

ADMINISTRATIVE PANEL DECISION

Barrick Gold of North America, Inc. and Barrick Gold Corporation v. loving kkon

Case No. D2023-2214

1. The Parties

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

The Respondent is loving kkon, Thailand.

2. The Domain Names and Registrar

The disputed domain names <barrickgld.com>, <goldbarrick.com>, and <goldbarrickltd.com> are registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 22, 2023. On May 23, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 23, 2023, 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 (Redacted for Privacy, Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainants on May 25, 2023, 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 May 30, 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 the Respondent of the Complaint, and the proceedings commenced on June 12, 2023. In accordance with the Rules, paragraph 5, the due date for Response was July 2, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 4, 2023.

The Center appointed Andrea Mondini as the sole panelist in this matter on July 25, 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 Complainants, along with their parent, affiliates and subsidiaries are one of the largest gold mining operations in the world.

The Complainants owns numerous trademark registrations for their BARRICK trademark in more than thirteen countries, *inter alia*, the United States Trademark Registration (figurative), No. 4578245 for BARRICK, covering “gold mining extraction and mining of silver, copper and base metals” in Class 37, and “mine design and engineering in the field of mine exploration of precious and base metals” in Class 42, registered on August 5, 2014, and the United States Trademark Registration, No. 4683358 for BARRICK GOLD, covering “mine design and engineering in the field of mine exploration of precious and base metals” in Class 42, registered on February 10, 2015. The Complainants will be referred as the “Complainant” hereinafter.

The Complainant also holds the domain name <barrick.com> which it uses to advertise and promote a variety of mining services, business initiatives, and other commercial endeavors.

The first disputed domain name <barrickgld.com> (hereinafter referred as the “first disputed domain name”) was registered on January 25, 2023. The second disputed domain name (hereinafter referred as the “second disputed domain name”) was registered on March 20, 2023, and the third disputed domain name (hereinafter referred as the “third disputed domain name”) was registered on April 17, 2023.

The Respondent used the disputed domain names in connection with webpages displaying the Complainant’s BARRICK logo prompting Internet users to enter their name and login credentials.

5. Parties’ Contentions

A. Complainant

The Complainant contends as follows:

The disputed domain names are each confusingly similar to the Complainant’s BARRICK GOLD trademark. First, the disputed domain name <barrickgld.com> consists of the Complainant’s BARRICK mark, immediately followed by the version without the vowel of the term “gold”, namely “gld”, which is insufficient to avoid confusing similarity.

Second, the disputed domain names <goldbarrick.com> and <goldbarrickltd.com> also incorporate the BARRICK GOLD mark but merely invert the terms. The inversion of the words does not dispel the confusing similarity between the disputed domain name and the Complainant’s trademark. Lastly, the disputed domain name <goldbarrickltd.com> includes the “ltd” abbreviation, which is short for “limited”, a corporate entity formation designation. Its inclusion does nothing to differentiate this disputed domain name from the Complainant’s marks.

The Respondent has no rights or legitimate interests in respect of the disputed domain name. The mark BARRICK is associated with the Complainant, since the trademark BARRICK has been extensively used to identify the Complainant and its services in gold mining. The Respondent has not been authorized by the Complainant to use this trademark, is not commonly known by the disputed domain name, and there is no evidence of the Respondent’s use, or demonstrable preparation to use, the disputed domain name in connection with a *bona fide* offering of goods and services.

The disputed domain name was registered and is being used in bad faith because it is obvious that the Respondent had knowledge of both the Complainant and its well-known trademark BARRICK at the time it registered the disputed domain names, and because the Respondent used the disputed domain names to misrepresent itself as being affiliated with or endorsed by the Complainant for fraudulent activities.

B. Respondent

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

6. Discussion and Findings

According to paragraph 4(a) of the Policy, in order to succeed, a complainant must establish each of the following elements:

- (i) the disputed domain name is identical or confusingly similar to the trademark or service mark in which the complainant has rights;
- (ii) the 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.

A. Identical or Confusingly Similar

The Panel is satisfied that the Complainant owns trademark registrations for its BARRICK and BARRICK GOLD trademark.

The Panel notes that the disputed domain names incorporate the BARRICK or the BARRICK GOLD trademark in its entirety. The addition of "ltd", the omission of one letter and the interchanging of the sequence of the words "gold" and "barrick" do not prevent a finding of confusing similarity under the Policy, paragraph 4(a)(i). See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.8.

For these reasons, the Panel concludes that all disputed domain names are confusingly similar to the Complainant's mark BARRICK.

The addition of the generic Top-Level Domain ("gTLD") ".com" in the disputed domain names is a standard registration requirement and as such is disregarded under the confusing similarity test under the Policy, paragraph 4(a)(i). See [WIPO Overview 3.0](#), section 1.11.1.

For these reasons, the Panel concludes that the disputed domain names are confusingly similar to the Complainant's marks BARRICK and BARRICK GOLD.

The first element of paragraph 4(a) of the Policy has been met.

B. Rights or Legitimate Interests

The Complainant states it has not authorized the Respondent to use its trademarks and that before notice of the dispute, there is no evidence of the Respondent's use, or demonstrable preparation to use, the disputed domain names in good faith. The Panel does not see any contrary evidence from the record.

In the view of the Panel, the Complainant has succeeded in raising a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. For its part, the Respondent failed to provide any explanations as to any rights or legitimate interests. Therefore, the Panel finds that the Respondent does not have any rights or legitimate interests in the disputed domain names.

Furthermore, the nature of the disputed domain names, comprising the Complainant's trademarks with misspelling of one of its marks or an added relevant term, indicates an awareness of the Complainant and its marks and intent to take unfair advantage of such, which does not support a finding of any rights or legitimate interests.

The second element of paragraph 4(a) of the Policy has been met.

C. Registered and Used in Bad Faith

The Complainant has shown to the satisfaction of the Panel that its BARRICK trademark is well-known in the gold industry.

In the view of the Panel, noting that the Complainant's trademark predates the registration of the disputed domain name and the fact that the Respondent uses the Complainant's logo on the web pages it posted under the disputed domain names, it is inconceivable that the Respondent could have registered the disputed domain name without knowledge of the Complainant's well-known trademark. In the circumstances of this case, this is evidence of registration in bad faith.

The Complainant has shown that the Respondent used the disputed domain names in connection with webpages displaying the BARRICK logo where Internet users are prompted to input a username other credentials, thereby deceiving Internet users and possibly obtaining from them passwords or other credentials that create a risk of phishing or other illegal activities. This clearly constitutes use in bad faith. The Panel thus finds that by using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its websites by creating a likelihood of confusion as to the source, sponsorship or affiliation of its website in the sense of paragraph 4(b)(iv) of the Policy.

The Panel thus finds that the disputed domain name was registered and is being used in bad faith.

The third element of paragraph 4(a) of the Policy has been met.

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, <barrickgold.com>, <goldbarrick.com> and <goldbarrickltd.com>, be transferred to the Complainant.

/Andrea Mondini/

Andrea Mondini

Sole Panelist

Date: August 8, 2023