

ADMINISTRATIVE PANEL DECISION

Baccarat SA v. Ahmad Rifai, Duta

Case No. D2023-0045

1. The Parties

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

Respondent is Ahmad Rifai, Duta, Indonesia.

2. The Domain Name and Registrar

The disputed domain name <parfumbaccarat.com> (the “Domain Name”) is registered with CV. Rumahweb Indonesia (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 5, 2023. On the same day, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On January 6, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent and contact information in the Complaint.

The Center sent an email communication in English and Indonesian to the Parties on January 9, 2023, regarding the language of the proceeding, as the Complaint has been submitted in English and the language of the registration agreement for the Domain Name is Indonesian. Complainant submitted a request for English to be the language of the proceeding on January 12, 2023. Respondent did not comment on the language of the proceeding.

The Center sent an email communication to Complainant also on January 9, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on January 12, 2023.

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 Respondent of the Complaint, and the proceedings commenced on January 16, 2023. In accordance with the Rules, paragraph 5, the due date for Response was March 9, 2023. Respondent sent several informal communications by email to the Center, but did not submit any formal response. Accordingly, the Center notified the parties of the Commencement of Panel Appointment Process on March 10, 2023.

The Center appointed Kimberley Chen Nobles as the sole panelist in this matter on March 13, 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

Complainant, BACCARAT SA, is a French manufacturer of luxury crystal ware, and served as the supplier to numerous foreign Courts and heads of State for over 250 years. About fifteen years ago, Complainant formed a partnership with Francis Kurkdjian, a creator of perfumes, to launch perfumes with reference to the royal courts Complainant supplied its products to in the past.

Complainant owns and operates numerous websites, including “www.baccarat.fr” and “www.baccarat.com”, with a section of these websites dedicated to the BACCARAT perfumes. Complainant’s products are available through over 240 boutiques, department stores, authorized resellers, and various points of sale, including two stores that are located in Jakarta, Indonesia, where Respondent reportedly operates and resides. Complainant’s partner Maison Francis Kurkdjian also has distributors in Indonesia where BACCARAT fragrances are sold.

Complainant, owns numerous registered trademark for BACCARAT, either alone or in combination with other marks, including:

- French registered trademark number 1523101 for BACCARAT FRANCE word and design mark, registered on April 4, 1989;
- Indonesian registered trademark number IDM00014893 for BACCARAT word mark registered on December 11, 2007;
- International registered trademark number 433950 for BACCARAT word mark, registered on December 2, 1977;
- International registered trademark number 592210 for BACCARAT word and design mark, registered on October 15, 1992;
- International registered trademark number 1260833 for BACCARAT ROUGE 540 N registered on May 4, 2015, which designates numerous countries including Indonesia; and

The Domain Name was registered on August 4, 2022, and at the time of filing of the Complaint, reverted to a website that offered for sale Complainant’s BACCARAT branded perfumes, as well as competing products, at a discounted price. At the time of the Decision, the Domain Name reverted to an error page.

5. Parties’ Contentions

A. Complainant

Complainant contends that (i) the Domain Name is identical or confusingly similar to Complainant’s trademarks; (ii) Respondent has no rights or legitimate interests in the Domain Name; and (iii) Respondent registered and is using the Domain Name in bad faith.

In particular, Complainant contends that it has trademark registrations for BACCARAT and that Respondent registered and is using the Domain Name with the intention to confuse Internet users looking for *bona fide* and well-known BACCARAT products and services.

Complainant notes that it has no affiliation with Respondent and contends that Respondent has used Complainant's reputation to sell plagiarisms on the website associated with the Domain Name. Complainant further contends that Respondent is using the Domain Name as a tool to exploit Complainant's reputation for its own commercial gain, and that Respondent has no rights or legitimate interests in the registration and use of the Domain Name other than trademark infringement. Further, Complainant contends that Respondent has acted in bad faith in acquiring and setting up the Domain Name, when Respondent clearly knew of Complainant's rights.

B. Respondent

Respondent did not reply to Complainant's contentions, however, Respondent sent an email communication in English to the Center on January 21, 2023, indicating that it agreed to release or cancel the Domain Name. On January 25, 2023, Respondent sent another email communication in English to the Center indicating that Respondent had responded to emails to his/her best ability and that the Domain Name had been removed from hosting. Thereafter, Respondent sent additional emails in English noting that the Center's communications had been received, but did not formally respond to the Complaint.

6. Discussion and Findings

6.1. Preliminary Issue: Language of the Proceeding

The Rules, in paragraph 11(a), provide that unless otherwise agreed by the parties or specified otherwise in the registration agreement, the language of the proceeding shall be the language of the registration agreement, subject to the authority of the panel to determine otherwise, having regard to the circumstances of the administrative proceeding.

According to the information received from the Registrar, the language of the Registration Agreement for the Domain Name is Indonesian.

Complainant submitted its original Complaint in English. In its Complaint and amended Complaint, Complainant submitted a request that the language of the proceeding should be English. Complainant contends that the Domain Name resolved to a website providing content in English throughout the site, that the privacy policy on the website was in entirely in English, and that Respondent communicated by email with the Center several times in English, and thus asserts that Respondent is thus familiar with the English language. Complainant also requested that the proceedings be in English to ensure fairness between the parties and to provide prompt resolution of the dispute at reasonable costs.

In exercising its discretion to use a language other than that of the Registration Agreement for the Domain Name, the Panel has to exercise such discretion judicially in the spirit of fairness and justice to both Parties, taking into account all relevant circumstances of the case, including matters such as the Parties' ability to understand and use the proposed language, time, and costs.

The Panel accepts Complainant's submissions regarding the language of the proceeding. The Panel notes that the Domain Name is composed of Complainant's trademark plus what could be considered a misspelling of an English term "parfum" ("perfume", where the initial "e" has been replaced with an "a" and with a missing letter "e" at the end of the term), and the content of the website that the Domain Name reverted to, prior to the time of filing of the Complaint, included English. In addition, the Center notified the Parties in Indonesian and English of the language of the proceeding as well as notified Respondent in Indonesian and English of commencement of the proceeding and indicated that Respondent may file a

Response in either Indonesian or English. Respondent communicated several times by email in English with the Center, but did not formally file a Response.

The Panel is also mindful of the need to ensure that the proceeding is conducted in a timely and cost-effective manner. Complainant may be unduly disadvantaged by having to translate the Complaint into Indonesian and to conduct the proceeding in Indonesian while conducting the proceeding in English would not cause unfairness to either Party in this case.

Having considered all the circumstances of this case, the Panel determines that English be the language of the proceeding.

6.2. Substantive Issues

Under paragraph 4(a) of the Policy, to succeed Complainant must satisfy the Panel that:

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

Section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") states that failure to respond to the complainant's contentions would not by itself mean that the complainant is deemed to have prevailed; a respondent's default is not necessarily an admission that the complainant's claims are true.

Thus, although in this case Respondent has failed to respond to the Complaint, the burden remains with Complainant to establish the three elements of paragraph 4(a) of the Policy by a preponderance of the evidence.

A. Identical or Confusingly Similar

Ownership of a trademark registration is generally sufficient evidence that a complainant has the requisite rights in a mark for purposes of paragraph 4(a)(i) of the Policy. See [WIPO Overview 3.0](#), section 1.2.1. Complainant has provided evidence of its rights in the BACCARAT trademarks, as noted above under section 4. Complainant has also submitted evidence, which supports that the BACCARAT trademarks are widely known and a distinctive identifier of Complainant's products and services. Complainant has therefore proven that it has the requisite rights in the BACCARAT trademarks.

With Complainant's rights in the BACCARAT trademarks established, the remaining question under the first element of the Policy is whether the Domain Name, typically disregarding the Top-Level Domain ("TLD") in which it is registered (in this case is, ".com"), is identical or confusingly similar to Complainant's trademark. See, e.g., *B & H Foto & Electronics Corp. v. Domains by Proxy, Inc. / Joseph Gross*, WIPO Case No. [D2010-0842](#).

Here, the Domain Name is confusingly similar to Complainant's BACCARAT trademarks. These BACCARAT trademarks are recognizable in the Domain Name. In particular, the Domain Name's inclusion of Complainant's trademark BACCARAT in its entirety, with an addition of the term "parfum", does not prevent a finding of confusing similarity between the Domain Name and the BACCARAT trademarks. See [WIPO Overview 3.0](#), section 1.8.

Thus, the Panel finds that Complainant has satisfied the first element of the Policy.

B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, a complainant must make a *prima facie* showing that a respondent possesses no rights or legitimate interests in a disputed domain name. See, e.g., *Malayan Banking Berhad v. Beauty, Success & Truth International*, WIPO Case No. [D2008-1393](#). Once a complainant makes such a *prima facie* showing, the burden of production shifts to the respondent, though the burden of proof always remains on the complainant. If the respondent fails to come forward with relevant evidence showing rights or legitimate interests, the complainant will have sustained its burden under the second element of the UDRP.

From the record in this case, it is evident that Respondent was, and is, aware of Complainant and its BACCARAT trademarks, and does not have any rights or legitimate interests in the Domain Name. In addition, Complainant asserts that Respondent is not an authorized reseller and is not related to Complainant. Respondent is also not known to be associated with the BACCARAT trademarks and there is no evidence showing that Respondent has been commonly known by the Domain Name.

In addition, Respondent has not used the Domain Name in connection with a *bona fide* offering of goods or services or a legitimate noncommercial or fair use. Rather, at the time of filing of the Complaint, the Domain Name reverted to a website that offered perfumes for sale at a discounted price, including third party perfumes and Complainant's BACCARAT-branded perfumes providing information, and photographs with the BACCARAT mark, which could mislead Internet users into thinking that the website has been authorized or operated by or affiliated with Complainant, and offered BACCARAT-branded products for sale. At the time of the Decision, the Domain Name reverted to an error or inactive page. Such use does not constitute a *bona fide* offering of goods or services or a legitimate noncommercial or fair use and cannot under the circumstances confer on Respondent any rights or legitimate interests in the Domain Name. See, e.g., *Intesa Sanpaolo S.p.A. v. Charles Duke / Oneandone Private Registration*, WIPO Case No. [D2013-0875](#).

Moreover, the nature of the Domain Name is inherently misleading, and carries a risk of implied affiliation (see [WIPO Overview 3.0](#), section 2.5.1).

Accordingly, Complainant has provided evidence supporting its *prima facie* claim that Respondent lacks any rights or legitimate interests in the Domain Name. Respondent has failed to produce countervailing evidence of any rights or legitimate interests in the Domain Name. Rather, Respondent, in a couple of email communications with the Center, had indicated that Respondent is in agreement with the proposed remedy and had taken down the website, reinforcing the notion that the Respondent was not using the Domain Name in connection with a *bona fide* offering. Thus, the Panel concludes that Respondent does not have any rights or legitimate interests in the Domain Name and Complainant has met its burden under paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Panel finds that Respondent's actions indicate that Respondent registered and is using the Domain Name in bad faith.

Paragraph 4(b) of the Policy provides a non-exhaustive list of circumstances indicating bad faith registration and use on the part of a domain name registrant, namely:

“(i) circumstances indicating that you have registered or you have acquired the 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 your documented out-of-pocket costs directly related to the domain name; or

(ii) you have 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 you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your 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 your website or location or of a product or service on your website or location."

The Panel finds that Complainant has provided ample evidence to show that registration and use of the BACCARAT trademarks long predate the registration of the Domain Name. Complainant is also well established and known. Indeed, the record shows that Complainant's BACCARAT trademarks and related products and services are widely known and recognized. Therefore, Respondent was likely aware of the BACCARAT trademarks when it registered the Domain Name or knew or should have known that the Domain Name was confusingly similar to Complainant's trademarks. See [WIPO Overview 3.0](#), section 3.2.2; see also *TTT Moneycorp Limited v. Privacy Gods / Privacy Gods Limited*, WIPO Case No. [D2016-1973](#).

The Panel therefore finds that Respondent's awareness of Complainant's trademark rights at the time of registration suggests bad faith. See *Red Bull GmbH v. Credit du Léman SA, Jean-Denis Deletraz*, WIPO Case No. [D2011-2209](#); *Nintendo of America Inc v. Marco Beijen, Beijen Consulting, Pokemon Fan Clubs Org., and Pokemon Fans Unite*, WIPO Case No. [D2001-1070](#); and *BellSouth Intellectual Property Corporation v. Serena, Axel*, WIPO Case No. [D2006-0007](#).

Further, the registration of the Domain Name incorporating Complainant's BACCARAT trademark in its entirety suggests Respondent's actual knowledge of Complainant's rights in the BACCARAT trademarks at the time of registration of the Domain Name and its effort to opportunistically capitalize on the registration and use of the Domain Name. Moreover, the additional descriptive term "parfum" (the French term for "perfume", or a misspelling of the English word "perfume") in the Domain Name is also directly associated with Complainant's business activities in the field luxury perfumes, further indicating Respondent's actual knowledge of Complainant and its trademarks, and that Respondent's registration of the Domain Name was in bad faith.

In addition, the evidence provided by Complainant indicated that at the time of filing of the Complaint, the Domain Name reverted to a website that offered perfumes for sale at a discounted price, including third party perfumes and Complainant's BACCARAT-branded perfumes providing information, photographs with the BACCARAT mark, which could mislead Internet users into thinking that the website has been authorized or operated by or affiliated with Complainant, and offered BACCARAT-branded products for sale. At the time of the Decision, the Domain Name reverted to an error or inactive page. Such use included Respondent's unauthorized reproduction of Complainant's BACCARAT marks, which could mislead Internet users into thinking that the respective website has been authorized or operated by or affiliated with Complainant, and offered BACCARAT-branded products for sale, all of which have not been rebutted by Respondent. Such use cannot be considered in good faith.

Moreover, Respondent registered and is using the Domain Name to confuse and mislead consumers looking for *bona fide* and well-known BACCARAT products and services of Complainant or authorized partners of Complainant. The use of the BACCARAT mark as the dominant part of the Domain Name is intended to capture Internet traffic from Internet users who are looking for Complainant's products and services. Therefore, by using the Domain Name, Respondent has intentionally attempted to attract, for commercial gain, Internet users to Respondent's webpage by creating a likelihood of confusion with Complainant's BACCARAT marks as to the source, sponsorship, affiliation, or endorsement of Respondent's website.

Further, the Panel also notes the failure of Respondent to submit a formal Response or to provide any evidence of actual or contemplated good-faith use, and the implausibility of any good-faith use to which the Domain Name may be put.

Accordingly, the Panel finds that Respondent registered and is using the Domain Name in bad faith and Complainant succeeds under the third element of paragraph 4(a) 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 Domain Name, <parfumbaccarat.com>, be transferred to Complainant.

/Kimberley Chen Nobles/

Kimberley Chen Nobles

Sole Panelist

Date: March 24, 2023