

## **ADMINISTRATIVE PANEL DECISION**

**Barrick Gold of North America, Inc., Barrick Gold Corporation v. vivek kishore**  
Case No. D2023-3760

### **1. The Parties**

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

The Respondent is vivek kishore, India.

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

The disputed domain name <barrickgold.shop> is registered with GoDaddy.com, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 8, 2023. On September 11, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 12, 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 (Registration Private) and contact information in the Complaint. The Center sent an email communication to the Complainant on September 14, 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 September 22, 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 September 25, 2023. In accordance with the Rules, paragraph 5, the due date for Response was October 15, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 19, 2023.

The Center appointed George R. F. Souter as the sole panelist in this matter on October 27, 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, Barrick Gold of North America, Inc., and the co-Complainant, Barrick Gold Corporation, are hereinafter referred to as “The Complainant”.

The Complainant, along with its affiliates and subsidiaries, have used the trademark BARRICK in connection with gold and copper mining, and precious metal goods and services in over 13 countries since at least as early as 1983, and operate one of the largest gold mining operations in the world.

The Complainant has supplied the Panel with details of numerous US trademark registrations of its BARRICK trademark, all of which predate the registration of the disputed domain name. These include US Trademark Registration No. 4944505, in respect of the trademark BARRICK GOLD, registered on April 26, 2016.

The disputed domain name was registered on November 17, 2022, and resolves to a website in which the trademark BARRICK is used in connection with an Indian jewelry company selling “100% gold” rings and charms.

#### **5. Parties’ Contentions**

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

The Complainant alleges that the disputed domain name is confusingly similar to its BARRICK and BARRICK GOLD trademarks.

The Complainant alleges that the Respondent lacks rights or legitimate interests in the disputed domain name, in particular that the Respondent is not generally known by the disputed domain name, and that the Complainant has never consented to the Respondent using its BARRICK and BARRICK GOLD trademarks in connection with the registration of a domain name, or otherwise.

The Complainant alleges that the disputed domain name was registered in bad faith, and is being used in bad faith in connection with the website referred to above.

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

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

#### **6. Discussion and Findings**

##### **A. Identical or Confusing Similarity**

The Panel finds that the Complainant has rights to the trademarks BARRICK and BARRICK GOLD for the purposes of these proceedings under the Policy.

It is well established in prior decisions under the UDRP, with which the Panel agrees, that a generic Top-Level Domain (“gTLD”) may generally be disregarded when comparing a trademark with a disputed domain name. The Panel finds that the gTLD “.shop” may be disregarded in the circumstances of the present case.

The Complainant's trademarks BARRICK and BARRICK GOLD are instantly recognizable in the disputed domain name, rendering the disputed domain name confusingly similar to the Complainant's trademark.

Accordingly, the Panel finds that the Complainant has satisfied the requirements of paragraph 4(a)(i) of the Policy.

### **B. Rights or Legitimate Interests**

The Panel considers that the Complainant's allegations under section 5 above are sufficient to provide a *prima facie* case under this heading.

It is the consensus view of UDRP panels, with which the Panel agrees, that a *prima facie* case advanced by a complainant will generally be sufficient for the complainant to be deemed to have satisfied the requirement of paragraph 4(a)(ii) of the Policy, provided the respondent does not come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain name.

The Respondent did not advance any claim of rights or legitimate interests in the disputed domain name to rebut this *prima facie* case.

Accordingly, the Panel finds that the Complainant has satisfied the requirements of paragraph 4(a)(ii) of the Policy.

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

The Panel is of the view that the finding that the Respondent has no rights or legitimate interests in a disputed domain name can lead, in appropriate circumstances, to a finding of registration of a disputed domain name in bad faith. The circumstances of the present case, in which the Panel regards it as self-evident that the Complainant's prior registered BARRICK and BARRICK GOLD trademarks were deliberately targeted in the disputed domain name, are such that the Panel concludes that the disputed domain name was registered in bad faith, and so finds.

While the Complainant is in the mining industry, and the Respondent uses the disputed domain name for selling jewelry, the Panel finds that the Respondent chose the disputed domain name to take unfair advantage of the identity with the Complainant's BARRICK GOLD trademarks. It is well-established in prior decisions under the Policy that the use of a disputed domain name in connection with the sale of products taking advantage of the identity of the disputed domain name with the Complainant's trademark constitutes use of the disputed domain name in bad faith. This is obviously the case in the circumstances of the present case, and renders a finding of use in bad faith inevitable, and the Panel so finds.

Accordingly, the Panel finds that the Complainant has satisfied the requirements of paragraph 4(a)(iii) of the Policy.

## **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 <barrickgold.shop> be transferred to the Complainant.

/George R. F. Souter/

**George R. F. Souter**

Sole Panelist

Date: November 10, 2023