

ADMINISTRATIVE PANEL DECISION

Baccarat SA v. Snvdh Dmvcd

Case No. D2023-1287

1. The Parties

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

The Respondent is Snvdh Dmvcd, China.

2. The Domain Name and Registrar

The disputed domain name <baccaratsale.store> 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 March 24, 2023. On March 27, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 29, 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 ("Whois Agent, Domain Protection Services, Inc.") and contact information in the Complaint. The Center sent an email communication to the Complainant on March 30, 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 April 4, 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 April 6, 2023. In accordance with the Rules, paragraph 5, the due date for Response was April 26, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on April 27, 2023.

The Center appointed Selma Ünlü as the sole panelist in this matter on May 9, 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

Given that no Response was filed, the following facts are based on the submissions in the Complaint and the Annexes to the Complaint.

The Complainant, Baccarat SA, is a French company manufacturing crystal ware since 1764 operating worldwide. The Complainant's products and brand are luxurious and famous throughout the United States of America ("United States") and the rest of the world.

The Complainant is the owner of several trademarks for "BACCARAT" for goods and services related to crystal glass products and jewelry. The Complainant's trademarks including the term BACCARAT are, *inter alia*, the following:

- United States trademark BACCARAT No. 73182634, registered on February 12, 1980
- United States trademark BACCARAT No. 73259517, registered on June 29, 1982
- International trademark BACCARAT No. 433950, registered on December 12, 1977
- International trademark BACCARAT No. 571155, registered on June 10, 1991
- European Union trademark BACCARAT device No. 004807582, registered on January 24, 2007

The Complainant is also the owner of several domain names incorporating its BACCARAT trademark, such as <baccarat.com> and <baccarat.fr>.

The disputed domain name was registered on August 9, 2022. The disputed domain name resolves to a website, offering Baccarat kitchenware for sale under the BACCARAT trademark for cheaper prices.

5. Parties' Contentions

A. Complainant

The Complainant states that it is the owner of the BACCARAT trademarks, and the business with these trademarks was well established at the time of the registration of the disputed domain name. It was highlighted that the Complainant's first trademark registration was filed for "BACCARAT France" for articles made of crystal glass as early as in 1860 and it has thousands of trademark registrations across the world. The Complainant states that its two centuries old wide and constant use throughout the world is also making BACCARAT one of the most famous trademarks in the world. The disputed domain name is confusingly similar to the Complainant's trademarks because it incorporates the BACCARAT trademark in its entirety. It is also noted that the mere addition of the generic and descriptive word "sale" is not enough to distinguish the disputed domain name from the trademark BACCARAT, since the Complainant's core activity is to sell the products that they create and manufacture. Also, the addition of the Top-Level Domain ("TLD") ".store" is not significant in determining whether the disputed domain name is identical or confusingly similar to the trademarks of the Complainant.

The Complainant contends that the Respondent has no legitimate rights or interests in the disputed domain name, since the Respondent is not sponsored by or affiliated or licensed with the Complainant in any way and the Complainant has not given to the Respondent or to anyone else the permission to use its trademarks in any manner, including in domain names. The Respondent is not known and has never been known under the names of "BACCARAT" or "BACCARAT SALE". Further, the Complainant claims that the disputed domain name and its associated website falsely suggest that they are affiliated with its trademark BACCARAT, therefore, such use cannot be considered as fair use or legitimate use as there is no affiliation. Also, the Complainant states that the website attached to the disputed domain reproduces on the top of its homepage the European Union figurative trademark n°004807582 as BACCARAT written stylised a signature, together with poor quality copies of official pictures that reproduce BACCARAT products and that the Complainant also is the holder of the copyright of such photos and no authorization is given.

Additionally, the website at the disputed domain name displays and offers for sale cookware products from an Australian company also sold under the name BACCARAT. It is asserted that these products are offered for sale at highly discounted prices that cast doubt on their authenticity and the fact of selling products under the name BACCARAT and using the trademark is an evidence that the Respondent tried to impersonate or pass off the Complainant.

Regarding bad faith, the Complainant submits that the Complainant and its trademarks were well reputed and predated, refers to various previous Panel decisions determining the well-known status of the Complainant's trademarks, and contends that it is clear the Respondent knew or should have known about the existence of the earlier and well-known BACCARAT trademarks. Moreover, the Complainant states that the Respondent uses the "signature BACCARAT" trademark (European Union figurative trademark n°004807582) and copyrighted photographs of BACCARAT products on the website linked to the disputed domain name; accordingly, that it is clear the Respondent could not have ignored the existence of the Complainant and its well-known trademark when it filed an application for registration of the confusingly similar disputed domain name. It is stated that the addition of the generic and descriptive word "SALE", which is not sufficient to distinguish the disputed domain name to the Complainant's trademark, and the use of the extension ".store" are other evidence that the Respondent's intention was to confuse users into believing that the website corresponds to an official BACCARAT reseller with discounted prices, which is not true. Consequently, the Complainant is of the opinion that the disputed domain name is registered and used in bad faith.

B. Respondent

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

6. Discussion and Findings

The Complainant must prove that the three elements of paragraph 4(a) of the Policy have been met for the disputed domain name, namely:

- (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.

Since the Respondent did not object to any of the contentions from the Complainant by not submitting a Response, the Panel will decide the Complaint in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable and on the basis of the Complaint and supporting Annexes.

A. Identical or Confusingly Similar

In light of the explanations and evidence provided by the Complainant, the Panel is satisfied that the Complainant has valid trademark rights in the BACCARAT trademark, which is reproduced in its entirety in the disputed domain name. Additionally, the Panel considers that the addition "sale" does not eliminate the confusing similarity, since it refers to the commercial activity of the Complainant under its trademarks.

Furthermore, the addition of the generic Top-Level Domain ("gTLD") ".store" does not prevent a finding of confusing similarity, since it is merely a technical registration requirement to be disregarded typically.

Consequently, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark and the Complainant has satisfied the requirements of paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy lists non-exhaustively the relevant circumstances that could show the Respondent's rights or legitimate interests in a domain name, as follows:

"Any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate [the respondent's] rights or legitimate interests to the domain name for purposes of paragraph 4(a)(ii):

(i) before any notice to [the respondent] of the dispute, [the respondent's] 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) [the respondent] (as an individual, business, or other organization) ha[s] been commonly known by the domain name, even if [the respondent] ha[s] acquired no trademark or service mark rights; or

(iii) [the respondent] is 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."

The Panel notes that the Respondent has not filed a Response, and therefore, neither denied the Complainant's claims, nor brought any information or evidence to prove any rights or legitimate interests.

The Complainant has made a *prima facie* showing that the Respondent does not have any rights or legitimate interests in the disputed domain name. In particular, the Complainant asserted that the Respondent is not sponsored by or affiliated or licensed with the Complainant in any way and the Complainant has not given to the Respondent or to anyone else the permission to use its trademarks in any manner, including in domain names. Further, the Complainant claims that the disputed domain name and its associated website falsely suggest that they are affiliated with its trademark BACCARAT, therefore, such use cannot be considered as fair use or legitimate use as there is no affiliation and the website attached to the disputed domain reproduces on the top of its homepage the European Union figurative trademark n°004807582 as BACCARAT written stylised a signature, together with poor quality copies of official pictures that reproduce BACCARAT products and that the Complainant also is the holder of the copyright of such photos and no authorization is given. It is asserted that the products are offered for sale at highly discounted prices that cast doubt on their authenticity and the fact of selling products under the name BACCARAT and using the trademark is an evidence that the Respondent tried to impersonate or pass off the Complainant.

The Complainant's registration and use of the BACCARAT trademark predates the registration of the disputed domain name. Since the Complainant made out a *prima facie* case, the burden of production shifts to the Respondent to establish its rights or interests in the disputed domain name. The Respondent, however, has not sought to rebut that *prima facie* case.

Moreover, the Panel finds that the composition of the disputed domain name, consisting of the Complainant's trademark entirely, carries a risk of implied affiliation. This finding is reinforced given the Complainant's use of the domain name <baccaratsale.store>. See sections 2.5.1 and 2.5.3 of the [WIPO Overview 3.0](#).

In light of the Complainant's assertions and evidence, the Panel finds that the Complainant has met the requirement under the Policy of *prima facie* showing that the Respondent does not have any rights or legitimate interests in the disputed domain name. Accordingly, the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy lists certain relevant non-exhaustive circumstances, which can be considered as the registration and use of a domain name in bad faith, namely:

“(i) circumstances indicating that [the respondent has] registered or acquired [a disputed] domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of [the respondent’s] documented out-of-pocket costs directly related to the domain name; or

(ii) [the respondent has] registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that [the respondent has] engaged in a pattern of such conduct; or

(iii) [the respondent has] registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, [the respondent has] intentionally attempted to attract, for commercial gain, Internet users to [the respondent’s] website or other on-line 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.”

The Panel must decide by examining all relevant circumstances of each case in question. It is possible that cumulative conditions lead to the finding of bad faith, such as the Complainant’s trademark being well-known, as well as no response to the Complaint. Given the explanations in the Complaint and the evidence provided by the Complainant, the Panel finds that the disputed domain name was registered in bad faith.

The disputed domain name incorporates the exact distinctive BACCARAT trademark of the Complainant, which cannot be considered as a coincidence. The Complainant has provided that the BACCARAT trademark is well established, well-known and predated, therefore, the fact that the Respondent decided to register the disputed domain name including this term in its entirety strongly suggests that the Respondent taken the Complainant’s reputed BACCARAT trademark into account and targeted it specifically in order to gain unfair advantage. This is even more likely given the fact that the website linked to the disputed domain name has the content of BACCARAT products on sale with unrealistic high-discounted prices, which cannot be considered in good faith. Moreover, the use of the identical “signature BACCARAT” trademark (European Union figurative trademark n°004807582) belonging to the Complainant and copyrighted photographs of BACCARAT products on the website linked to the disputed domain name without authorization constitute bad faith. The Panel consequently finds that the dispute in question is a typical case of bad faith provided in the Policy under UDRP paragraph 4(b) as one of the scenarios constituting evidence of the Respondent’s bad faith, namely, the case of the Respondent using the disputed domain name, intentionally attempting to attract, for commercial gain, Internet users to the website linked to the disputed domain name, creating a likelihood of confusion with the Complainant’s mark as to the source, sponsorship, affiliation, or endorsement of such website or of a product or service on such website, considering that the disputed domain name reproduces entirely the distinctive well-known BACCARAT trademark and includes the trademarked content without authorization under very cheaper prices.

Accordingly, the evidence shows that the Respondent likely knew of and had sought to take unfair advantage of the similarity between the disputed domain name and the Complainant’s trademarks and create likelihood of confusion as to the source or affiliation.

Consequently, the Panel decides that the third requirement is also met and both the registration and the use of the disputed domain name are in bad faith.

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, <baccaratsale.store>, be transferred to the Complainant.

/Selma Ünlü/

Selma Ünlü

Sole Panelist

Date: May 23, 2023