

Nominet UK Dispute Resolution Service

DRS 11238

Barclays PLC

and

Lycos

Decision of Independent Expert

1 Parties

Complainant: Barclays PLC
Address: 1 Churchill Place
London
Postcode: E14 5HP
Country: United Kingdom

Respondent: Lycos
Address: 100 5th Ave
Waltham, MA
Postcode: 02451
Country: United States

2 Domain Name

<barclaysbkplc.co.uk>

3 Procedural History

- 3.1 On 19 April 2012 the complaint was received by Nominet, which checked that it complied with the Nominet UK DRS Policy (“the Policy”) and DRS Procedure (“the Procedure”). Nominet notified the respondent on 20 April 2012. No response was received. The complainant requested referral of the matter for expert decision under the Procedure, and on 22 May 2012 paid the applicable fee.
- 3.2 I was appointed as expert on 28 May 2012. I have made the necessary declaration of impartiality and independence.

4 Factual background

- 4.1 The complainant is a well known international bank and financial services provider.
- 4.2 The respondent registered the domain name on 22 February 2011.

5 Parties’ Contentions

Complainant

- 5.1 The complainant says it has traded as Barclays PLC since 1985 and as Barclays Bank Limited or Barclay & Company Limited since 1896. It says it owns UK and Community trade marks in the name BARCLAYS, and has produced documentary evidence that it has registered the domains www.barclays.co.uk since before 1996 and www.barclays.com since 2003.
- 5.2 The complainant argues that the domain name contains a word which is identical to its name.
- 5.3 The complainant says the domain name is being used as a “pay-per-click” website showing links to financial services products competing with the complainant’s. It has produced evidence of this in the form of a screenshot. The complainant argues that therefore the domain name is being used to redirect traffic intended for the complainant, diverting potential custom, so as to generate income for the respondent. This it argues is neither non-commercial nor fair use.
- 5.4 No one, the complainant argues, would register the domain name except to create a false impression of association with the complainant. It argues that the respondent could never use the domain name for a legitimate purpose.
- 5.5 Finally the complainant also argues that the respondent has blocked it from registering the domain name.

Respondent

- 5.6 No response has been provided.

6 Discussion and Findings

General

6.1 Under paragraph 2(a) of the Policy a complainant must show on the balance of probabilities that:

- it has rights in respect of a name or mark which is identical or similar to the domain name, and that
- the domain name, in the hands of the respondent, is an abusive registration.

Rights

6.2 Rights are defined in the Policy as rights enforceable by the complainant, whether under English law or otherwise.

6.3 It is not disputed that the complainant is well known as Barclays, that it has trade marks in that name and that it owns the domains barclays.co.uk and barclays.com.

6.4 At the third level (i.e. disregarding “co.uk”), the first and dominant element of the domain name is the word “barclays”.

6.5 In my view, the inclusion within the domain name of the additional letters “bkplc” does not make it dissimilar to the complainant’s name, domains or trade marks. On the contrary, the inclusion of the letters “bk”, which it is possible, and in the context of the domain name as a whole natural, to read as an abbreviated reference to a bank or banking, and of the letters “plc”, which especially in the context of the domain name as a whole it is natural to read as a reference to a public limited company like the complainant, strengthens the likelihood of an inference that the domain name refers to the complainant. It reinforces the domain name’s similarity to the complainant’s name.

6.6 In those circumstances I am satisfied that the complainant has rights in respect of a name which is similar to the domain name.

Abusive Registration

6.7 Under paragraph 1 of the Policy, abusive registration means 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.

This definition obviously covers both the time of registration, and later use.

- 6.8 Under paragraph 3(a)(ii) of the Policy, circumstances indicating that the respondent is using a domain name 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.
- 6.9 Given that the domain name includes the complainant's name together with additional letters which can be read as referring to the complainant and its services, and which in context strengthen the likelihood of an inference that the domain name refers to the complainant, it is in my view clear that confusion is likely between the domain name and the complainant.
- 6.10 In my view therefore, the respondent appears in the circumstances to have used the domain name in a manner which has taken unfair advantage of or has been unfairly detrimental to the complainant's rights.
- 6.11 It is for the complainant to make good its case. However, for the reasons I have given the evidence before me establishes a clear prima facie case of abusive registration. The respondent has provided no response.
- 6.12 In those circumstances therefore I am satisfied on the balance of probabilities that the domain name, in the hands of the respondent, is an abusive registration.

7 Decision

- 7.1 I find that the complainant has rights in a name which is similar to the domain name; and that the domain name, in the hands of the respondent, is an abusive registration.
- 7.2 The complaint is upheld. I direct that the domain name be transferred to the complainant.

Carl Gardner

19 June 2011