Decision for dispute CAC-UDRP-102189

Case number	CAC-UDRP-102189
Time of filing	2018-10-12 10:31:31
Domain names	barrry-calllebuat.com

Case administrator

Organization	Iveta Špiclová (Czech Arbitration Court) (Case admin)

Complainant

Organization	Barry Callebaut AG
Organization	Barry Callebaut Belgium NV

Complainant representative

Organization	Adlex Solicitors

Respondent

Organization	Barry-Callebaut

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings pending or decided between the same parties and relating to the disputed domain name.

IDENTIFICATION OF RIGHTS

Barry Callebaut AG (“The First Complainant“) is the registered owner of several trademark registrations containing and or consisting of the terms “BARRY CALLEBAUT" in particular international trademark registration no.702211 (word mark “BARRY CALLEBAUT”), dated 4 September 1998, protected in classes 29 and 30 and designating many countries worldwide.

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:

The Complainants claim to be among the world’s leading manufacturers of high-quality chocolate and cocoa products with more than 55 production facilities and more than 11.000 employees operating in over 30 countries. In the industrial chocolate market, the Group contends to have a 40% market share in the open market, meaning its products are present in one out of five chocolate products consumed around the world.

The First Complainant was incorporated on 13 December 1994 and the Second Complainant on 15 December 1989.

The Respondent registered the disputed domain name on 23 August 2018. The disputed domain name does currently not resolve to any website and - to the best of the Complainants' knowledge - it never did in the past either.

On 29 August 2018 the Complainants' solicitor sent an e-mail to the disputed domain name´s registrar requesting amongst others suspension of the disputed domain name according to the Registration Agreement. The Registrar responded the same day confirming that the disputed domain name had been suspended.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant has, to the satisfaction of the Panel, shown the Respondent to have no rights or legitimate interests in respect of the disputed domain name (within the meaning of paragraph 4(a)(ii) of the Policy).

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name has been registered and is being used in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy).

PROCEDURAL FACTORS

The Panel is satisfied that all procedural requirements under UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

1.
The Panel finds that the disputed domain name is confusingly similar to the First Complainant’s trademarks.

Many panels have found that a domain name is confusingly similar to a complainant’s trademark where it incorporates the complainant’s trademark in its entirety. This is the case in the case at issue where the Complainant’s registered trademark “BARRY CALLEBAUT” is fully included in the disputed domain name.

The fact that the trademark is slightly distored by adding the further letterrs "R" and "L" as well as by inverting the vowels "AU" into "UA" does not add any distinctive matter so as to distinguish the disputed domain name from Complainant’s trademark. It is rather an evident misspelling of the registered trademark. The trademark “BARRY CALLEBAUT” remains readily identifiable within the disputed domain name.

2.
In the absence of any response, or any other information from the Respondent indicating the contrary, the Panel further holds that the Complainants successfully presented their prima facie case and that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

In particular, the Respondent is not affiliated with nor authorized by the Complainants to use the First Complainant's trademark. Furthermore, it is not related in any way to the Complainants' business either. In addition, the Respondent is not commonly known by the disputed domain name. Finally, the disputed domain name does not resolve to any active website. This can neither be considered bona fide offering of goods or services nor a legitimate non-commercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or

service mark at issue. In fact, there is no use at all.

3.
Finally, the Panel finds that the disputed domain name has also been registered and is being used in bad faith.

First it is to be noted that the non-use of a disputed domain name does not prevent a finding of bad faith under the doctrine of passive holding.

It is the view of this Panel that the Respondent has intentionally registered the disputed domain name, which consists of an evident misspelling of the First Complainant's trademark "BARRY CALLEBAUT". In addition, the trademark "BARRY CALLEBAUT" is highly distinctive so that in the Panel's view the Respondent knew or should have known that the disputed domain name is almost identical to that trademark when it registered the disputed domain name. Registration of a domain name in awareness of a trademark and in the absence of rights or legitimate interests amounts to registration in bad faith.

Considering the high similarity between the trademark "BARRY CALLEBAUT" and the disputed domain name, which suggests the Respondent's awareness of the trademark, the Panel finds that the Respondent registered and is using the disputed domain name for bad faith purposes. Relevant factors are (i) the high degree of distinctiveness of the First Complainant's mark, (ii) the failure of the Respondent to submit a response or to provide any evidence of actual or contemplated good faith use, (iii) the Respondent has concealed its identity and, finally, (iv) the implausibility of any good faith use to which the disputed domain name may be put.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

AND THE DISPUTED DOMAIN NAME(S) IS (ARE) TO BE

1. **BARRRY-CALLLEBUAT.COM**: Transferred

PANELLISTS

Name	**Dr. Tobias Malte Müller**

DATE OF PANEL DECISION 2018-11-20

Publish the Decision