

## **ADMINISTRATIVE PANEL DECISION**

Baccarat SA v. Richard John Upton, BACCARATO  
Case No. D2024-0397

### **1. The Parties**

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

The Respondent is Richard John Upton, BACCARATO, United Kingdom.

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

The disputed domain name <baccarato.com> is registered with Tucows Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 29, 2024. On January 30, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 30, 2024, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name which differed from the named Respondent (Contact Privacy Inc. Customer 0169679692) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 31, 2024, 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 amended Complaint on February 6, 2024.

The Center verified that the Complaint together with the amended 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 February 7, 2024. In accordance with the Rules, paragraph 5, the due date for Response was February 27, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 28, 2024.

The Center appointed Kaya Köklü as the sole panelist in this matter on March 5, 2024. 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 crystal wares, which roots date back to 1764. Some years ago, the Complainant launched a perfume series, which is offered worldwide by selective distributors.

The Complainant offers its products under the trademark BACCARAT, which is registered in many jurisdictions worldwide. The Complainant is, among others, the owner of the International Trademark Registration No. 433950, registered on December 2, 1977, for BACCARAT, covering protection for perfumes and other goods as covered in class 3 (Annex F5 to the Complaint).

The Complainant operates its primary website at “www.baccarat.com”, and owns and operates also a large number of country websites in respective language versions (Annex E1 to the Complaint).

The Respondent is reportedly located in the United Kingdom.

The disputed domain name was registered on December 24, 2023.

The screenshots, as provided by the Complainant, show that the disputed domain name previously resolved to a website purportedly offering the Complainant’s perfumes at discounted prices (Annex G1). Furthermore, the website associated with the disputed domain name was using the Complainant’s BACCARAT trademark, including product pictures of the Complainant’s products, without any prominent and accurate disclaimer describing the (lack of) relationship between the Parties.

At the time of the Decision, the disputed domain name does not resolve to an active website anymore.

#### **5. Parties’ Contentions**

##### **A. Complainant**

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

##### **B. Respondent**

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

#### **6. Discussion and Findings**

According to paragraphs 14 and 15(a) of the Rules, the Panel shall decide the Complaint in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

In accordance with paragraph 4(a) of the Policy, the Complainant must prove that each of the three following elements is satisfied:

- (i) the disputed domain name is identical or confusingly similar to a trademark 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.

Paragraph 4(a) of the Policy states that a complainant bears the burden of proving that all these requirements are fulfilled, even if a respondent has not substantively replied to the complainant's contentions. *Stanworth Development Limited v. E Net Marketing Ltd.*, WIPO Case No. [D2007-1228](#).

However, concerning the uncontested information provided by a complainant, the Panel may, where relevant, accept the provided reasonable factual allegations in a complaint as true. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") section 4.3.

It is further noted that the Panel has taken note of the [WIPO Overview 3.0](#) and, where appropriate, will decide consistent with the consensus views captured therein.

#### **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 disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

The Complainant has shown rights in respect of the BACCARAT trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the Complainant's BACCARAT mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other letters or terms, here the letter "o", may bear on assessment of the second and third elements, the Panel finds the addition of such letter does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

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.

Although 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 difficult 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 (although the burden of proof always remains on the complainant). 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 available record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. 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 disputed domain name such as those enumerated in the Policy or otherwise.

The Respondent's organization name per the Whois record for the disputed domain name is "Baccarato", however the Respondent did not come forward with any evidence to suggest that the Respondent is commonly known by the disputed domain name. Moreover, for the reasons discussed below in terms of bad faith, the Panel is of the opinion that even if such entity exists, it would not be sufficient to give rise to rights or legitimate interests. In addition, the Panel notes that the nature of the disputed domain name, which comprises the entirety of the Complainant's trademark, carries a risk of implied affiliation or association with the Complainant. [WIPO Overview 3.0](#), section 2.5.1.

Also, Panels have held that the use of a domain name for illegal activity, here the sale of presumably counterfeit perfumes of the Complainant, can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

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.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

In the present case, the Panel notes that the Respondent must have had the Complainant and its BACCARAT trademark in mind when registering the disputed domain name. It is obvious to the Panel, that the Respondent has deliberately chosen the disputed domain name to target and mislead third parties. Consequently, the Panel is convinced that the Respondent has registered the disputed domain name in bad faith. The Panel further finds that by the concrete way of using the disputed domain name, the Respondent tries to generate traffic to his own website and mislead Internet users in their false belief that the associated website is operated or at least authorized by the Complainant, apparently for offering presumably counterfeit perfumes of the Complainant.

Panels have held that the use of a domain name for illegal activity, here claimed sale of presumably counterfeit goods, constitutes bad faith. [WIPO Overview 3.0](#), section 3.4.

Furthermore, the Panel accepts the failure of the Respondent to submit a response to the Complainant's contentions as an additional indication for bad faith.

The fact that the disputed domain name currently no longer resolves to an active website does not prevent a finding of bad faith under the doctrine of passive holding.

Having reviewed the case record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

The Panel finds that the Complainant has established the third element of the Policy.

## 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 <baccarato.com> be transferred to the Complainant.

*/Kaya Köklü/*

**Kaya Köklü**

Sole Panelist

Date: March 19, 2023