

DISPUTE RESOLUTION SERVICE

D00011670

Decision of Independent Expert

Barclays PLC

and

Laurent Girault

1. The Parties:

Lead Complainant: Barclays PLC
c/o Pinsent Masons LLP
123 St Vincent Street
Glasgow
G25EA
United Kingdom

Respondent: Laurent Girault
Burmester Road
London
SW17 0JN
United Kingdom

2. The Domain Name(s):

barclays.co.uk

3. Procedural History:

18 July 2012 11:22 Dispute received
18 July 2012 11:54 Complaint validated
18 July 2012 12:00 Notification of complaint sent to parties
06 August 2012 02:30 Response reminder sent
09 August 2012 10:52 No Response Received
09 August 2012 10:52 Notification of no response sent to parties
10 August 2012 10:32 Expert decision payment received

4. Factual Background

The Complainant is a major international bank and provider of financial services. It is the proprietor of various trademarks using its trading name and is the registrant of a number of domain names incorporating its trademark, including barclays.co.uk (registered prior to 1996) and barclays.com (registered November 2003).

The Respondent is the registrant of the Domain Name (registered 11 July 2005). The Domain Name currently resolves to a portal site providing links to professional and online services, including banking and financial services.

The undersigned, Peter Davies, was asked to provide a full Expert Decision On 13 August 2012 and agreed to do so, certifying that he was independent of the Parties and knew of no facts which might call his impartiality into question. The Expert's appointment was confirmed on 16 August 2012.

5. Parties' Contentions

The Complainant's submissions are summarised by the Expert as follows

Complainant's Rights

The Complainant is Barclays Bank PLC, a global financial services provider engaged in retail banking and other services. It has traded as Barclays Bank PLC since 1985. Prior to this the Complainant traded as Barclays Bank Limited since 1917 and Barclay & Company Limited since 1896. The Complainant operates in over 50 countries, with more than 48 million customers and clients worldwide.

The Complainant is the proprietor of a variety of UK and Community registered trademarks in the term BARCLAYS in a range of classes.

Through its use of the name BARCLAYS the Complainant has acquired goodwill and a significant reputation in the areas in which it specialises. As such, the name BARCLAYS has become a distinctive identifier associated with the Complainant and the services it provides.

The Complainant is the registrant of domain names including www.barclays.co.uk (registered before 1996) and www.barclays.com. (registered November 2003).

Abusive Registration

The Domain Name in the hands of the Respondent is abusive because:

The Domain Name contains a word which is confusingly similar to the name BARCLAYS in which the Complainant holds registered trademark Rights and other unregistered Rights. The Domain Name includes an additional "E" in BARCLAYS which is a classic typosquatting tactic.

Given the notoriety of the mark BARCLAYS, no trader would choose the Domain Name other than to create a false impression of association with the Complainant, to attract business from the Complainant or misleadingly to divert the public from the Complainant to the Respondent.

The Domain Name resolves to a page containing a number of sponsored links relating to competitor products and services. The Domain Name is being used to redirect Internet traffic away from the Complainant to these products and services, to generate income for the Respondent. The Respondent registered the Domain Name knowing that it is likely to attract interest from Internet users who are searching for the Complainant. The content on the website at the Domain Name is tailored to match the Complainant's core goods and services; when internet users view the content displayed at the Domain Name and click on one of the sponsored links, the Respondent generates revenue from the initial interest arising from the similarity of BARECLAYS to BARCLAYS in the Domain Name.

The Respondent is not known by the Domain Name and it is clear that the Respondent is not making fair use of the Domain Name. The content found at the Domain Name is pay-per-click sponsored links which relate to financial services. Such activity does not qualify as fair use.

The Respondent has never been given permission by the Complainant to register or use any domain name incorporating the Complainant's trademark or confusingly similar mark.

The Complainant's agent wrote to the Respondent on 16 February 2012. No reply was received so chaser letters were issued on 13 April and 17 May 2012. The Respondent failed to respond to either of these letters. Despite the correspondence the content on the Domain Name remains unchanged. Given the widespread use and notoriety of the BARCLAYS mark, the Respondent must have been aware that in registering the Domain Name he was misappropriating the Complainant's intellectual property.

The Respondent's registration of the Domain Name has prevented the Complainant from registering a domain name which corresponds to the Complainant's trade marks.

The Respondent has attempted to attract Internet users to the website by creating a likelihood of confusion with the Complainant's trade marks. The Domain Name in the hands of the Respondent will divert potential custom from the Complainant's business due to the presence of links to competitor websites via the Domain Name.

6. Discussions and Findings

In order to succeed in these proceedings, paragraph 2.b of the DRS Policy requires the Complainant to prove on the balance of probabilities that both elements of the test set out in paragraph 2.a are present, namely that:

i. the Complainant has Rights in respect of names or marks which are identical or similar to the Domain Name; and

ii. the Domain Name, in the hands of the Respondent, is an Abusive Registration.

Where no Response has been received, as is the case with this Complaint, it is still necessary for the Expert to be satisfied that the elements necessary to establish the Complainant's Rights and to make a finding of Abusive Registration are present.

Complainant's Rights

The Complainant has submitted evidence of its ownership of registered and unregistered Rights in the name BARCLAYS, which the Expert accepts. The Complaint states on a number of occasions that the Domain Name incorporates a name which is "confusingly similar" to the name in which it has Rights. This is not, as Paragraph 2.a.i shows above, the test to be applied under Nominet's Procedure, which requires that the Complainant's name or mark be "identical or similar" to the Domain Name. The result is nevertheless the same: the addition of a single vowel to the name BARCLAYS clearly falls within the contemplation of Paragraph 2.a.i of the DRS Policy, establishing that the Complainant has Rights sufficient to make this Complaint.

Abusive Registration

Paragraph 1 of the Policy, defines Abusive Registration as a domain name which either:

- *was registered or otherwise acquired in a manner which, at the time when the registration or acquisition took place, took unfair advantage of or was unfairly detrimental to the complainant's rights; or*

- *has been used in a manner which took unfair advantage of or was unfairly*

detrimental to the complainant's rights.

Paragraph 3(a)(ii) of the Policy, establishes that use of the Domain Name by the Respondent in a way which has confused or is likely to confuse people into believing it is connected with the Complainant may be evidence of Abusive Registration. The Domain Name includes the Complainant's name into which has been inserted a single additional letter. Taking this similarity into account, together with the nature of the site to which the Domain Name resolves, as described in the Complaint, the Expert's view is that confusion is likely between the Domain Name and the Complainant. It follows from this that the Respondent has used the Domain Name in a manner which has taken unfair advantage of or has been unfairly detrimental to the Complainant's rights.

It is the Complainant's responsibility to make its case, even in the absence of a Response. The Expert's view is that, on a balance of probabilities, the Complaint's assertions, supported by evidence and uncontested by the Respondent, establish that the Domain Name is an Abusive Registration in the hands of the Respondent.

7. Decision

The Complainant has Rights in a name which is identical or similar to the Domain Name. The Domain Name, in the hands of the Respondent, is an Abusive Registration as defined in the Nominet DRS Policy. The Domain Name should be transferred to the Complainant.

Signed Peter Davies

Dated 29 August 2012