

ADMINISTRATIVE PANEL DECISION

Futbol Club Barcelona v. 许自谦 (Xu Zi Qian)
Case No. D2024-0543

1. The Parties

Complainant is Futbol Club Barcelona, Spain, represented by Isern Patentes y Marcas, Spain.

Respondent is 许自谦 (Xu Zi Qian), China.

2. The Domain Name and Registrar

The disputed domain name <barcagames.com> (the “Domain Name”) is registered with Alibaba Cloud Computing Ltd. d/b/a HiChina (www.net.cn) (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on February 6, 2024. On February 6, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On February 7, 2024, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to Complainant on February 13, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amendment to the Complaint in English on February 14, 2024.

On February 13, 2024, the Center informed the parties in Chinese and English, that the language of the registration agreement for the Domain Name is Chinese. On February 14, 2024, Complainant requested English to be the language of the proceeding. Respondent did not submit any comment on Complainant’s submission.

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 Respondent in English and Chinese of the Complaint, and the proceedings commenced on February 19, 2024. In accordance with the Rules, paragraph 5, the due date for Response was March 10, 2024. Respondent did not submit any response. Accordingly, the Center notified Respondent's default on March 12, 2024.

The Center appointed Kimberley Chen Nobles as the sole panelist in this matter on March 18, 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

Founded in year 1899, Futbol Club Barcelona is a Spanish sports association with a functional scope that includes the participation and promotion of sports activities, the most popular of which is soccer. It is also owner of the world-wide famous football club named "FUTBOL CLUB BARCELONA" (in English, "Football Club Barcelona" or "FC Barcelona") and also popularly and widely known as "BARÇA".

Complainant is one of the most widely supported football teams in the world, and the club has one of the largest social media following in the world among sports teams. In particular, FC Barcelona has 125 million followers on Instagram, 26.1 million followers on X and 16,5 million subscribers on YouTube.

Complainant owns numerous registered trademarks in various countries consisting of or incorporating the BARÇA mark, including:

- European Union registered trademark number 198598 for the BARÇA word mark, registered on September 20, 1999;
- Brazilian registered trademark number 821455583 for the BARÇA word mark, registered on March 8, 2005;
- Mexican registered trademark number 716394 for the BARÇA word mark, registered on September 25, 2001;
- Singapore registered trademark number 40201912330Y for the BARÇA word mark, registered on June 6, 2020; and
- United States of America registered trademark number 5969877 for the BARÇA word mark, registered on January 28, 2020.

Complainant also owns several domain names with the BARÇA mark, including <barca.one>, <barcaone.com>, <barcaone.es>, <barcaone.tv>.

The Domain Name was registered on November 9, 2023 and at the time of the filing of the Complaint, the Domain Name redirected to a parked website, "www..sedo.com", which offered the Domain Name for sale at EUR 1,088,888. At the time of the Decision, the Domain Name resolves to an inactive or error page.

5. Parties' Contentions

A. Complainant

Respondent registered and is using the Domain Name in bad faith.

In particular, Complainant contends that it has trademark registrations for BARÇA, and that Respondent registered and is using the Domain Name with the intention to confuse Internet users looking for bona fide and well-known BARÇA products and services.

Complainant notes that it has no affiliation with Respondent. Complainant further contends that Respondent is using the Domain Name as a tool to exploit Complainant's reputation for its own commercial gain, and that Respondent has no rights or legitimate interests in the registration and use of the Domain Name other than trademark infringement. Further, Complainant contends that Respondent has acted in bad faith in acquiring and setting up the Domain Name, when Respondent clearly knew of Complainant's rights.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

6.1. Preliminary Issue: Language of the Proceeding

The Rules, in paragraph 11(a), provide that unless otherwise agreed by the parties or specified otherwise in the registration agreement between the respondent and the registrar in relation to the disputed domain name, the language of the proceeding shall be the language of the registration agreement, subject to the authority of the panel to determine otherwise, having regard to the circumstances of the administrative proceeding.

Complainant submitted its original Complaint in English. In its Complaint, email dated February 14, 2024, and amended Complaint, Complainant submitted its request that the language of the proceeding should be English. According to the information received from the Registrar, the language of the Registration Agreement for the Domain Name is Chinese.

Complainant submits that the English language should be the language for the current proceedings because: Complainant is a Spanish association; the website associated with the Domain Name before the filing of the Complaint was in Spanish but as the Respondent might not speak Spanish, Complainant's representative chose English as the language of the proceedings as it has a wider international reach; Complainant does not speak Chinese and if the proceedings were conducted in Chinese, it would cause undue burden on Complainant and result in delay to the proceedings.

In exercising its discretion to use a language other than that of the Registration Agreement for the Domain Name, 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.

The Panel accepts Complainant's submissions regarding the language of the proceeding. The Panel also notes that the Domain Name does not have any specific meaning in the Chinese language, and that the Domain Name contains Complainant's BARÇA trademark in its entirety (with the Spanish alphabet "Ç" replaced by the English alphabet "c"), and the addition of the English term "games" to Complainant's trademark in the Domain Name, the Domain Name redirected to an English language webpage for sale; all of which indicate that Respondent understands English. The Panel further notes that the Center notified the Parties in Chinese and English of the language of the proceeding as well as notified Respondent in Chinese and English of the Complaint. Respondent chose not to comment on the language of the proceeding, nor did Respondent choose to file a Response in Chinese or English.

The Panel is also mindful of the need to ensure that the proceeding is conducted in a timely and cost-effective manner. Complainant may be unduly disadvantaged by having to translate the Complaint into Chinese and to conduct the proceeding in Chinese.

Having considered all the circumstances of this case, the Panel determines that English be the language of the proceeding.

6.2. Substantive Issues

Under paragraph 4(a) of the Policy, to succeed Complainant must satisfy the Panel that:

- (i) the Domain Name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (ii) Respondent has no rights or legitimate interests in respect of the Domain Name; and
- (iii) the Domain Name was registered and is being used in bad faith.

Section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") states that failure to respond to the complainant's contentions would not by itself mean that the complainant is deemed to have prevailed; a respondent's default is not necessarily an admission that the complainant's claims are true.

Thus, although in this case, Respondent has failed to respond to the Complaint, the burden remains with Complainant to establish the three elements of paragraph 4(a) of the Policy by a preponderance of the evidence.

A. Identical or Confusingly Similar

Ownership of a trademark registration is generally sufficient evidence that a complainant has the requisite rights in a mark for purposes of paragraph 4(a)(i) of the Policy. See [WIPO Overview 3.0](#), section 1.2.1. Complainant has provided evidence of its rights in the BARÇA trademarks, as noted above under section 4. Complainant has also submitted evidence which supports that the BARÇA trademarks are widely known and a distinctive identifier of Complainant's products and services.

Further, while the letter "ç" does not exist in English language, its general English language equivalent is the alphabet "c", as noted by Complainant in its registration and use of domain names including the slightly modified "BARCA" mark. Notwithstanding the foregoing, this minor change in the mark does not prevent a finding of confusing similarity with the BARÇA trademarks.

Complainant has therefore proven that it has the requisite rights in the BARÇA trademarks.

With Complainant's rights in the BARÇA trademarks established, the remaining question under the first element of the Policy is whether the Domain Name, typically disregarding the Top-Level Domain ("TLD") in which it is registered (in this case is, ".com"), is identical or confusingly similar to Complainant's trademark. See, e.g., *B & H Foto & Electronics Corp. v. Domains by Proxy, Inc. / Joseph Gross*, WIPO Case No. [D2010-0842](#).

Here, the Domain Name is confusingly similar to Complainant's BARÇA trademarks. The use of Complainant's trademark in its entirety, with the addition of the word "games", does not prevent a finding of confusing similarity between the Domain Name and the BARÇA trademark as it is recognizable in the Domain Name.

Thus, the Panel finds that Complainant has satisfied the first element of the Policy.

B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, a complainant must make a prima facie showing that a respondent possesses no rights or legitimate interests in a disputed domain name. See, e.g., *Malayan Banking Berhad v. Beauty, Success & Truth International*, WIPO Case No. [D2008-1393](#). Once a complainant makes out such a prima facie showing, the burden of production shifts to the respondent, though the burden of proof

always remains on the complainant. If the respondent fails to come forward with relevant evidence showing rights or legitimate interests, the complainant will have sustained its burden under the second element of the UDRP.

From the record in this case, it is evident that Respondent was, and is, aware of Complainant and its BARÇA trademarks, and does not have any rights or legitimate interests in the Domain Name. In addition, Complainant asserts that Respondent is not an authorized reseller and is not related to Complainant. Respondent is also not known to be associated with the BARÇA trademarks and there is no evidence showing that Respondent has been commonly known by the Domain Name.

In addition, Respondent has not used the Domain Name in connection with a bona fide offering of goods or services or a legitimate noncommercial or fair use. Rather, at the time of the filing of the Complaint, the Domain Name redirected a webpage that offered the Domain Name for sale at EUR 1,088,888. At the time of the Decision, the Domain Name reverted to an error or inactive page. Such use does not constitute a bona fide offering of goods or services or a legitimate noncommercial or fair use and cannot under the circumstances confer on Respondent any rights or legitimate interests in the Domain Name. See, e.g., *Intesa Sanpaolo S.p.A. v. Charles Duke / Oneandone Private Registration*, WIPO Case No. [D2013-0875](#).

Moreover, the nature of the Domain Name, including Complainant's trademark and the term "games" which refers to Complainant's business and products, is misleading and carries a risk of implied affiliation. See [WIPO Overview 3.0](#), section 2.5.1.

Accordingly, Complainant has provided evidence supporting its prima facie claim that Respondent lacks any rights or legitimate interests in the Domain Name. Respondent has failed to produce countervailing evidence of any rights or legitimate interests in the Domain Name, reinforcing the notion that Respondent was not using the Domain Name in connection with a bona fide offering.

Thus, the Panel concludes that Respondent does not have any rights or legitimate interests in the Domain Name, and Complainant has met its burden under paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Panel finds that Respondent's actions indicate that Respondent registered and is using the Domain Name in bad faith.

Paragraph 4(b) of the Policy provides a non-exhaustive list of circumstances indicating bad faith registration and use on the part of a domain name registrant, namely:

"(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or

(ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product or service on your website or location."

The Panel finds that Complainant has provided ample evidence to show that registration and use of the BARÇA trademarks long predate the registration of the Domain Name. Complainant is also well established and known. Indeed, the record shows that Complainant's BARÇA trademarks and related products and services are widely known and recognized. In addition, the addition of the term "games" to Complainant's trademark in the Domain Name is directly related to Complainant's sports industry and business activities. Therefore, Respondent was aware of the BARÇA trademarks when it registered the Domain Name, knew, or should have known that the Domain Name was confusingly similar to Complainant's trademarks. See [WIPO Overview 3.0](#), section 3.2.2; see also *TTT Moneycorp Limited v. Privacy Gods / Privacy Gods Limited*, WIPO Case No. [D2016-1973](#).

The Panel therefore finds that Respondent's awareness of Complainant's trademark rights at the time of registration suggests bad faith. See *Red Bull GmbH v. Credit du Léman SA, Jean-Denis Deletraz*, WIPO Case No. [D2011-2209](#); *Nintendo of America Inc v. Marco Beijen, Beijen Consulting, Pokemon Fan Clubs Org., and Pokemon Fans Unite*, WIPO Case No. [D2001-1070](#); and *BellSouth Intellectual Property Corporation v. Serena, Axel*, WIPO Case No. [D2006-0007](#).

Further, the registration of the Domain Name incorporating Complainant's BARÇA trademark in its entirety suggests Respondent's actual knowledge of Complainant's rights in the BARÇA trademarks at the time of registration of the Domain Name and its effort to opportunistically capitalize on the registration and use of the Domain Name.

Moreover, Respondent offered the Domain Name for sale at EUR1,088,888. The Panel considers that the price indicated for the Domain Name, likely in excess of out-of-pocket costs, derives from its significance in connection with the BARÇA trademark.

At the time of the Decision, the Domain Name resolves to an error or inactive page. Such use does not prevent a finding of bad faith. See [WIPO Overview 3.0](#), section 3.3.

Further, the Panel also notes the failure of Respondent to submit a Response or to provide any evidence of actual or contemplated good-faith use.

Accordingly, the Panel finds that Respondent registered and is using the Domain Name in bad faith and Complainant succeeds under the third element of paragraph 4(a) 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 Domain Name <barcagames.com> be transferred to Complainant.

/Kimberley Chen Nobles/

Kimberley Chen Nobles

Sole Panelist

Date: March 27, 2024