

ADMINISTRATIVE PANEL DECISION

Barracuda Networks, Inc. v. Edward Enderle, MAXtech, and Matt Enderle,
MAXtech

Case No. D2023-4546

1. The Parties

Complainant is Barracuda Networks, Inc., United States of America (“United States”), represented by KXT LAW, LLP, United States.

Respondents are Edward Enderle, MAXtech, United States, and Matt Enderle, MAXtech, United States.

2. The Domain Names and Registrar

The Disputed Domain Names <barracudaemailquarantine.com> and <barracudaquarantine.com> are both registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 2, 2023. On November 2, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Names. On the same day, 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 Respondents (Registration Private and Domains by Proxy, LLC) and contact information in the Complaint.

The Center sent an email communication to Complainant on November 3, 2023, with the registrant and contact information of nominally multiple underlying registrants revealed by the Registrar, requesting the Complainant to either file separate complaint for the Disputed Domain Names associated with different underlying registrants or alternatively, demonstrate that the underlying registrants are in fact the same entity. Complainant filed an amended Complaint on November 8, 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 Respondents of the Complaint, and the proceedings commenced on November 9, 2023. In accordance with the Rules, paragraph 5, the due date for Response was November 29, 2023. Respondents did not submit any response. Accordingly, the Center notified Respondents' default on November 30, 2023.

The Center appointed Richard W. Page as the sole panelist in this matter on December 4, 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

Complainant is involved in the IT security business and is the owner of all rights in and to United States Trademark Registration No. 4,715,332 for BARRACUDA (the "BARRACUDA Mark") registered on April 7, 2015, in the following classes:

IC009: Computer firewalls; computer anti-virus software; computer software for ensuring the security of electronic mail; computer software for controlling and managing access server applications; network access server operating software; network servers, Internet servers, Intranet servers; and network access server hardware, all related to network security and physical and cloud data archiving and storage;

IC041: Educational services, namely, providing live and online seminars and training in the field of computer security, application delivery and data protection; and

IC042: Design and development of electronic data security systems; data encryption services; data decoding services; computer security consultancy in the field of electronic data and information; computer services, namely, providing virtual and non-virtual application servers, web servers, file servers, co-location servers, load balancing servers, redundancy servers, media servers and data base servers of variable capacity to third party computing and data storage facilities; computer services, namely, remote and onsite management of electronic messaging systems of others; remote computer backup services; providing temporary use of online and non-downloadable computer software for use in electronic storage of data and information; computer virus protection services; providing virtual computer systems and virtual computer environments through cloud computing computer services, namely, providing spam filtering services to protect websites and online applications from receiving unsolicited messages; computer services, namely, online scanning, detecting, quarantining and elimination of viruses, worms, trojans, spyware, adware, malware and unauthorized data and programs on computer and electronic devices; electronic storage of document and archived emails, namely, electronic document and email archiving services; and electronic storage services for archiving electronic data.

Complainant has offered these good and services under the BARRACUDA Mark since at least as early as December 2002. Complainant also owns the <barracuda.com> domain name through which the goods and services are offered on the corresponding website.

Disputed Domain Names were registered on October 11, 2023. At the time of filing the Complaint, they both resolve to websites with pay-per-click ("PPC") links.

5. Parties' Contentions

A. Complainant

Complainant contends that it has prominently and extensively used, promoted, and advertised the BARRACUDA name for over 20 years, and the corresponding domain name for close to 17 years. By virtue of these efforts, the BARRACUDA Mark and the corresponding domain name have become well known and

are recognized by consumers as designating Complainant as the source of the goods and services so marked. Accordingly, the BARRACUDA Mark and the corresponding domain name are extremely valuable to Complainant.

Complainant further contends that the Disputed Domain Names are confusing similar to the BARRACUDA Mark in that they incorporate the BARRACUDA Mark in its entirety. One Disputed Domain Name also uses the term “quarantine,” which is a feature of Complainant’s Email Security Gateway software, as evidence by the supporting documentation available to users of Complainant’s software. Complainant further contends that use of the term “quarantine” is an intentional attempt to divert traffic from consumers trying to purchase Complainant’s goods and services by tricking them into believing that they are accessing Complainant’s website.

The other Disputed Domain Name uses a one-letter misspelling of “quarantine,” which is a feature of Complainant’s software. Additionally, the use of “email” is another reference to the “quarantine” feature of Complainant’s Email Security Gateway. Complainant contends that the use of the entirety of the BARRACUDA Mark alongside “email” and a one-letter misspelling of “quarantine” is an intentional attempt to divert traffic from consumers trying to purchase Complainant’s goods and services by tricking them into believing that they are accessing Complainant’s website.

Complainant asserts that Respondents have no rights or legitimate interests with respect to the Disputed Domain Names. Respondents registered the Disputed Domain Names on October 11, 2023, long after Complainant registered the BARRACUDA Mark with the United States Patent and Trademark Office, and long after Complainant began using the BARRACUDA name and the <barracuda.com> domain. Further, the Disputed Domain Names are a combination of the entirety of the BARRACUDA Mark and the email quarantine feature of Complainant’s Email Security Gateway software. Complainant further asserts that this is an intentional attempt to divert traffic from consumers trying to purchase Complainant’s goods and services by tricking them into believing that they are accessing Complainant’s website. In light of Respondents’ reported organization “MAXtech”, an IT security service provider would be knowledgeable about Complainant’s IT security products and services which are well known in the industry, therefore would only use Complainant’s trademark in this manner to confuse the public.

Complainant further asserts that Respondents (whether as individuals, a business, or other organization) are not and have not been commonly known as “Barracuda” or by the Disputed Domain Names. Respondents use the organization name “MAXtech”.

Complainant further asserts that Respondents have not used the Disputed Domain Names for a *bona fide* offering of goods and services or for any other legitimate purpose.

Respondents have not established rights or legitimate interests in the Disputed Domain Names pursuant to the Policy.

Complainant alleges that Respondents registered the Disputed Domain Names in an attempt to intentionally attract Internet users to its websites by creating a likelihood of confusion with the BARRACUDA Mark as to the source, sponsorship, affiliation, or endorsement of Respondents’ website. Complainant repeats its arguments regarding the composition of the Disputed Domain Names and that given the Respondents’ reported operations in IT, would know of the BARRACUDA Mark and incorporated it with the intent to confuse.

The <barracudaquarantine.com> Disputed Domain Name directs to PPC webpages that list out multiple third-party links related to different advertisements covering contents such as “Email Security,” “Sage Business Management Software,” and “SolarWinds it Asset Management.” The term “Email Security” is directly related to Complainant’s IT security business, as it is part of the Email Security Gateway software name and is listed in the good and services of Complainant’s BARRACUDA Mark registration. SolarWinds is a competitor of Complainant in the business of IT and other business management software, while Sage is another business management software company.

The <barracudaemailquarantine.com> Disputed Domain Name also directs to PPC webpages that list out multiple third-party links related to different advertisements covering contents such as “Cyber Penetration Testing,” “Best Password Manager 2023,” and “Phishing Email Filter,” all terms relating to Complainant’s IT security business. This similarly evidences that Respondents are using the Disputed Domain Names to intentionally create confusion in the marketplace.

Complainant further alleges that there is no plausible circumstance under which Respondents could legitimately maintain registration or use of the Disputed Domain Names and that, therefore, the Disputed Domain Names’ registrations are being held by Respondents in bad faith.

Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the Disputed Domain Names.

B. Respondents

Respondents did not reply to Complainant’s contentions.

6. Discussion and Findings

Paragraph 15(a) of the Rules instructs the Panel as to the principles the Panel is to use in determining the dispute: “A Panel shall decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules, and any rules and principles of law that it deems applicable.”

Even though Respondents have failed to file a Response or to contest Complainant’s assertions, the Panel will review the evidence proffered by Complainant to verify that the essential elements of the claims are met.

See section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#)).

Paragraph 4(a) of the Policy directs that Complainant must prove each of the following:

- i) that the Disputed Domain Names registered by Respondents are identical or confusingly similar to the BARRACUDA Mark in which Complainant has rights; and,
- ii) that Respondents have no rights or legitimate interests in respect of the Disputed Domain Names; and,
- iii) that the Disputed Domain Names have been registered and are being used in bad faith.

Consolidation: Multiple Respondents

The amended Complaint was filed in relation to nominally different domain name registrants. Complainant alleges that the domain name registrants are the same entity or mere alter egos of each other, or under common control. Complainant requests the consolidation of the Complaint against the multiple disputed domain name registrants pursuant to paragraph 10(e) of the Rules.

Respondents as the Disputed Domain Names’ registrants did not comment on Complainant’s request.

Paragraph 3(c) of the Rules states that a complaint may relate to more than one domain name, provided that the domain names are registered by the same domain name holder.

In addressing Complainant’s request, the Panel will consider whether (i) the Disputed Domain Names or corresponding websites are subject to common control; and (ii) the consolidation would be fair and equitable to all Parties. See [WIPO Overview 3.0](#), section 4.11.2.

As regards common control, the Panel notes that the actions of Respondents appear to be coordinated for each of the Disputed Domain Names. Further, both Respondents appear to share the same surname and organization name and registered both Disputed Domain Names through email addresses incorporating the organization name within the email address.

As regards fairness and equity, the Panel sees no reason why consolidation of the disputes would be unfair or inequitable to any Party.

Accordingly, the Panel decides to consolidate the disputes regarding the nominally different Disputed Domain Name registrants (referred to above as “Respondents”) in a single proceeding.

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 Complainant’s BARRACUDA Mark and the Disputed Domain Names. [WIPO Overview 3.0](#), section 1.7.

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

The Panel finds the entirety of the mark is reproduced within each of the Disputed Domain Names. Accordingly, the Disputed Domain Names are confusingly similar to the BARRACUDA Mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms, here “email”, “quarantine”, and the misspelling “quarentine”, may bear on assessment of the second and third elements, the Panel finds the addition of such terms does not prevent a finding of confusing similarity between the Disputed Domain Names and the BARRACUDA Mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

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 respondents may demonstrate rights or legitimate interests in a disputed domain name.

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

Having reviewed the available record, the Panel finds Complainant has established a *prima facie* case that Respondents lack rights or legitimate interests in the Disputed Domain Names. Respondents have not rebutted Complainant’s *prima facie* showing and have not come forward with any relevant evidence demonstrating rights or legitimate interests in the Disputed Domain Names such as those enumerated in the Policy or otherwise.

Also, the use of a domain name to host a parked page comprising PPC links does not represent a *bona fide* offering where such links compete with or capitalize on the reputation and goodwill of the complainant’s mark (which is the case here, as will be explained further under Section C below). [WIPO Overview 3.0](#), section 2.9.

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.

Given the composition of the disputed domain names, which combine the Complainant's BARRACUDA Mark with terms descriptive of its IT services, and given that the term "barracuda" has no ordinary connotation within IT services apart from its use by the Complainants as a trademark, it is clear that the Respondent knew of and targeted the Complainant when registering the Disputed Domain Names.

In the present case, the Panel notes that the <barracudaquarantine.com> Disputed Domain Name directs to PPC webpages that list out multiple third-party links related to different advertisements covering contents such as "Email Security," "Sage Business Management Software," and "SolarWinds IT Asset Management." The term "Email Security" is directly related to Complainant's IT security business, as it is part of the Email Security Gateway software name and is listed in the good and services of Complainant's BARRACUDA Mark registration. SolarWinds is a competitor of Complainant in the business of IT and other business management software, while Sage is another business management software company.

The <barracudaemailquarentine.com> Disputed Domain Name also directs to PPC webpages that list out multiple third-party links related to different advertisements covering contents such as "Cyber Penetration Testing," "Best Password Manager 2023," and "Phishing Email Filter," all terms relating to Complainant's IT security business. This similarly evidences that Respondents are using the Disputed Domain Names to intentionally create confusion in the marketplace.

Based on this record, the Panel finds that Respondents have intentionally attempted to attract, for commercial gain, Internet users by creating a likelihood of confusion with the BARRACUDA Mark, pursuant to paragraph 4(b)(iv) of the Policy.

Based on the available record, the Panel finds that Complainant has established the third element 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 Names, <barracudaemailquarentine.com> and <barracudaquarantine.com>, be transferred to Complainant.

/Richard W. Page/

Richard W. Page

Sole Panelist

Date: December 12, 2023