

ADMINISTRATIVE PANEL DECISION

Baccarat SA v. Hui Han

Case No. D2022-4380

1. The Parties

The Complainant is Baccarat SA, France, represented by MEYER & Partenaires, France.

The Respondent is Hui Han, China.

2. The Domain Name and Registrar

The disputed domain name <baccaratsell.com> is registered with Name.com, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 17, 2022. On November 17, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 18, 2022, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that 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 the Respondent of the Complaint, and the proceedings commenced on December 2, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 22, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 23, 2022.

The Center appointed Pablo A. Palazzi as the sole panelist in this matter on December 29, 2022. 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

The Complainant is a French based company which operates from its principal office in Baccarat, a town between the larger centers of Nancy and Strasbourg in North Eastern France.

The Complainant has been a manufacturer of fine crystal ware since 1764 in the reign of Louis XV. It operates a website at “www.baccarat.com” which shows that the range of crystal products is extensive comprising not just tableware or ornaments but also jewelry and lighting. With respect to its crystal products, the Complainant has supplied and continues to supply its products worldwide to a range of customers including royalty and heads of states.

The Complainant owns a number of registered trademarks around the world including the European Union, China and the United States of America. The Complainant’s first trademark registration dates back to 1860 for the denomination BACCARAT FRANCE. The Complainant also owns trademark registrations for BACCARAT in multiple jurisdictions, such as the International Trademark Registration No. 571155 for BACCARAT, registered on June 10, 1991, designating, among others, China. The Complainant contends that its trademark, in relation to its products (or services), is famous.

The Complainant also owns and operates a web portal at “www.baccarat.fr” and the domain name <baccarat.com>. There are also a number of country code specific domain names utilizing four languages and connecting with customers in over 40 countries. There are additionally other domain names registered, all utilizing the trademark BACCARAT.

The disputed domain name was registered on January 17, 2022, and at the time of filing of the Complaint, it was used for a non-authorized online store, purportedly offering for sale the Complainant’s products at heavily discounted prices.

5. Parties’ Contentions

A. Complainant

According to the Complainant, each of the three elements specified in paragraph 4(a) of the Policy are satisfied in the present case.

First, the Complainant submits that the disputed domain name is identical or confusingly similar to the BACCARAT trademark registration of the Complainant.

Second, the Complainant argues that the Respondent has neither rights nor legitimate interests in the disputed domain name.

Third, the Complainant submits that the disputed domain name was registered and is being used in bad faith.

With respect to bad faith, the Complainant specifically states that, the disputed domain name resolves to an online shop allegedly selling and offering the Complainant’s BACCARAT products at heavily discounted prices.

B. Respondent

The Respondent did not reply to the Complainant’s contentions.

6. Discussion and Findings

Paragraph 4(a) of the Policy lists three elements, which a complainant must satisfy in order to succeed. The Complainant must satisfy that:

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

A. Identical or Confusingly Similar

The first element that the Complainant must establish is that the disputed domain name is identical or confusingly similar to the Complainant's trademark. The Complainant holds several valid trademark registrations for BACCARAT.

The disputed domain name contains the trademark BACCARAT of the Complainant in its entirety with the addition of the term "sell". Since the trademark BACCARAT of the Complainant is included in the disputed domain name, this is sufficient to establish that the disputed domain name is confusingly similar to the Complainant's trademark. The addition of the other term does not prevent a finding of confusing similarity under the first element.

The Panel finds the first element of the Policy has therefore been met.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances any of which is sufficient to demonstrate that the Respondent has rights or legitimate interests in the disputed domain name:

- "(i) before any notice to you of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or
- (ii) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or
- (iii) you are making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue."

There is no evidence of the existence of any of those rights or legitimate interests in this case.

The Complainant has not authorized, licensed, or permitted the Respondent to register or use the disputed domain name or its trademarks. The Complainant has prior rights in the trademarks, which precede the Respondent's registration of the disputed domain name.

Moreover, the Complainant has asserted that at the time of filing the Complaint, the disputed domain name resolved to an online shop allegedly selling and offering the Complainant's BACCARAT illegitimate products. The Respondent has not denied this assertion. The Panel notes that the website purportedly offered for sale the Complainant's products at heavily discounted prices. Further, the website did not accurately and prominently disclose the lack of relationship between the Parties. It is the view of the Panel, this use of the disputed domain name by the Respondent does not qualify as a *bona fide* offering of products or services.

The Complainant has therefore established a *prima facie* case that the Respondent has no rights and legitimate interests in the disputed domain name and thereby shifted the burden to the Respondent to produce evidence to rebut this presumption. The Respondent has failed to rebut the Complainant's *prima facie* case.

Moreover, the nature of the disputed domain name carries a risk of an implied affiliation as it effectively impersonates or suggests sponsorship or endorsement by the Complainant.

Therefore, the Panel finds that the Complainant has satisfied the second requirement of paragraph 4(a) of the Policy.

C. Registered and Used in Bad Faith

The Complainant must prove both that the disputed domain name was registered and is being used in bad faith.

The Complainant's allegations with regard to the Respondent's registration and use of the disputed domain name in bad faith have been considered by the Panel. The Respondent has not contested these allegations.

There is no doubt that the Respondent was aware of the Complainant's trademark when he registered the disputed domain name given that the website at the disputed domain name reproduced the Complainant's trademark.

With respect to use in bad faith, the Complainant's evidence shows that at the time of filing the Complaint, the disputed domain name resolved to an online shop allegedly selling and offering the Complainant's BACCARAT products at heavily discounted prices. It is the view of the Panel, this is evidence of bad faith. In light of the evidence, the Panel holds that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to his website by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website under paragraph 4(b)(iv) of the Policy, and likely to disrupt the business of the Complainant.

Therefore, the Panel concludes that the Complainant has made out its case that the disputed domain name was registered and is being used in bad faith, and the Complainant has satisfied the third limb of the Policy, under paragraph 4(a)(iii).

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 disputed domain name <baccaratsell.com> be transferred to the Complainant.

/Pablo A. Palazzi/

Pablo A. Palazzi

Sole Panelist

Date: January 12, 2023