

ADMINISTRATIVE PANEL DECISION

Balenciaga v. Qiu Xiaofeng
Case No. D2023-3683

1. The Parties

The Complainant is Balenciaga, France, represented by Studio Barbero, Italy.

The Respondent is Qiu Xiaofeng, China.

2. The Domain Name and Registrar

The disputed domain names <balenciagaargentina.net>, <balenciagabelgique.com>, <balenciagabelgium.net>, <balenciagabrasil.com>, <balenciagachile.net>, <balenciagadanmark.net>, <balenciagaeesti.com>, <balenciagaespaña.com>, <xn--balenciagaespa-crb.com>, <balenciagahrvatska.net>, <balenciagaireland.com>, <balenciagaisrael.com>, <balenciagalatvia.com>, <balenciagalietuva.com>, <balenciagamagyarország.com>, <xn--balenciagamagyarország-t0b.com>, <balenciaganederland.com>, <balenciaganorge.com>, <balenciagaperú.com>, <xn--balenciagaper-gob.com>, <balenciagaportugal.net>, <balenciagaromania.net>, <balenciagasrbija.com>, <balenciagasuisse.com>, <balenciagasuomi.net>, and <balenciagauruguay.com> (the “Domain Names”) are registered with Paknic (Private) Limited (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 1, 2023. On September 1, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Names. On September 7, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Names which differed from the named Respondent (Whois Agent Web Domains By Proxy, Libby Rowe, Kiera Humphries, Kian Crawford, Nicole Hooper, Finlay Birch, Louise Dawson, Charlie Hayward, Alisha Khan, Eve Hooper, Tyler Bailey, Louie Flynn, Finlay Carroll, Leon Bray, Finlay Field, Niamh Holden, Isabel Bray, Adam Byrne, James Grant, Adam Gardiner, Melissa Morrison, Matthew Barnes, Charlotte Black, and Spencer Bryant) and contact information in the Complaint. The Center sent an email communication to the Complainant on September 8, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amendment to the Complaint on September 8, 2023.

The Center verified that the Complaint, together with the amendment to 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 September 15, 2023. In accordance with the Rules, paragraph 5, the due date for Response was October 5, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 6, 2023.

The Center appointed Pablo A. Palazzi as the sole panelist in this matter on October 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 company based in France founded in 1918 by Cristobel Balenciaga. The Complainant and its predecessors in title have used the mark BALENCIAGA for many years in relation to luxury fashion goods. Today, the Complainant creates women’s and men’s ready-to-wear, shoes, handbags, and accessories and sells the items worldwide under the mark BALENCIAGA.

The Complainant is the registered owner of various word marks and stylized trademarks consisting of the word “balenciaga” in a number of jurisdictions, including countries within Europe, Asia, Africa, and North America. For example, International Trademark registration No. 397506 for BALENCIAGA (word mark), registered on April 13, 1973, in classes 03, 05, 14, 16, 18, 20, 21, 24, 25, 26 and 34; International Trademark Registration No. 1207961 for a stylized **B** logo, registered on February 7, 2014, in classes 9, 12, 18 and 25. The Complainant further operates a website linked to numerous domain names having the word “balenciaga” as the entirety of the second-level domain, including, *inter alia*, <balenciaga.com>, registered on March 29, 1999.

The Panel accepts that BALENCIAGA is a well-known trademark.

The Domain Names were registered by the Respondents between May 8, 2023 and May 11, 2023. The Domain Names resolve to websites featuring the Complainant’s trademarks **B** logo and BALENCIAGA, publishing images taken from the Complainant’s official advertising campaigns and offering for sale BALENCIAGA products at discounted prices.

5. Parties’ Contentions

A. Complainant

The Domain Names are confusingly similar to the Complainant’s BALENCIAGA trademark.

The Respondents have no rights or legitimate interests in respect of the Domain Names. The Respondents have registered and are using the Domain Names in bad faith.

The Complainant requests the consolidation of the Domain Names based on the reasons provided in its Complaint and amended Complaint.

The Complainant requests the transfer of the Domain Names.

B. Respondent

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

6. Discussion and Findings

6.1. Consolidation: Multiple Respondents

While the original Complaint was filed in relation to nominally different domain name registrants, to which the Complainant argued common control, the Registrar ultimately disclosed a single underlying registrant as the Respondent. The amended Complaint was filed identifying only the Respondent, arguing that it was likely that the previously identified registrants had been aliases or connected to the disclosed Respondent. Ultimately, considering paragraph 3(c) of the Rules and that there is a single Respondent, the Panel need not consider the Complainant's arguments for consolidation and will proceed to consider the substantive merits of the Complaint.

6.2 Substantive Issues

Paragraph 4(a) of the Policy provides that a complainant must prove each of the following elements with respect to each disputed domain name:

- (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.

The burden of proof of each element is borne by the Complainant. The Respondent's default does not by itself mean that the Complainant is deemed to have prevailed. See [WIPO Overview 3.0](#), section 4.3.

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the Domain Names. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, (["WIPO Overview 3.0"](#)), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the entirety of the mark is reproduced within the Domain Names. Accordingly, the Domain Name is identical or confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

While the addition of geographical terms such as "argentina", "belgique", "belgium", "brasil", "chile", "danmark", "eesti" ("Estonian" in Estonian), "hrvatska" ("Croatia" in Croatian), "ireland", "israel", "latvia", "lietuva" ("Lithuania" in Lithuanian), "nederland", "norge", "portugal", "romania", "srbija" ("serbia" in Serbian), "suisse" ("Switzerland" in French), "suomi" ("Finland" in Finnish), "uruguay", "españa" ("Spain" in Spanish), "magyarország" ("Hungary" in Hungarian), and "perú" ("Peru" in Spanish) may bear on assessment of the second and third elements, the Panel finds the addition of such terms do not prevent a finding of confusing similarity between the Domain Names and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Based on the available record, the Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of “proving a negative”, requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the Domain Names. The Respondent has not rebutted the Complainant’s *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the Domain Names such as those enumerated in the Policy or otherwise.

While the genuine nature of the goods offered on the Domain Names is unclear, the websites to which the Domain Names resolve prominently feature the Complainant’s mark and allegedly offer for discounted sale the Complainant’s branded products. Given the lack of any clarifying statement as to the Domain Names (lack of) relationship to the Complainant, it is clear that the Respondent seeks to mislead unsuspecting Internet users into the false belief of association or sponsorship by the Complainant. Moreover, given the risk of implied affiliation found in the composition of the Domain Names, the Panel finds that the Respondent sought to impersonate the Complainant. Panels have held that the use of a domain name for illegal activity (e.g., impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

Based on the available record, the Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular but without limitation, that if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

In the present case, the Panel notes that:

- the Complainant trademark is well-known (*Balenciaga v. Rudy Gay*, WIPO Case No. [D2012-2299](#), *Balenciaga v. Zhifeng Rao*, WIPO Case No. [D2013-0575](#));
- the Complainant trademark has been in use since 1919, while the Domain Names were registered in 2023;
- the Respondent Qiu Xiaofeng has been a respondent in six (6) previous UDRP cases where it was held that he acted in bad faith in registering other domain names (e.g., *Autumnpaper Ltd v. Qiu Xiaofeng*, WIPO Case No. [D2023-3671](#), *Dansko, LLC v. Qiu Xiaofeng*, WIPO Case No. [D2023-3370](#));
- according to the Complaint, Respondent in this case is using the Domain Names to advertise and offer for sale *prima facie* counterfeit BALENCIAGA products. The Complaint also states that “in view of the very low prices at which the purported BALENCIAGA goods are offered, the lack of complete and reliable information about the entity operating Respondents’ websites supports the conclusion that Respondents might have indeed engaged in the sale of counterfeit goods and willfully indicated fictitious contact details in the WhoIs records to avoid being identified and prosecuted for their illegal conduct.”

As a result, there is no doubt that the Respondent knew about the existence of the Complainant and its trademarks. In the circumstances, the Panel finds that the Respondent registered the Domain Names in bad faith.

The Panel concludes that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or location or of a product or service on the Respondent's website or location. Paragraph 4(b)(iv) of the Policy, and [WIPO Overview 3.0](#), section 3.1.4.

Based on the available record, the Panel finds the third element of the Policy has been established.

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 Names, <balenciagaargentina.net>, <balenciagabelgique.com>, <balenciagabelgium.net>, <balenciagabrasil.com>, <balenciagachile.net>, <balenciagadanmark.net>, <balenciagaeesti.com>, <balenciagaespaña.com>, <xn--balenciagaespaa-crb.com>, <balenciagahrvatska.net>, <balenciagaireland.com>, <balenciagaisrael.com>, <balenciagalatvia.com>, <balenciagalietuva.com>, <balenciagamagyarország.com>, <xn--balenciagamagyarország-t0b.com>, <balenciaganederland.com>, <balenciaganorge.com>, <balenciagaperú.com>, <xn--balenciagaper-gob.com>, <balenciagaportugal.net>, <balenciagaromania.net>, <balenciagasrbija.com>, <balenciagasuisse.com>, <balenciagasuomi.net>, and <balenciagauruguay.com>, be transferred to the Complainant.

/Pablo A. Palazzi/

Pablo A. Palazzi

Sole Panelist

Date: November 9, 2023.