Decision for dispute CAC-UDRP-102486

Case number	CAC-UDRP-102486
Time of filing	2019-06-06 09:00:47
Domain names	barry-caillebaut.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	Jaime10907 88th Stree Adam

OTHER LEGAL PROCEEDINGS

There are no other legal proceedings related to the disputed domain name.

IDENTIFICATION OF RIGHTS

Trademark (international word mark “Barry Callebaut” 702 211 registered on September 4, 1996); company name.

FACTUAL BACKGROUND

A. Identical or Confusingly Similar

(i.) Rights

The Complainant relies on its registered trade marks referred to above.
The Complainant also relies on common law rights. By virtue of its extensive trading and marketing activities outlined above, the Complainant has acquired substantial reputation and goodwill in the name “Barry Callebaut” such that it is recognised by the public as distinctive of the Complainant’s business.

(ii.) Identical or Confusing Similarity

The disputed domain name differs only by the insertion of the letter “i” before “ll” in the word “callebaut”, thus creating a misspelling of the Complainant’s trade mark “Barry Callebaut”. This has the obvious potential to cause confusion with the Complainant’s trade mark both visually and phonetically. The Complainant’s trade mark remains readily identifiable within the disputed domain name.

B. Rights or legitimate interests

Section 2.1 of WIPO Overview 3.0 explains the consensus view that, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If not, the complainant is deemed to have satisfied the second element.

Dealing with each of the subparagraphs of paragraph 4(c) of the Policy in turn:

(i.) Bona fide use

The Complainant has no association with the Respondent and has never authorised or licensed the Respondent to use its trade marks.

There is no evidence that the Respondent has ever used the disputed domain name at all.

(ii.) Commonly known by the disputed domain name

There is no evidence that the Respondent has been commonly known by the names comprised in the disputed domain name.

(iii.) Legitimate non-commercial or fair use of the disputed domain name

Again, there is no evidence that the Respondent has ever used the disputed domain name, let alone in a non-commercial or fair manner.

C. Registered and used in bad faith

Paragraph 3.3 of WIPO Overview 3.0 explains that, from the inception of the UDRP, panels have found that the non-use of a domain name (including a blank or “coming soon” page) would not prevent a finding of bad faith under the doctrine of passive holding. While panels will look at the totality of the circumstances in each case, factors that have been considered relevant include: (i) the degree of distinctiveness or reputation of the 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’s concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put.

In this case the Complainant relies on the following factors as evidencing bad faith by passive holding.

a. The Complainant has a well-known and highly distinctive trade mark. It is inconceivable that the Respondent registered the disputed domain name independently of that trade mark; the disputed domain name is explicable only as a deliberate misspelling of the Complainant’s trade mark.

b. It is impossible to conceive of a good faith use of the Domain.

The Complainant suspects that the disputed domain name has been registered for use as part of a fraudulent phishing exercise. The Complainant and its customers/suppliers have been subject to such attempts before and indeed the Complainant has won a number of previous domain name cases relating to such fraudulent typo-squatting activities.

The failure of the Respondent to verify its e-mail address to the Registrar is further evidence of bad faith.

The Complainant requested transfer of the disputed domain name to the First Complainant.

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

The Complainant has demonstrated to the satisfaction of the Panel that:

- "Barry Callebaut" is the name of several companies member of the "Barry Callebaut" group:

- “Barry Callebaut” is the house brand, used as the branding on many of the Group’s bulk cocoa products such as cocoa powder, cocoa butter and chocolate and it is also generally displayed in conjunction with each of the Group’s other brands.

The first condition typically involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name.

The disputed domain name differs by only a single letter: barry-caillebaut (reminded that the ccTLD or gTLD is not taken into account in this assessment).

The first condition is satisfied.

It appears that:

- The Respondent has no legal and/or business relation relationship with the Complainant;
- The Complainant ignores the exact identity of the Respondent (anonymous registration);
- The Respondent did not respond to any request addressed to it;
- The Respondent did not answer to the Complaint and lacks to provide any explanation as to its alleged rights or legitimate interests.

The second condition is satisfied.

It is unlikely that the Respondent registered the disputed domain name independently of the Complainant's trade mark. A credible explanation is a deliberate misspelling of the Complainant's trade mark and/or the first step of a phishing attempt.

The Respondent did not answer to the Complaint and did not provide any explanation as to its (intended) use of the disputed domain name.

The third condition is satisfied.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **BARRY-CAILLEBAUT.COM**: Transferred

PANELLISTS

Name	**Mr. Etienne Wéry**

DATE OF PANEL DECISION 2019-07-31

Publish the Decision