and the BARRICK Mark.

Accordingly, the Panel finds the Domain Name is identical to Complainant's BARRICK GOLD Mark and confusingly similar to Complainant's BARRICK Mark in which Complainant has valid trademark rights. Therefore, Complainant satisfied paragraph 4(a)(i) of the Policy.

### B. Rights or Legitimate Interests

Under the Policy paragraph 4(a)(ii), Complainant must establish Respondent has no rights or legitimate interest in the Domain Name. Complainant need only make a *prima facie* showing on this element, at which point the burden shifts to Respondent to present evidence that it has some rights or legitimate interests in the Domain Name. If Respondent failed to do so, Complainant is deemed to have satisfied its burden under paragraph 4(a)(ii) of the Policy. See *Vicar Operating, Inc. v. Domains by Proxy, Inc. / Eklin Bot Systems, Inc.*, WIPO Case No. [D2010-1141](#); see also *Nicole Kidman v. John Zuccarini, d/b/a Cupcake Party*, WIPO

Case No. [D2000-1415](#); *Inter-Continental Hotels Corporation v. Khaled Ali Soussi*, WIPO Case No. [D2000-0252](#).

Complainant asserts Respondent is unauthorized to have registered the Domain Name and allegedly set up a website that purports to be an employment application page for Complainant's business. In addition, Complainant alleged the website provides a fictitious Customer Service Representative application that prompts visitors to provide personal and confidential information. Although properly notified by the Center, Respondent failed to submit any response to legitimize these concerning points. A respondent's silence may support a finding that it has no rights or legitimate interests in respect of the Domain Name. See *Alcoholics Anonymous World Services, Inc., v. Lauren Raymond*, WIPO Case No. [D2000-0007](#); *Ronson Plc v. Unimetal Sanayi ve Tic. A.S.*, WIPO Case No. [D2000-0011](#). Additionally, previous UDRP panels found when respondents have not availed themselves of their rights to respond to a complainant, it can be assumed in appropriate circumstances that respondents have no rights or legitimate interests in the disputed domain name. See *AREVA v. St. James Robyn Limoges*, WIPO Case No. [D2010-1017](#); *Nordstrom, Inc. and NIHC, Inc. v. Inkyu Kim*, WIPO Case No. [D2003-0269](#).

Nevertheless, under paragraph 4(c) of the Policy, a respondent's rights or legitimate interests in a domain name may be established by demonstrating any of the following three conditions: (i) before any notice to respondent of the dispute, respondent's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or (ii) respondent (as an individual, business, or other organization) has been commonly known by the 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 domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue. The Panel finds Respondent is unable to show rights or legitimate interests under any of the three conditions.

As an initial matter, Respondent cannot satisfy paragraph 4(c)(ii) of the Policy. While Respondent may have registered the Domain Name using the organization name "barrick Gold", there is no evidence in the record indicating Respondent is commonly known by that name, which was most likely usurped in furtherance of Respondent's fraudulent scheme to impersonate Complainant.

Complainant also asserts the Domain Name resolved to a website created to intentionally confuse visitors by suggesting it is affiliated with Complainant. For example, the website displays the BARRICK GOLD Mark, accompanied by a purported career opportunity. The website further states, "[i]f you thrive on challenge and collaboration, Barrick offers opportunities on a global scale. Our remarkable staff has made us the leading gold mining company, and we're looking for more people to join our team".

In addition, Complainant asserts the website may play an integral role in an email phishing campaign where unsuspecting job applicants are induced to submit personal and confidential information due, in part, to its use of the BARRICK GOLD Mark. In support of its contention, Complainant points to one instance where Respondent emailed an employment opportunity to a prospective employee using the email "[...][@barrickgold.org](#)". Posing as a Barrick Gold employee, Respondent emailed the individual an Application Reference Number and a link to the Domain Name's website where there were instructions to provide personal and confidential information. Complainant provided evidence of three similar incidents where Respondent emailed fake employment contracts.

The Panel finds that the use of the Domain Name in this manner to confuse and deceive the Internet users is not a *bona fide* offering of goods or services under paragraph 4(c)(i) of the Policy. Prior UDRP panels have held that such use of a domain name cannot be a "*bona fide* offering of goods or services" and is not "fair use of the domain name". See *Microsoft Corporation v. Microsof.com aka Tarek Ahmed*, WIPO Case No. [D2000-0548](#) ("by using a domain name and establishing a website deliberately designed to confuse Internet users and consumers regarding the identity of the seller of the goods and services, Respondent has not undertaken a *bona fide* or good faith offering of the goods and services."); see *Hulu, LLC v. Helecops, Vinod Madushanka*, WIPO Case No. [D2016-0365](#) (finding that an infringing website operating under the name "HuluMovies" does not entail a *bona fide* offering of services in the sense of paragraph 4(c)(i) of the Policy, nor a legitimate noncommercial or fair use under Policy paragraph 4(c)(iii), without intent for commercial gain

to misleadingly divert consumers or to tarnish the HULU mark.). Without a response from Respondent justifying its use of the Domain Name as authorized by Complainant or as fair use, the Panel cannot find Respondent has a legitimate interest.

Moreover, to the extent the Domain Name was registered to engage in an information harvesting scheme, such use would not be a *bona fide* offering of goods or services. [WIPO Overview 3.0](#), section 2.13.1 (“Panels have categorically held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent.”); see also, *CMA CGM v. Diana Smith*, WIPO Case No. [D2015-1774](#) (finding that the respondent had no rights or legitimate interests in the disputed domain name holding, “such phishing scam cannot be considered a *bona fide* offering of goods or services nor a legitimate noncommercial or fair use of the Domain Name”). The undisputed evidence of impersonation, deception, and fraud nullifies any possible basis for the acquisition of rights or legitimate interests by Respondent. See *Afton Chemical Corporation v. Meche Kings*, WIPO Case No. [D2019-1082](#).

In sum, Complainant made a *prima facie* showing of Respondent’s lack of rights or legitimate interests and Respondent failed to come forward to rebut that showing. As provided for by paragraph 14 of the Rules, the Panel may draw such inference from Respondent’s default as it considers appropriate. For all these reasons, the Panel is entitled to accept that the second element of the Policy is established by Complainant, and Respondent has no rights or legitimate interests in respect of the Domain Name, under paragraph 4(a)(ii) of the Policy.

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

According to paragraph 4(a)(iii) of the Policy, Complainant must show Respondent is registered and is using the Domain Name in bad faith. A non-exhaustive list of factors constituting bad faith registration and use is set out in paragraph 4(b) of the Policy.

Bad faith registration can be found where a respondent “knew or should have known” of a complainant’s trademark rights and nevertheless registered a domain name in which it had no right or legitimate interest. See *Accor S.A. v. Kristen Hoerl*, WIPO Case No. [D2007-1722](#). As detailed above, to pose as Complainant, Respondent registered the Domain Name, which is identical to the BARRICK GOLD Mark and confusingly similar to the BARRICK Mark. There is no explanation for Respondent to have chosen to register the Domain Name other than to intentionally trade off the goodwill and reputation of Complainant’s trademarks or otherwise create a false association with Complainant. Furthermore, Respondent’s use of the email address “[...]@barrickgold.org” to impersonate Complainant’s employee, with the intent to collect users’ personal and confidential information on the website associated with the Domain Name, is a strong indication of bad faith. *Groupe Lactalis v. admin tools, admin space llc*, WIPO Case No. [D2021-2216](#) (finding impersonation of complainant’s employee “cannot be anything other than registration and use in bad faith”); *Elkem ASA v. Domains by Proxy, LLC / Name Redacted*, WIPO Case No. [D2020-2077](#) (finding respondent’s impersonation of complainant’s employee was a factor considered in deciding bad faith).

Accordingly, with no response from Respondent, the Panel holds such a claim of bad faith registration is undisputed. Complainant has met its burden of showing that Respondent registered and is using the Domain Name in bad faith under paragraph 4(a)(iii) of the Policy.

### **7. Decision**

For the foregoing reasons, according to paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders the Domain Name, <barrickgold.org>, be transferred to Complainant.

/John C. McElwaine/

**John C. McElwaine**

Sole Panelist

Date: June 9, 2023