

ADMINISTRATIVE PANEL DECISION

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

liu xian sheng

Case No. D2024-2434

1. The Parties

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

The Respondent is liu xian sheng, China.

2. The Domain Name and Registrar

The disputed domain name <gold-barrick.com> is registered with Gname.com Pte. Ltd. (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on June 13, 2024. On June 14, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 17, 2024, 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 (Redacted for Privacy) and contact information in the Complaint. The Center sent an email communication to the Complainants on June 19, 2024, 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 in English on June 20, 2024.

On June 19, 2024, the Center informed the Parties in Chinese and English, that the language of the Registration Agreement for the disputed domain name is Chinese. On June 20, 2024, the Complainants requested English to be the language of the proceeding. The Respondent did not submit any comment on the Complainants’ submission.

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 in English and Chinese of the Complaint, and the proceedings commenced on June 25, 2024. In accordance with the Rules, paragraph 5, the due date for Response was July 15, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on July 17, 2024.

The Center appointed Deanna Wong Wai Man as the sole panelist in this matter on July 25, 2024. 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 First Complainant, along with its parent, affiliates and subsidiaries, including the Second Complainant (collectively "the Complainant") is one of the largest gold mining groups in the world. The Complainant, and its affiliates and subsidiaries, state that they have used the trademark BARRICK in connection with gold and copper mining and precious metal goods and services in over thirteen countries since at least as early as 1983.

The Complainant's group owns an international trademark portfolio, including, but not limited to the following registrations for BARRICK and BARRICK GOLD: United States Trademark Registration No. 4578245, for BARRICK (figurative), registered on August 5, 2014; United States Trademark Registration No. 6225225, for BARRICK (word), registered on December 22, 2020; United States Trademark Registration No. 4683358, for BARRICK GOLD, registered on February 10, 2015; and European Union Trademark Registration No. 008890386 for BARRICK (word), registered on August 10, 2010.

The Complainant also has a strong online presence, using the domain name <barrick.com> since 1995 to host its website and advertise and promote a variety of mining services, business initiatives, and other commercial endeavors under the BARRICK trademarks and also has a large following on social media platforms.

The disputed domain name was registered on March 1, 2024, and is therefore of a later date than the abovementioned trademarks of the Complainant. The Complainant submits evidence that the disputed domain name previously directed to an active website, presenting a purported login portal that requested users to fill in their email address and password information, and also offered an option to create a new account for unknown services. However, the Panel notes that on the date of this Decision the disputed domain name directs to an inactive/error page.

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 the disputed domain name is confusingly similar to its famous registered trademarks as it incorporates the BARRICK trademark entirely and inverts the BARRICK GOLD trademark. The Complainant also states that the Respondent has no rights or legitimate interests in respect of the disputed domain name: the Respondent is not a licensee of the Complainant, and the Complainant has not given the Respondent any permission to register the trademark as a domain name, nor is there any evidence that the Respondent has been commonly known by the disputed domain name, the Respondent has not used, or prepared to use, the disputed domain name in connection with a bona fide offering of goods and/or services or for any legitimate noncommercial or fair purpose. Furthermore, the Complainant argues that the Respondent uses the disputed domain name to host a website, presenting a login portal that

requests users to fill in their email address and password information. The Complainant deducts from this that the website at which the disputed domain name resolves intends to induce Internet users into entering their usernames and passwords to obtain personal information for fraudulent purposes. The Complainant argues that the Respondent's use of the disputed domain name is clearly attempting to pass off as the Complainant itself, by inducing actual customers, vendors, and affiliates of the Complainant to enter their confidential login information with the belief they are logging into the Complainant's actual website. As to bad faith, the Complainant essentially contends that the Respondent consciously targeted the Complainant's well-known marks and registered the disputed domain name without any bona fide basis for such registration in an attempt to capitalize unfairly on the goodwill of the Complainant's widely recognized BARRICK Marks. The Complainant essentially argues that such use of the disputed domain name does not confer rights or legitimate interests on the Respondent and constitutes registration and use in bad faith of the disputed domain name.

B. Respondent

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

6. Discussion and Findings

6.1 Preliminary Issue: Language of the Proceeding

The language of the Registration Agreement for the disputed domain name is Chinese. Pursuant to the Rules, paragraph 11(a), in the absence of an agreement between the parties, or unless specified otherwise in the registration agreement, the language of the administrative proceeding shall be the language of the registration agreement.

The Complaint was filed in English. The Complainant requested that the language of the proceeding be English for several reasons, including the fact that the website linked to the disputed domain name was entirely in English and that the Respondent will therefore not be materially prejudiced if this proceeding were conducted in English; the fact that the Registrar makes the Registration Agreement readily available in English; and the allegation that the Complainant would incur substantial expense and inconvenience if the Complaint must be translated into Chinese.

The Respondent did not make any submissions with respect to the language of the proceeding.

In exercising its discretion to use a language other than that of the registration agreement, the Panel has to exercise such discretion judicially in the spirit of fairness and justice to both parties, taking into account all relevant circumstances of the case, including matters such as the parties' ability to understand and use the proposed language, time and costs (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.5.1).

Having considered all the matters above, the Panel determines under paragraph 11(a) of the Rules that the language of the proceeding shall be English.

6.2 Findings on the merits.

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 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 that the entirety of the Complainant's BARRICK mark is reproduced within the disputed domain name. Moreover, the Panel also finds that the disputed domain name constitutes a mere inversion of the Complainant's trademarks for BARRICK GOLD, and that this mark remains easily recognizable in the disputed domain name. Accordingly, the disputed domain name is confusingly similar to these marks 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.

Although 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 difficult 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 (although the burden of proof always remains on the complainant). 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 available 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.

Moreover, upon review of the facts and evidence, the Panel notes that the Respondent has not provided any evidence of the use of, or demonstrable preparations to use, the disputed domain name in connection with a bona fide offering of goods or services. Instead, upon review of the facts and evidence submitted in this proceeding, the Panel notes that the disputed domain name previously directed to an active website, displaying a purported login portal that requests users to fill in their email address and password information or offers the opportunity to register a new account. This suggests that, on the balance of probabilities, the Respondent was using the disputed domain name to mislead Internet users by creating a false affiliation with the Complainant and thereby driving Internet traffic to the website linked to the disputed domain name and creating a grave risk of use of such website for potential phishing or spamming activities. Such activities do not confer rights or legitimate interests on the Respondent, see in this regard also previous UDRP decisions such as *Accenture Global Services Limited v. Leed Johnny (蒋黎)*, WIPO Case No. [D2020-0578](#). Given the abovementioned elements, the Panel concludes that the Respondent's use of the disputed domain name does not constitute a bona fide offering of goods or services, nor a legitimate noncommercial or fair use of the disputed domain name.

Furthermore, the Panel notes that the disputed domain name currently directs to an inactive, error webpage. In this regard, the Panel finds that holding a domain name, without making any specific use of it, would not confer any rights or legitimate interests in the disputed domain name on the Respondent (see in this regard earlier UDRP decisions such as *Bollore SE v. 赵竹飞 (Zhao Zhu Fei)*, WIPO Case No. [D2020-0691](#); and *Vente-Privee.Com and Vente-Privee.com IP S.à.r.l. v. 崔郡 (jun cui)*, WIPO Case No. [D2021-1685](#)).

Finally, the Panel finds that the nature of the disputed domain name, being confusingly similar to the Complainant's trademarks, carries a risk of implied affiliation and cannot constitute fair use, as it effectively impersonates the Complainant and its products or suggests sponsorship or endorsement by the Complainant (see [WIPO Overview 3.0](#), section 2.5.1).

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 Respondent has registered a domain name which is confusingly similar to the Complainant's well-known, intensively used, and distinctive trademarks for BARRICK and BARRICK GOLD. The Panel refers to prior decisions under the Policy which have recognized the well-known nature of the BARRICK trademarks, see for instance *Barrick Gold of North America, Inc. and Barrick Gold Corporation v. Mui Laurence Zwane*, WIPO Case No. [D2024-1181](#). The Panel deducts from this fact that by registering the disputed domain name, the Respondent deliberately and consciously targeted the Complainant's prior well-known trademarks for BARRICK and BARRICK GOLD. The Panel finds that this creates a presumption of bad faith. In this regard, the Panel refers to the [WIPO Overview 3.0](#), section 3.1.4, which states "[p]anel has consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith". Furthermore, the Panel also notes that the Complainant's trademarks were registered many years before the registration date of the disputed domain name. The Panel deducts from these elements that the Respondent knew, or at least should have known, of the existence of the Complainant's trademarks at the time of registering the disputed domain name. In the Panel's view, these elements indicate bad faith on the part of the Respondent, and the Panel therefore finds that it has been demonstrated that the Respondent registered the disputed domain name in bad faith.

As to use in bad faith, the Panel notes that the disputed domain name previously directed to an active website, displaying a purported login portal that requested users to fill in their email address and password information, or encouraged them to register a new account. This suggests that the Respondent may have been using the disputed domain name to mislead Internet users and created a grave risk of use for potential phishing and spamming activities. The Panel accepts that this means that the Respondent was using the disputed domain name in bad faith, see in this regard also previous UDRP decisions such as *Accenture Global Services Limited v. Leed Johnny (蒋黎)*, supra.

However, on the date of this Decision, the disputed domain name directs to an inactive/error page. Panels have found that such holding of a domain name (including a blank or "coming soon" page) would not prevent a finding of bad faith. Having reviewed the available record, the Panel notes the distinctiveness and reputation of the Complainant's trademarks, the lack of cooperation of the Respondent in this proceeding, and the unlikelihood of any future good faith use of the disputed domain name by the Respondent (also taking into account the previous use of the disputed domain name by the Respondent) and finds that in the circumstances of this case the present holding of the disputed domain name does not prevent a finding of bad faith under the Policy.

Based on the available record, the Panel finds that the 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 name <gold-barrick.com> be transferred to the Complainant.

/Deanna Wong Wai Man/

Deanna Wong Wai Man

Sole Panelist

Date: August 7, 2024