Panel Decision for dispute CAC-ADREU-006071

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Domain names	www.barclaycorporatefunding.eu

Case administrator

Tereza Bartošková (Case admin)

Complainant

Organization	Barclays Bank Plc

Respondent

Organization	Simon Allso

INSERT INFORMATION ABOUT OTHER LEGAL PROCEEDINGS THE PANEL IS AWARE OF WHICH ARE PENDING OR DECIDED AND WHICH RELATE TO THE DISPUTED DOMAIN NAME

As far as the Panel is concerned there are no other legal proceedings taking place regarding the disputed domain name.

FACTUAL BACKGROUND

The Complainant, Barclays Bank, Plc., is a public limited company registered in England under company number 1026167. The Complainant is registered and listed in the Companies House in the United Kingdom and its business dates back to 1690.

Barclays Bank Plc. is a major international bank, operating in over 50 countries across the world, with annual profits of £11.6 billion in 2009. Amongst other businesses, Barclays Bank Plc. includes a corporate banking business: Barclays Corporate, which is managed alongside Barclays Wealth and Barclays Capital. Barclays Corporate is hosted under the domain name <barclayscorporate.com>. The Barclays Corporate arm of the business operates in over 20 countries worldwide including the United Kingdom, Italy, Spain, France and Portugal. Barclays Corporate's relationship directors' work with over three quarters of the largest 350 companies listed in the London Stock Exchange (FTSE 350). (Annex 1)

In March 2011, the Complainant became aware of the incorporation of a company called "Barclay Corporate Funding Limited" in Ireland. Given its proximity to the Complainant's rights and the fraud risks that such a name posed, the Complainant raised its concerns with that company. It was at this point that the Respondent, Mr. Simon Allso, came forward, claiming that he would be the designated actor both advising and acting on the company's behalf in any negotiations with the Complainant. According to the Complainant, the outcome of these negotiations was that the company's name would be changed. The Respondent's professional background is a Corporate Restructure Consultant; an extract of the Respondent's website is submitted by the Complainant in the form of Annex 3.

The Complainant asserts that as part of their negotiations with the Respondent in relation to the company's name, it became apparent that the Respondent had registered the Domain Name, and that the Respondent had invited offers to purchase the Domain Name, requesting that any such offers should be forwarded to him personally.

The Complainant further asserts that legal restrictions have been imposed upon the Respondent in relation to his involvement in companies in the United Kingdom. According to the information provided in the Complaint, on November 2, 1995, the Respondent was sentenced to a total of four years imprisonment for two offences of fraud and two offences under section 11 of the Company Directors Disqualification Act 1986. The Complainant also contends that the Respondent was further disqualified from acting as a director under section 2 of the Company Directors Disqualification Act 1986 for ten years. On October 22, 2003, a maximum period disqualification of 15 years was imposed on the Respondent as a result of his operations with relation to another failed company, In-A-Flap Envelope Co. Ltd, an assertion for which the Complainant has submitted evidence for in Annex 4.

A. COMPLAINANT

Firstly, the Complainant alleges that the disputed domain name <barclaycorporatefunding.eu> is identical or confusingly similar to the trademark in which the Complainant has rights. The Complainant has a number of registered trademarks for BARCLAYS CORPORATE around the world, including in the United Kingdom; he also holds a Community trademark for BARCLAYS CORPORATE. On this basis, the Complainant asserts their rights in the name BARCLAYS Corporate under national and Community law as required by the ADR Rules.

Furthermore, the Complainant asserts that the disputed domain name is confusingly similar to the Complainant's trading name. According to the Complainant, Barclays Bank, PLC, has a trading arm under Barclays Corporate as well as valid trademark registrations under this arm.

In summary, therefore, the Complainant alleges that the domain name <barclaycorporatefunding.eu> is both confusingly similar to the BARCLAYS CORPORATE trademark in which the Complainant has rights and confusingly similar to the Complainant's company name and trading name.

Secondly, the Complainant argues that the domain name holder has no rights or legitimate interests in respect of the disputed domain name. According to the Complainant, the Respondent has never been authorized or otherwise licensed or permitted by the Complainant to use any of its trademarks. The Complainant states that the Complainant and the Respondent are not affiliated with each other in any way.

Moreover, the Complainant argues that the domain name does not appear to be, nor are the Complainant's Representatives aware that it has ever been, in use. According to the Complainant, the Respondent has stated in a letter to the Complainant's Irish solicitors: "For the avoidance of doubt, there is no 'use' of the website at present and it does not have 'clients' […] there are no clients as yet and therefore no use of the website"; a copy of this letter is attached to the Complaint by the Complainant.

Moreover, the Complainant believes that the Respondent cannot assert that he is commonly known by the domain name. For the Complainant, the Respondent has no genuinely competing name or trademarks to the domain name.

In the Complainant's view the fact that the domain name has never been used, along with the Respondent's statement that there are no clients as yet and, therefore, no use of the website, is enough evidence to attest that the Respondent is unable to assert that he is making a legitimate and non-commercial or fair use of the domain name without intent to mislead consumers or harm the reputation of BARCLAYS CORPORATE.

The Complainant, therefore, submits that the disputed domain name has been registered by the Respondent without rights or legitimate interests.

Finally, the Complainant argues that the domain name has been registered or is being used in bad faith.

The Complainant argues that when the Respondent was asked about the domain name, his immediate response was that he owned it, and would be prepared to consider offers to purchase it. The Complainant further says that the Respondent also indicated that he was not using the domain name.

The Complainant believes that its reputation, its corporate arm, and its corporate funding business is such that when the Respondent chose to register the domain name <barclaycorporatefunding.eu>, he would have been well aware of the Complainant's rights and the likelihood of confusion that would arise by virtue of his registration. It is the Complainant's strong belief that this is precisely the reason the Respondent registered the domain name.

Moreover, the Complainant argues that the registration of the domain name, and the apparent link with the incorporation of the company "Barclay Corporate Funding Limited", both of which are highly similar to the Complainant's company name, trading name and registered trademark rights, indicate the Respondent's clear intention to trade off the established and significant goodwill and reputation of the Complainant. For the Complainant, this is general evidence of bad faith on the part of the Respondent.

B. RESPONDENT

The Respondent has failed to submit a response to the Complaint. He is, therefore, in default.

DISCUSSION AND FINDINGS

To succeed under Article 21 (1) of the Regulation, the Complainant must demonstrate that the Disputed Domain Name:

(a) is identical or confusingly similar to a name in respect of which the Complainant has a recognised right; and

(b) has been registered by its holder without rights or legitimate interests; or

(c) has been registered or is being used in bad faith.

Each aspect of this test will now be examined.

A. THE DOMAIN NAME IS IDENTICAL OR CONFUSINGLY SIMILAR

The Complainant owns numerous trademark registrations for the 'BARCLAYS CORPORATE' mark in various jurisdictions around the world, including the United Kingdom and the European Union; in the case of the latter, the Complainant has provided evidence of a Community Trademark Registration.

The disputed domain name <barclaycorporatefunding.eu> differs from the Complainant's registered trademarks in two ways: first, the letter "s" has been omitted from the word 'Barclay' and, secondly, there is the addition of the word 'funding'. Although, generally, such variations should not automatically trigger arguments in favour of cybersquatting allegations, in this case these two elements certainly raise issues regarding their impact on the rights of the Complainant. Barclays has a strong trademark, something that is established not only through the Complainant's various trademark rights across the world but also due to the fact that the Complainant is an established financial entity, engaging in business activities dating back to 1960. Moreover, given the fact that the Complainant has an established reputation as a funding entity within the financial world, it is undisputed that the word 'funding' will add much confusion, in particular to the minds of its customer basis and to Internet users in general.

To this end, given the highly related nature between the dispute domain name and the services provided by the Complainant through his trademarks, the panel finds that the domain name <barclaycorporatefunding.eu> is both confusingly similar to the BACLAYS CORPORATE trademark in which the Complainant has rights and confusingly similar to the Complainant's company and trading name.

B. RIGHTS AND LEGITIMATE INTERESTS IN RELATION TO THE DOMAIN NAME

The Complainant submits that the Respondent does not have any rights or legitimate interests in the Disputed Domain Name because there is no evidence of bona fide use of an equivalent mark by the Respondent and the Complainant has never authorized the use of, or licensed the use of, the Disputed Domain Name, by or to the Respondent.

According to a letter sent on June 20, 2011 by the Respondent to the Complainant's Irish solicitors and which the Complainant has attached as Annex 6, the Respondent claims the following: "For the avoidance of doubt, there is no 'use' of the website at present and it does not have any 'clients'. What the website says is that you must be a client to use it. There are no clients as yet and therefore no use of the website whatsoever let alone in any trade classification where your client has trademark. Your clients are therefore put to providing strict evidence as to the alleged infringement in this respect".

The fact that the Respondent has not used the disputed domain name in any commercial or other way and the fact that it has not got any clients leads to the logical conclusion that the Respondent could not have been known, in any meaningful or other way, by the domain name. Moreover, from the independent research conducted by the Panel it has also become obvious that the Respondent has not registered this domain name for non-commercial purposes, seeking to promote his free speech or other similar rights.

The fact also that the Respondent has not been using the disputed domain name indicates that the domain name is used as a parking website. Although there might be instances where the parking of a domain name can generate legitimate interests, this is not the case here. For the panel the close association between the domain name and the Complainant's trademark rights clearly manifests that this parking website can provide opportunities for possible cybersquatting activities. This is not a random domain name that the Respondent decided to register and, subsequently, park; this domain name is very specific, in terms of incorporating both the Complainant's trademark rights (BARCLAYS and CORPORATE) and the services it provides (FUNDING) through its trademarks.

As a result of the foregoing, the Panel concludes that the Complainant has established a prima facie case that the Respondent registered the Disputed Domain Name without having any rights or legitimate interests in that name. As a result of the Respondent's failure to rebut any of the Complainant's submissions and based further on the discussion under bad faith below, and in the absence of any evidence to rebut the Complainant's case, the Panel infers that the Respondent does not have any rights or legitimate interests in the Disputed Domain Name. Accordingly, the Complaint succeeds in relation to the second limb of the test under Article 21 (1) of the Regulation.

C. THE DOMAIN NAME HAS BEEN REGISTERED OR IS BEING USED IN BAD FAITH

The Complainant alleges that when the Respondent, Mr. Allso, was asked about the domain name, his immediate response was that he owned it, and would be prepared to consider offers to purchase it. Indeed, in an email communication between the two parties, which is submitted by the Complainant as Annex 7, the Respondent says: “On the matter of the web domain <www.baclaycorporatefunding.eu>, I personally, as the Registrant, would be willing to listen offers from your client to purchase this unused domain if they wish it to be transferred to them. Please forward such if that is their desire”. Indeed, according to the .eu Alternative Dispute Resolution Rules, 11(f)(1), the fact that the Respondent makes the domain name available for sale, which is not limited to the Respondent’s out of pocket costs, is a clear indication of bad faith.

Moreover, the Complainant argues that neither them nor their Representatives knew how the domain name was to be used by the Respondent. Although the Complainants do not seek to make any conclusive judgments or assertions on how the domain name would eventually be used, the do state that given the high level of risk which banks and other financial institutions face from fraud and phising activities online, the Complainant is concerned that this domain name in the hands of any third party could be used as a vehicle for fraud. This panel expresses the same fear. The fact that the domain name is so confusingly similar to the established rights of the Complainant certainly raises substantial questions regarding the way it can be used by the Respondent and for what purposes. The possibility that the domain name might be used for fraudulent activities is further exacerbated by both the Respondent’s criminal history and subsequent behaviour. On November 2, 1995, the Respondent was sentenced to a total of four years imprisonment for two offences of fraud and two offences under section 11 of the Company Directors Disqualification Act 1986. He was further disqualified from acting as a director under section 2 of that Act for 10 years. On October 22, 2003, a maximum period disqualification of 15 years was imposed on Mr. Allso as a result of his operation with relation to another failed company, In-A-Flap Envelope Co. Ltd. The Complainant has submitted a copy of a judgment referring to the above, in the form of Annex 4.

It is, therefore, obvious that the Respondent registered the domain name, and the apparent link with the incorporation of the company Barclay Corporate Funding Limited, both of which are indisputably highly similar to the Complainant’s company name, trading name and registered trademark rights, to attract Internet users for commercial gain, by creating a likelihood of confusion with the Complainant’s name, which is recognized by national and European law.

It is for all these reason that this Panel believes that the Complainant has met their burden of proof in relation also to this third element.

DECISION

For all the foregoing reasons, in accordance with Paragraphs B12 (b) and (c) of the Rules, the Panel orders that the domain name BARCLAYCORPORATEFUNDING be transferred to the Complainant.

PANELISTS

Name	**Dr. Konstantinos Komaitis**

DATE OF PANEL DECISION 2011-09-04

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

This Decision relates to the domain name barclaycorporatefunding.eu (the "Domain Name").

The Complainant, Barclays Bank, Plc., is a public limited company registered in England under company number 1026167. The Complainant is registered and listed in the Companies House in the United Kingdom and its business dates back to 1690. The Complainant requests the revocation and transfer of the Domain Name.

The Panel has made the following findings:

• The Panel believes that the omission of the letter “s” and the addition of the word “funding” is not enough to distinguish the domain name from the Complainant’s trademark rights. Because of the highly related nature between the dispute domain name and the services provided by the Complainant through his trademarks, the panel finds that the domain name <barclaycorporatefunding.eu> is both confusingly similar to the BACLAYS CORPORATE trademark in which the Complainant has rights and confusingly similar to the Complainant’s company and trading name.
• The fact that the Respondent has not used the disputed domain name in any commercial or other way and the fact that it has not got

any clients leads to the logical conclusion that the Respondent could not have been known, in any meaningful or other way, by the domain name. This is not a random domain name that the Respondent decided to register and, subsequently, park; this domain name is very specific, in terms of incorporating both the Complainant's trademark rights (BARCLAYS and CORPORATE) and the services it provides (FUNDING) through its trademarks. Thus, the Respondent has no rights or legitimate interests in the domain name.
• The fact that the Respondent offered to sell the domain name to the highest bidder and given his history in fraudulent activities, indicate that the Respondent has engaged in bad faith registration of the domain name.

On the basis of the above, the Panel finds that Complainant has established the prerequisites under Paragraph B11(d)(1) of the ADR Rules for revocation of the Domain Name. On these grounds, and in view of the fact that the Complainant is established in the European Union, the Panel has ordered the transfer of the Domain Name to the Complainant.