

ADMINISTRATIVE PANEL DECISION

Barracuda Networks, Inc. v. James kirkwood
Case No. D2023-5258

1. The Parties

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

The Respondent is James kirkwood, United Kingdom.

2. The Domain Name and Registrar

The disputed domain name <barracvda.com> is registered with NameCheap, Inc. (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on December 19, 2023. On December 19, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 19, 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 (Redacted for Privacy, Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on December 20, 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 amendment to the Complaint on December 21, 2023.

The Center verified that the Complaint together with the amendment to the 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 December 22, 2023. In accordance with the Rules, paragraph 5, the due date for Response was January 11, 2024. On January 11, 2024, a third party apparently unrelated to the proceedings sent an email communication to the Center concerning the disputed domain name. Pursuant to paragraph 6 of the Rules, on February 6, 2024, the Center informed the Parties that it would proceed with the panel appointment process.

The Center appointed Zoltán Takács as the sole panelist in this matter on February 12, 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 Complainant is a corporation formed in 2003 in the State of Delaware in the United States, doing business in IT-security, networking, storage appliances and cloud-based services.

According to the Complainant it has more than 200,000 global customers and more than 5,000 channel partners worldwide.

The Complainant is owner of the United States Trademark Registration No. 4715332 for the word mark BARRACUDA, registered since April 7, 2015, for various goods and services related to computer and data protection and security.

The Complainant's website is located at "www.barracuda.com" with the corresponding domain name being registered since April 8, 1998.

The disputed domain name was registered on November 15, 2023, and was resolving to a parking page featuring various pay-per-click ("PPC") links, one of which ("Monitor Devices on Network") directly related to the Complainant's services of monitoring network and user activity.

Currently the disputed domain name does not resolve to an active website.

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 BARRACUDA trademark since it incorporates a misspelled variation of it, altered only by the switching of the letter "u" of the trademark to the letter "v";
- the Respondent has no rights or legitimate interests in respect of the disputed domain name and is unable to rely on any of the circumstances set out in paragraphs 4(c)(i), (ii), or (iii) of the Policy;
- registration of the disputed domain that is a misspelled version of the Complainant's mark and use of it to generate a landing page containing competing PPC advertisement links is evidence of the Respondent's bad faith.

The Complainant requests that the disputed domain name be transferred from the Respondent to the Complainant.

B. Respondent

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

However, on January 11, 2024, a third party apparently unrelated to the proceedings sent an email communication to the Center indicating that their client received the Written Notice sent by courier in the present proceedings, but that (i) their client has no knowledge of the registration of the disputed domain name and they don't recognize neither the name nor the phone number confirmed by the Registrar and (ii) the address for their client's place of business was used in error or as a deliberate misrepresentation.

6. Discussion and Findings

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 of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

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 mark is recognizable within the disputed domain name. The only difference between the trademark and the disputed domain name is switching of the letter "u" of the trademark to the letter "v" in the disputed domain name. The Panel considers this obvious misspelling of the Complainant's trademark in the disputed domain name a clear-cut example of typosquatting. A domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by UDRP panels to be confusingly similar to the relevant mark for the purpose of the first element. [WIPO Overview 3.0](#), section 1.9.

Based on the available record, the Panel finds that the disputed domain name is confusingly similar to the mark for the purposes of the Policy and that 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.

The corresponding parking page for the disputed domain name displayed various PPC links, one of which directly related to the Complainant's services. Panels have found that the use of a domain name to host a parked page comprising PPC links does not represent a bona fide offering where such links either compete with or capitalize on the reputation and goodwill of the complainant's mark or otherwise mislead Internet users. [WIPO Overview 3.0](#), section 2.9.

The Panel finds that 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 disputed domain name is a typo-variant of the Complainant's distinctive BARRACUDA trademark and a clear-cut case of typosquatting registration (see e.g., *National Association of Professional Baseball Leagues, Inc., d/b/a Minor League Baseball v. John Zuccarini*, WIPO Case No. [D2002-1011](#)).

The disputed domain name was used for a parking website that among others featured a link to the Complainant's competitors. The purpose of the PPC parking website clearly was to attract Internet users to that website for profit based on their confusing the disputed domain name with the Complainant's, which amounts to use of the disputed domain name in bad faith. [WIPO Overview 3.0](#), section 3.5.

As mentioned above, the information provided to the Center by a third party unrelated to the proceedings indicates that the contact information provided at registration of the disputed domain name is false. Provision of false contact information is a breach of the Respondent's own commitment in the Registration Agreement that all the information provided be complete and accurate and further indication of bad faith. [WIPO Overview 3.0](#), section 3.6.

At the time of rendering of this administrative decision the disputed domain name was resolving to a blank web page. However, that does not prevent a finding of bad faith when considering the totality of the circumstances. [WIPO Overview 3.0](#), section 3.3. Given the typo-squatting nature of the disputed domain name, the use of false contact information when registering the disputed domain name, and the disputed domain name's initial use for the presumed commercial advantage of the Respondent through the click-through revenue received from misdirected Internet users expecting to find the Complainant, the Panel finds that the current passive holding does not prevent a finding of bad faith.

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 <barracvda.com> be transferred to the Complainant.

/Zoltán Takács/

Zoltán Takács

Sole Panelist

Date: February 26, 2024