

## **ADMINISTRATIVE PANEL DECISION**

**Baccarat SA v. Xueyan Pang**

**Case No. D2023-2118**

### **1. The Parties**

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

The Respondent is Xueyan Pang, China.

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

The disputed domain name <baccaratsaleus.com> is registered with Hong Kong Juming Network Technology Co., Ltd (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 12, 2023. On May 15, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 17, 2023, 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 (Redacted for privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 19, 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 May 22, 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 May 26, 2023. In accordance with the Rules, paragraph 5, the due date for Response was June 15, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 19, 2023.

The Center appointed Aaron Newell as the sole panelist in this matter on June 27, 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 based in France and is a multi-award-winning business that has manufactured crystal ware since 1764. Its products are sold around the world, and at present it markets its business through over twenty different domain names and online portals, in addition to various department stores, authorized resellers, and other retail outlets, including in the United States of America ("United States").

The Complainant has pursued other UDRP cases and some have resulted in panel determinations that the Complainant's BACCARAT name is very well known.

The Complainant owns a number of trade mark registrations for its BACCARAT name, including a still-maintained France trade mark registration filed in 1860 for BACCARAT FRANCE covering articles of crystal, as well as more recent registrations for BACCARAT (including, *inter alia*, United States trade mark registration no. 1199343 for BACCARAT, in class 14 for jewelry, registered on June 29, 1982).

The disputed domain name was registered March 9, 2023. At the time of writing this decision, the disputed domain name does not load any website. However, the disputed domain name had, whilst apparently under the control of the Respondent, previously (and demonstrably in May 2023) loaded a website that i) used the Complainant's BACCARAT name in the same font used by the Complainant, ii) purported to offer the Complainant's crystal-based products at sale prices that were held out to be between 20% and 25% of the recommended retail price, and iii) used images and text that also appeared on the websites of the Complainant's authorized retailers. The Panel will refer to this website as "the Respondent's website" in this decision.

#### 5. Parties' Contentions

##### A. Complainant

The Complainant:

- (i) submits that its BACCARAT name is famous and well known, and should be considered to be well known within the meaning of Article 6bis of the Paris Convention;
- (ii) provides evidence of valid and subsisting trade mark rights in numerous jurisdictions in respect of its BACCARAT name;
- (iii) submits that the Respondent is not sponsored by or affiliated with or licensed by the Complainant in any way, and has not been given any permission to use the Complainant's BACCARAT name;
- (iv) submits that it carefully manages its BACCARAT name and has contracted with numerous distributors in the United States who are authorized to sell the Complainant's products, and that the Respondent is not one of these distributors;
- (v) provides evidence that the images and textual descriptions of the products that appeared on the Respondent's website were copied without authorisation from the websites of the Complainant's authorized or licensed retailers, such as the UK-based department store Harrods;
- (vi) provides evidence that there were no indications or disclaimers on the Respondent's website to clarify that it had no relationship with the Complainant;
- (vii) provides evidence demonstrating that the Respondent's website provided a contact address of Pryor, Oklahoma in the United States, that the Complainant has no authorized distributors in this location and that the noted address appears to have been falsified as it cannot be located through online research;

- (viii) submits that if the Respondent was indeed selling products at its website, it is unlikely that the products were genuine products of the Complainant, despite being held out as genuine products.

## **B. Respondent**

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

## **6. Discussion and Findings**

To succeed, the Complainant must demonstrate that all of the elements enumerated in paragraph 4(a) of the Policy have been satisfied, namely:

- (i) the disputed domain name is identical or confusingly similar to a trade mark 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 Respondent's failure to file a Response does not automatically result in a decision in favor of the Complainant (see, e.g., *Airbus SAS, Airbus Operations GmbH v. Alesini Pablo Hernan / PrivacyProtect.org*, WIPO Case No. [D2013-2059](#)). However, the Panel may draw appropriate inferences from the Respondent's lack of a Response.

The Panel finds as follows:

### **A. Identical or Confusingly Similar**

The disputed domain name <baccaratsaleus.com> contains the Complainant's registered BACCARAT trade mark in its entirety.

WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") at section 1.7 sets out that "[w]hile each case is judged on its own merits, in cases where a domain name incorporates the entirety of a trade mark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing".

The inclusion of "saleus" does not prevent a finding of confusing similarity between the Complainant's registered BACCARAT trade mark and the disputed domain name. The Panel considers that this term is intended to be understood as "Sale US" and to suggest that the Complainant's products are being made available for sale or at discounted prices in the United States by way of the website at the disputed domain name.

The disputed domain name is confusingly similar to a trade mark in which the Complainant has rights. The Complainant has satisfied the first requirement.

### **B. Rights or Legitimate Interests**

[WIPO Overview 3.0](#) at section 2.1 sets out that:

"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.”

By way of its contentions outlined at section 5.A (iii) through (viii) above, the Complainant has shifted the burden to the Respondent to positively demonstrate rights or a legitimate interests.

The Respondent has failed to respond, has not rebutted the Complainant’s contentions, has done nothing to contradict the Complainant’s assertions and has therefore failed to discharge this burden.

The Panel finds that the Complainant has satisfied the second requirement.

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

The Complainant asserts that it has no association, affiliation, or other connection with the Respondent, and has provided evidence that the Respondent’s website featured:

- i) the BACCARAT name in red in the identical font used by the Complainant throughout its own branding and marketing materials, positioned in the centre of the top of the landing page of the website, and used in association with various crystal products purportedly offered for sale;
- ii) product descriptions and images that have been copied, without authorization, from the websites of authorized and licensed retailers of the Complainant’s products;
- iii) the Complainant’s products listed for sale at heavily-discounted prices;
- iv) nothing to clarify the nature of the relationship (or lack thereof) between the Respondent’s website and the Complainant;
- v) an address that cannot readily be located, in a location in the United States where the Complainant has no affiliated, authorized or licensed distributors.

The Complainant asserts that the Respondent’s website accordingly is misleading and gives the impression of having a commercial connection to the Complainant that it does not have.

The Complainant’s assertions are credible and convincing on their face. The Respondent did not engage in the proceedings or provide any rebuttal to the Complainant’s assertions or explanations for its conduct.

Based on the evidence provided by the Complainant, the Panel considers that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant’s trade mark as to the source, sponsorship, affiliation, or endorsement of the Respondent’s website (see [WIPO Overview 3.0](#), section 3.1.4), and that the disputed domain name was registered for this purpose.

Conduct so-described is indicative of bad faith use and registration under UDRP paragraph 4(b)(iv).

Accordingly, the Panel holds that the disputed domain name was registered and is being used in bad faith.

The Complainant has therefore satisfied the third requirement.

## **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, <baccaratsaleus.com>, be transferred to the Complainant.

*/Aaron Newell/*

**Aaron Newell**

Sole Panelist

Date: July 11, 2023