

## ADMINISTRATIVE PANEL DECISION

### BRC Trading Limited v. Carl Barton

### Case No. D2023-2895

#### 1. The Parties

The Complainant is BRC Trading Limited, United Kingdom, represented by Potter Clarkson AB, Sweden.

The Respondent is Carl Barton, United Kingdom<sup>1</sup>.

#### 2. The Domain Name and Registrar

The disputed domain name <brcfoodsafety.com> (the “Disputed 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 July 6, 2023. On July 6, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On July 6, 2023, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details and contact information in the Complaint.

The Center verified that 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 of the Complaint, and the proceedings commenced on August 3, 2023. In accordance with the Rules, paragraph 5, the due date for Response was August 23, 2023. The Respondent sent three email communications to the Center on August 15, 16 and 21, 2023. In response, the Center sent an email to the Parties regarding the possibility to settle the matter amicably on August 16, 2023. The Center reminded the possibility for the Parties to settle their dispute on August 23, 2023. After receiving no request for suspension from the Complainant, the Center notified the Parties of the Commencement of Panel Appointment process on September 5, 2023.

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<sup>1</sup> The Complaint was initially filed identifying the Respondents as both Carl Barton and Tony Connor. For the reasons explained under Section 6.1. below, the Panel will only treat Carl Barton as the Respondent.

The Center appointed Nick J. Gardner as the sole panelist in this matter on September 12, 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 acronym “BRC” in the context of the Complaint refers to the British Retail Consortium which is a trade body representing British retailers. The Complainant would appear to be a corporate entity associated with that consortium. The BRC and/or the Complainant have promulgated a range of standards which it would appear have been adopted on a widespread basis. One of these relates to food safety. It would appear that third party organisations can adopt the procedures and requirements mandated by this standard and then go through a formal application process to claim accreditation to the standard thus providing reassurance to their customers as to the quality of the goods and services they provide. The Complainant’s food safety standard has been adopted by over 22,000 sites in more than 130 countries.

The Complainant owns a range of registered trademarks which comprise or include the term BRC in stylised form - for example UK00003188424 registered on May 26, 2017. It also owns a number of registered trademark for the term BRCGS – for example UK00003408160 registered on October 11, 2019. The term BRCGS is an acronym for “British Retail Consortium Global Standards”.

The Disputed Domain Name was registered on December 27, 2009. It has been used to link to a website (the “Respondent’s Website”) which in essence provides material to assist third parties in obtaining a relevant certification from the Complainant. It appears that this material is provided on a commercial basis.

#### **5. Parties’ Contentions**

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

The Complainant’s contentions can be summarized as follows.

The Disputed Domain Name is confusingly similar to the BRC Trademark.

The Respondent has no rights or legitimate interests in the Disputed Domain Name.

In consequence, the Complainant alleges that the Disputed Domain Name was registered and is being used in bad faith. The Complainant says the Respondent is using the Disputed Domain Name to suggest it is authorised or approved by the Complainant and to attract customers to its website and sell them products or services.

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

No formal response has been filed. It is however appropriate to set out verbatim the Respondent’s email communications with the Center. On August 15, 2023, the Respondent wrote as follows: “I’m on vacation with my son for his summer holidays until the 26th August but aware that I need to respond to this by the 23rd August, so who do I need to respond to? Is this response acceptable? I’ve taken down the site and I’m not interested in getting involved in all this legal stuff. I was just trying to help people get a BRC certification for their businesses but it’s not worth this hassle. Is that ok?”

On August 16, 2023, following an email from the Center about possible settlement the Respondent stated, “Any chance someone can explain the situation to me in plain English that i can understand and what i need to do?”. On August 21, 2023, the Respondent sent a further email stating, “I’m still unclear on what I am supposed to do about this complaint. Am I supposed to reply with something? I have agreed to not using the domain anymore. Is that acceptable to the complainant? Do I just wait now for a reply now?”

See further the discussion below.

## **6. Discussion and Findings**

### **6.1. Preliminary Matters – Respondent Identity**

It seems clear that Carl Barton as the registrant of the Disputed Domain Name, as disclosed by the Registrar, is properly named as the Respondent. The Complainant has also named Tony Connor as a Respondent on the basis that he appears to be responsible for creating some of the material that is available from the Respondent's Website. The Panel does not consider that in itself makes him a respondent under the terms of the Policy. References in this decision to the Respondent are to Carl Barton.

### **6.2. Preliminary Matters – No Response**

The Panel notes that no formal Response has been received from the Respondent. However, given the Complaint and Written Notice were sent to the relevant addresses disclosed by the Registrar, then the Panel considers that this satisfies the requirement in paragraph 2(a) of the UDRP Rules to "employ reasonably available means calculated to achieve actual notice". Accordingly, the Panel considers it is able to proceed to determine this Complaint and to draw inferences from the Respondent's failure to file any Response. While the Respondent's failure to file a Response does not automatically result in a decision in favor of the Complainant, the Panel may draw appropriate inferences from the Respondent's default (see, e.g., *Verner Panton Design v. Fontana di Luce Corp*, WIPO Case No. [D2012-1909](#)). The Panel also notes that in any event emails have been received from the Respondent (see discussion below).

### **6.3. Substantive Matters - Finding Based on Consent**

The facts of this case give rise to a number of questions. It would seem that the Respondent has for a considerable number of years operated a business by way of the Respondent's Website. Whether in doing so he has infringed any trademark rights that the Complainant may own is not necessarily a matter for this Panel to conclude under the Policy. Whether he has acted in bad faith in terms of the Policy does not seem to the Panel to be clearcut – it appears to be the case that he has carried on a business for many years, and it may be that his adoption of the Disputed Domain Name in this context was done without a necessary appreciation of all of the potential issues involved. The Panel also notes that there is no indication that the Complainant or its representatives have attempted to contact the Respondent and ask him to desist in his use of the Disputed Domain Name prior to the issuing of the Complaint.

It does however appear from the emails sent by the Respondent to the Center (see above) that in substance he consents to the remedy selected by the Complainant. The Panel therefore proposes to adopt the approach set out in the WIPO Overview of WIPO Panel Views on Selected UDRP Questions Third Edition, section 4.10 as follows:

"How do panels handle cases involving a respondent's informal or unilateral consent for the transfer of the domain name to the complainant outside the 'standard settlement process' described above?"

Where parties to a UDRP proceeding have not been able to settle their dispute prior to the issuance of a panel decision using the 'standard settlement process' described above, but where the respondent has nevertheless given its consent on the record to the transfer (or cancellation) remedy sought by the complainant, many panels will order the requested remedy solely on the basis of such consent. In such cases, the panel gives effect to an understood party agreement as to the disposition of their case (whether by virtue of deemed admission, or on a no-fault basis)."

See for example *Infonxx.Inc v. Lou Kerner, WildSites.com*, WIPO Case No. [D2008-0434](#), where the Panel stated as follows:

“However, this Panel considers that a genuine unilateral consent to transfer by the Respondent provides a basis for an order for transfer without consideration of the paragraph 4(a) elements. As was noted by the Panel in *The Cartoon Network LP, LLLP v. Mike Morgan*, WIPO Case No. [D2005-1132](#), when the Complainant seeks the transfer of the Disputed Domain Name, and the Respondent consents to transfer, the Panel may proceed immediately to make an order for transfer pursuant to paragraph 10 of the Rules. Accordingly, and in light of the parties’ stipulations set forth above, the Panel will order the transfer of the Disputed Domain Name to the Complainant. This is clearly the most expeditious course. Id.; *Williams-Sonoma, Inc. v. EZ-Port*, WIPO Case No. [D2000-0207](#).”

Accordingly given the content of the Respondent’s email communications (see above) and pursuant to paragraph 10 of the Rules the Panel orders that the Disputed Domain Name be cancelled.

## 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 <brcfoodsafety.com> be cancelled.

*/Nick J. Gardner/*

**Nick J. Gardner**

Sole Panelist

Date: September 26, 2023