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DISPUTE RESOLUTION SERVICE

D011805

Decision of Independent Expert

Barclays PLC

and

Eric Zhang

1. The Parties:

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

Respondent: Eric Zhang
Tian Hong Shan Zhuang
Nanjing
Jiangsu
210049
China

2. The Domain Name(s):

barclayds.co.uk

3. Procedural History:

20 August 2012 10:26 Dispute received
20 August 2012 12:31 Complaint validated
20 August 2012 12:35 Notification of complaint sent to parties
07 September 2012 02:30 Response reminder sent
12 September 2012 08:11 No Response Received
12 September 2012 08:11 Notification of no response sent to parties

14 September 2012 09:33 Expert decision payment received

4. Factual Background

4.1 The Complainant is Barclays Bank plc, a major global financial services provider engaged in retail banking, credit cards, corporate banking, investment banking, wealth management and investment management services with an extensive international presence in Europe, the Americas, Africa and Asia.

4.2 The Complainant's use of the BARCLAYS name dates back to 1896, and it is the registered proprietor of a variety of UK and Community registered trade marks incorporating the terms BARCLAY and BARCLAYS in a range of classes.

4.3 Over the course of its trading, the Complainant has acquired significant reputation and goodwill. It is also the registrant of a variety of domain names, including www.barclays.co.uk, which was registered before 1996.

4.4 The Respondent appears to be a Chinese individual. He registered the Domain Name on 14 February 2011.

4.5 The Domain Name is currently being used for a pay per click website, which displays finance-related links.

4.6 The Complainant has never given permission to the Respondent to register or use any domain names incorporating the Complainant's registered trade marks. The Complainant's solicitors wrote to the Respondent in June 2011, with subsequent chasing letters in August and September 2011, asking the Respondent to sign undertakings, including transfer of the Domain Names. The Respondent has failed to respond to those letters.

5. Parties' Contentions

Complainant's Submissions

5.1 The Complainant relies upon its registrations of UK and Community Trade Marks BARCLAY and BARCLAYS and says that the Domain Name is identical to the word BARCLAY and confusingly similar to the word BARCLAYS. The inclusion of the letter "d" between the "y" and "s" in Barclays is a classic typo-squatting tactic.

Abusive Registration

5.2 The Complainant contends that, as an instance of typo-squatting, it is to be reasonably anticipated that the Respondent intended to capture

internet traffic intended for the Complainant. Given the worldwide name and notoriety of the mark BARCLAYS, no trader would choose the Domain Name barclayds.co.uk unless 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.

5.3 The use of the Domain Name for a website generating revenue through pay per click, displaying finance-related sponsored links, is neither non-commercial nor fair use of the Domain Name.

5.4 Further, the use of the Domain Name is without the Complainant's permission.

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

5.6 The Complainant seeks the transfer of the Domain Name to the Complainant

The Respondent's submissions

5.7 The Respondent has not replied.

6. Discussions and Findings

6.1 In order to succeed in these proceedings, paragraph 2.b of the Nominet DRS Policy ("the 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.

Complainant's Rights

6.2 The Expert agrees that this appears to be a classic case of typo-squatting. The Domain Name is not identical to either BARCLAY or BARCLAYS. However, it is clearly similar to both, with the addition of only one extra letter. Therefore the Expert finds that the Complainant has Rights in the names or marks BARCLAY and BARCLAYS which are similar to the Domain Name.

Abusive Registration

6.3 The Policy contains, in paragraph 3.a, a non-exhaustive list of factors which may be evidence that the Domain Name is an Abusive

Registration. The most relevant factor would appear to be that set out in paragraph 3.a.ii: "circumstances indicating that the Respondent is using or is threatening to use the Domain Name in a way which has confused or is likely to confuse people or businesses into believing that the Domain Name is registered to, operated or authorised by, or otherwise connected with the Complainant".

6.4 Paragraph 4.a of the policy contains a non-exhaustive list of factors which may be evidence that the Domain Name is not an Abusive Registration. Those other factors include, at paragraph 4.a.i.C "before being aware of the Complainant's cause for complaint.... the Respondent has...made non-commercial or fair use of the Domain Name".

6.5 This Complaint is a very simple one. At first sight, it appears to be a classic case of typo-squatting, and the Respondent has not replied to the Complaint. In the absence of a reply, it seems to the Expert to be legitimate to treat this as a typical typo-squatting case. As such, as the Complainant has pointed out, and in particular in relation to a company with the level of consumer recognition of the Complainant (which itself describes that recognition as "notoriety"), it must be reasonably anticipated that the Respondent intended to cause confusion and to capture internet traffic intended for the Complainant.

6.6 The website to which the Domain Name is linked confirms, firstly, the commercial nature of the use of the Domain Name (in generating income through the pay-per-click method), and secondly the likelihood of confusion, given the nature of the links involved to financial services provided by third parties (whether or not those have been knowingly selected by the Respondent). That activity cannot qualify as "fair" use.

6.7 In the circumstances, the Expert finds that the Domain Name, in the hands of the Respondent is an Abusive Registration within the meaning of the Policy.

7. Decision

The Expert finds that the Complainant has Rights in the marks BARCLAY and BARCLAYS which are similar to the Domain Name, and that the Domain Name in the hands of the Respondent, is an Abusive Registration. The Expert therefore directs that the Domain Name should be transferred to the Complainant.

Signed **Dated 19 September 2012**

Bob Elliott