

## **ADMINISTRATIVE PANEL DECISION**

Baccarat SA v. Putu Hamsa

Case No. D2023-3210

### **1. The Parties**

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

The Respondent is Putu Hamsa, Indonesia.

### **2. The Domain Name and Registrar**

The disputed domain name <baccaratrouge540.com> (the “Domain Name”) is registered with DropCatch.com LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 26, 2023. On July 26, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On the same date, 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 July 31, 2023. In accordance with the Rules, paragraph 5, the due date for Response was August 20, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 21, 2023.

The Center appointed Gregor Vos as the sole panelist in this matter on August 25, 2023. 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 manufacturer of *inter alia* crystal wares that was established in 1764. The Complainant is active worldwide and has more than 630 physical points of sale. For the Complainant's 250 years anniversary it launched a perfume fragrance named 'Baccarat Rouge 540'. This fragrance is currently still offered for sale worldwide through a network of the Complainant's distributors.

The Complainant is the owner of *inter alia* the following trademark registrations (hereinafter together referred to as the "Trademarks"):

- International trademark registration No. 433950 for BACCARAT, registered on December 2, 1977, with designation of *inter alia* the Benelux, Italy and Viet Nam;
- Indonesian trademark registration No. 159455 for BACCARAT, registered on September 14, 1981;
- International trademark registration No. 1260833 for BACCARAT ROUGE 540, registered on May 4, 2015, with designation of *inter alia* China and the United States of America.

Further, it is undisputed that the Complainant is the holder of *inter alia* the domain name <baccarat.com>.

The Domain Name was registered on June 23, 2023 and currently resolves to a webpage of Dan.com advertising that the Domain Name is for sale.

#### 5. Parties' Contentions

##### A. Complainant

With the Complaint, the Complainant seeks that the Domain Name is transferred to the Complainant. The Complaint is based on the following factual and legal grounds: the Domain Name is identical or confusingly similar to the Trademarks of the Complainant, the Respondent has no rights or legitimate interests in the Domain Name, and the Domain Name has been registered and is being used in bad faith.

First, according to the Complainant, the Domain Name is identical to the trademark BACCARAT ROUGE 540 and confusingly similar to the trademark BACCARAT. The Domain Name fully incorporates the trademark BACCARAT and integrally reproduces the trademark BACCARAT ROUGE 540.

Second, according to the Complainant, the Respondent has no rights or legitimate interests in the Domain Name. The Respondent is not sponsored or licensed by or affiliated with the Complainant in any way, nor has the Complainant given its permission to the Respondent or to anyone else to use the Trademarks in any manner, including in domain names. Further, the Respondent is not known under the Domain Name. Also, the Respondent is offering the Domain Name for sale since the first day after its registration, thus not actively using the Domain Name for a *bona fide* offering of goods or services or for any legitimate noncommercial or fair purpose.

Finally, according to the Complainant, the Respondent has registered and uses the Domain Name in bad faith. The Complainant submits that the Respondent was aware of both the (reputation of the) Complainant and its Trademarks at the time the Domain Name was registered and did not choose the Domain Name by coincidence. Since its registration the Domain Name resolves to a webpage of Dan.com advertising that the Domain Name is for sale. Further, the Respondent has actively contacted the Complainant to offer the sale of the Domain Name and the Respondent deleted his shipping email address after the Complainant sent a cease and desist letter that was mentioned the Complainant's Trademarks and demanded the transfer of the Domain Name to the Complainant. All the aforementioned elements indicate that the Domain Name is registered and being used in bad faith.

## B. Respondent

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

## 6. Discussion and Findings

In view of the lack of a response filed by the Respondent as required under paragraph 5 of the Rules, this proceeding has proceeded by way of default. Hence, under paragraphs 5(f), 14(a) and 15(a) of the Rules, the Panel is directed to decide this administrative proceeding on the basis of the Complainant's undisputed factual presentations.

For the Complainant to succeed, it must prove, within the meaning of paragraph 4(a) of the Policy and on the balance of probabilities that:

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

Only if all three elements have been fulfilled, the Panel is able to grant the remedies requested by the Complainant. The Panel will deal with each of the requirements in turn.

### A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires the Complainant to show that the Domain Name is (i) identical or confusingly similar to a trademark or service mark, (ii) in which the Complainant has rights.

With respect to having rights pursuant to paragraph 4(a)(i) of the Policy, it is noted that the Complainant is registered as the owner of the Trademarks. Consequently, the Panel finds that the Complainant has proven that it has rights in the Trademarks.

With regard to the assessment of identity or confusing similarity of the Domain Name with the Trademarks, it is generally accepted that this test involves a reasoned but relatively straightforward comparison between the Complainant's Trademarks and the Domain Name (see section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"). In cases where a domain name incorporates the entirety of a trademark, the domain name will normally be considered confusingly similar to that mark (see section 1.7 of the [WIPO Overview 3.0](#)).

In the present case, the Trademarks are incorporated in their entirety in the Domain Name and are clearly recognizable. The addition of the generic Top-Level Domain ".com" is viewed as a standard registration requirement and as such is disregarded under the first element (see sections 1.7 and 1.11.1 of the [WIPO Overview 3.0](#)). Consequently, the Panel finds that the requirement under paragraph 4(a)(i) of the Policy has been satisfied.

### B. Rights or Legitimate Interests

The second requirement the Complainant must prove is that the Respondent has no rights or legitimate interests in the Domain Name. The onus of proving this requirement, like each element, falls on the Complainant. Given the difficulty in proving a negative, however, it is usually sufficient for a complainant to make out a *prima facie* case that a respondent lacks rights or legitimate interests. If the Complainant does establish a *prima facie* case, the burden of production shifts to the Respondent (see, e.g. [WIPO Overview 3.0](#), section 2.1; *Sanofi v. Cimpress Schweiz GmbH*, WIPO Case No. [D2017-0522](#)).

Paragraph 4(c) of the Policy lists three non-limitative examples of instances in which a respondent may establish rights or legitimate interests in a domain name.

The Complainant has substantiated that none of these circumstances apply in this case. By defaulting, the Respondent has failed to address the *prima facie* case thus established by the Complainant. Furthermore, based on the record before it, the Panel does not see an indication that any of the circumstances of paragraph 4(c) of the Policy is present.

This is further evidenced by the nature of the Domain Name, which is identical to the Trademark BACCARAT ROUGE 540. The Domain Name thus carries a high risk of implied affiliation which cannot constitute fair use since it effectively impersonates or suggests sponsorship or endorsement by the Complainant (see section 2.5.1 of the [WIPO Overview 3.0](#)).

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in respect of the Domain Name. Paragraph 4(a)(ii) is thereby fulfilled.

### **C. Registered and Used in Bad Faith**

Under paragraph 4(a)(iii) of the Policy, the Complainant must show that the Domain Name has been registered and is being used in bad faith. Paragraph 4(b) of the Policy lists four non-limitative circumstances which may be considered as evidence of registration and use in bad faith of a domain name.

In the present case, the Trademarks are registered by the Complainant and have been used for many years. The Complainant's rights to the Trademarks predate the registration date of the Domain Name. In light of the well-known character of the Trademarks, the Panel agrees with the Complainant that it is not conceivable that the Respondent chose the Domain Name without knowledge of the Complainant's activities and its Trademarks under which the Complainant is doing business. The well-known character of the Trademarks of the Complainant has been confirmed by earlier UDRP panels (see e.g. *Baccarat SA v. Sndv Dmvd*, WIPO Case No. [D2023-1287](#); and *Baccarat SA v. Ahmad Rifai, Duta*, WIPO Case No. [D2023-0045](#)).

Further, in light of the reputation of the Trademarks, the lack of any rights or legitimate interests in the Domain Name by the Respondent, and in the absence of any conceivable good faith use of the Domain Name, the Panel finds from the present circumstances that the Respondent has intentionally sought to take unfair advantage of or otherwise abuse the Trademarks. This is reinforced by the fact that the Respondent offers the Domain Name for sale for valuable consideration likely in excess of the out-of-pocket costs directly related to the Domain Name and has actively approached the Complainant regarding the sale of the Domain Name. This further evidences registration and use of the Domain Name in bad faith.

Accordingly, the Panel finds that the Domain Name has been registered and is being used in bad faith and that the third element of paragraph 4(a)(iii) of the Policy is fulfilled.

### **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 Domain Name <baccaratrouge540.com> be transferred to the Complainant.

/Gregor Vos/

**Gregor Vos**

Sole Panelist

Date: September 8, 2023