

ADMINISTRATIVE PANEL DECISION

Barrick Gold of North America, Inc., Barrick Gold Corporation v. Name

Redacted

Case No. D2023-3564

1. The Parties

The Complainants are Barrick Gold of North America, United States of America ("United States"), Inc., and Barrick Gold Corporation, Canada , represented by Dorsey & Whitney, LLP, United States. The Panel will refer to the Complainants as "the Complainant".

The Respondent is Name Redacted¹.

2. The Domain Name and Registrar

The disputed domain name <barrick-gold.com> is registered with HOSTINGER operations, UAB (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on August 23, 2023. On August 24, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 25, 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 (Domain Admin) and contact information in the Complaint. The Center sent an email communication to the Complainant on August 23, 2023 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 amended Complaint on August 29, 2023.

¹ The Respondent appears to have used the name of the Complainant when registering the disputed domain name. In light of the identity theft and after the Complainant's request, the Panel has redacted the Respondent's name from this decision. However, the Panel has attached as Annex 1 to this decision an instruction to the Registrar regarding transfer of the disputed domain name, which includes the name of the Respondent. The Panel has authorized the Center to transmit Annex 1 to the Registrar as part of the order in this proceeding and has indicated Annex 1 to this decision shall not be published due to the exceptional circumstances of this case. See *Banco Bradesco S.A. v. FAST 12785241 Attn. Bradescourgente.net / Name Redacted*, WIPO Case No. [D2009-1788](#).

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 September 5, 2023. In accordance with the Rules, paragraph 5, the due date for the Response was September 25, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Parties of the Respondent’s default October 5, 2023.

The Center appointed Ingrīda Kariņa-Bērziņa as the sole panelist in this matter on October 30, 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 a company operating an international gold mining business. It has used the marks BARRICK and BARRICK GOLD in connection with gold and copper mining and precious metal goods and services in over thirteen countries. The Complainant is the proprietor of numerous trademark registrations in jurisdictions around the world, including the following:

- United States Trademark Registration No. 4578245 for BARRICK (design mark), registered on August 5, 2014 for services in classes 37 and 42, claiming a date of first use of January 1995;
- United States Trademark Registration No. 4683358 for BARRICK GOLD (word mark), registered on February 10, 2015 for services in class 42.

The Complainant has operated a business website at the domain name <barrick.com> since 1995.

The disputed domain name was registered on April 3, 2023. At the time of filing of the Complaint, the record reflects that it resolved to a page displaying a “Login” screen that prompts users to enter an account number and a password. After logging in, users were redirected to a gold and currency trading platform. The record also contains evidence of a Facebook page inviting users to engage in gold and currency trading at the Respondent’s website.

At the time of this Decision, the disputed domain name no longer resolved to an active website.

5. Parties’ Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant contends that it has continuously used its BARRICK mark in connection with its mining business since at least 1983. The disputed domain name fully incorporates its BARRICK mark and is confusingly similar to its BARRICK GOLD mark, save for an additional hyphen. The Respondent’s website is an attempt to mislead Internet users into believing that the Respondent’s online trading platform is associated with the Complainant. Moreover, Internet users who have used the Respondent’s services have been defrauded and have contacted the Complainant in the belief that the Complainant is operating the Respondent’s website. The Respondent is using the disputed domain name to mislead and defraud Internet users.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the UDRP requires the Complainant to make out all three of the following:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the Respondent has registered and is using the disputed domain name in bad faith.

Under paragraph 15(a) of the Rules, “[a] Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable”.

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, (“[WIPO Overview 3.0](#)”), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the entirety of the BARRICK GOLD mark is reproduced within the disputed domain name, with an additional hyphen. Accordingly, the disputed domain name is identical or confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Based on the available record, the Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of “proving a negative”, requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant's *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

Panels have 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. The Panel finds that using the disputed domain name to impersonate the Complainant and operating a scheme to defraud Internet users cannot confer rights and legitimate interests on the Respondent. [WIPO Overview 3.0](#), section 2.13.1.

Based on the available record, the Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular but without limitation, that if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

In the present case, the Panel notes that the Complainant's rights in its BARRICK and BARRICK GOLD marks significantly predate the registration of the disputed domain name. The disputed domain name incorporated the entirety of the Complainant's mark BARRICK GOLD, with the addition of a hyphen, thereby creating a direct association with the Complainant. The Respondent's website is operating in a field related to the Complainant's mining business. The Panel finds that, in registering the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users by creating a likelihood of confusion with the Complainant's mark. See [WIPO Overview 3.0](#), section 3.1.4.

Panels have 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) constitutes bad faith. As mentioned, the Panel finds that the Respondent's use of the disputed domain name to confuse Internet users and defraud them amounts to fraudulent activity. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

Based on the available record, the Panel finds the third element of the Policy has been established.

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 <barrick-gold.com> be transferred to the Complainant.

/Ingrīda Kariņa-Bērziņa/
Ingrīda Kariņa-Bērziņa
Sole Panelist
Date: November 13, 2023