

ADMINISTRATIVE PANEL DECISION

Baccarat SA v. Yu Yan Peng

Case No. D2023-3818

1. The Parties

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

The Respondent is Yu Yan Peng, Hong Kong, China

2. The Domain Names and Registrar

The disputed domain names, <baccaratperfume540.com> (the “First Domain Name”), and <baccatrrouge540.top> (the “Second Domain Name” and together with the First Domain Name, the “Domain Names”), are registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 13, 2023. On September 14, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Names. On September 15, 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 (REDACTED FOR PRIVACY, Domains By Proxy, LLC, and Registration Private, Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on September 18, 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 amended Complaint on September 18, 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 the Respondent of the Complaint, and the proceedings commenced on September 26, 2023. In accordance with the Rules, paragraph 5, the due date for Response was October 16, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 17, 2023.

The Center appointed Olga Zalomiy as the sole panelist in this matter on October 24, 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 French manufacturer of fine crystal. The Complainant owns numerous trademark registrations for the well-known BACCARAT trademark and the BACCARAT ROUGE 540 trademark, such as:

- International trademark No. 433950 for BACCARAT, registered on December 2, 1977;
- United States of America ("US") trademark registration number 1130893 for BACCARAT, registered on February 12, 1980;
- US trademark registration number 1199343 for stylized word BACCARAT, registered on June 29, 1982;
- International trademark No. 1260833 for BACCARAT ROUGE 540, registered on May 4, 2015;
- US trademark reg. number 5000592 for BACCARAT ROUGE 540, registered on July 19, 2016.

The Complainant owns numerous domain names that include its trademarks, including <baccarat.com> and <baccaratrouge540.hk>.

The Respondent registered the First Domain Name on August 21, 2023 and the Second Domain Name on September 5, 2023. The Domain Names used to direct to online stores offering for sale products under the Complainant's BACCARAT ROUGE 540 trademark. The websites under the Domain Names displayed the Complainant's trademarks, as well as photographs and textual content from its official website and purportedly offered for sale the BACCARAT ROUGE 540 branded products for only a fraction of the price of such products. At some point before the Complaint was filed, the Second Domain Name started resolving to different websites, such as a website devoted to art and travel, or redirecting to the website at the First Domain Name. According to the Complaint, such dynamic redirections possibly depend on the location of Internet users. The First Domain Name still directs to the online store.

5. Parties' Contentions

A. Complainant

The Complainant's contentions may be summarized as follows:

The Complainant is a French manufacturer of crystal wares. The Complainant launched a perfume trilogy referring to the great royal courts of which it was the supplier in the past. A partnership is bound with Francis Kurkdjian, creator of many successful perfumes and perfumes for his own brand: Maison Francis Kurkdjian. The Complainant registered its BACCARAT and BACCARAT ROUGE 540 trademarks as well as numerous domain names including its trademarks. The Complainant operates a commercial website at "www.baccarat.com" and "www.baccarat.fr" which make its products available to Internet users. The Complainant's products and brand are famous.

The Second Domain Name is identical or confusingly similar to the Complainant's BACCARAT and BACCARAT ROUGE 540 trademarks. The First Domain Name consists of the Complainant's well-known BACCARAT trademark, the generic and descriptive word "perfume", and the number "540", which also makes the First Domain Name confusingly similar to the Complainant's BACCARAT ROUGE 540 trademark. The generic Top-Level Domains ("gTLD") ".com" and ".top" should be disregarded under the confusing similarity test.

The Complainant contends that the Respondent does not have any rights or legitimate interests in the Domain Names because of the following: 1) the Respondent is not a licensee or an affiliate of the Complainant; and 2) the Domain Names are similar to the Complainant's well-known trademarks, which carries a high risk of implied affiliation and, as a result, cannot constitute fair use since they suggest affiliation with the Complainant; 3) The Respondent is not using the Domain Names in connection with a *bona fide* offering of goods or services and is not making a legitimate noncommercial or fair use of the Domain Names because the websites under the Domain Names likely sell counterfeit products, which cannot confer rights or legitimate interests on the Respondent.

The Domain Names were registered and are being used in bad faith because the Complainant's BACCARAT and BACCARAT ROUGE 540 trademarks were well known at the time of the Domain Name registrations. The Complainant has owned the BACCARAT trademark and domain name rights in Hong Kong, China, the place of the Respondent's location, since 1991 and the BACCARAT ROUGE 540 trademark since 2022. Both of the Complainant's trademarks have enjoyed international fame for many years. The notoriety of the Complainant's trademarks raises *prima facie* presumption that the Respondent registered the Domain Names for the purpose of selling them to the Complainant or its competitors or to attract for commercial gain users to his websites. The Domain Names used to resolve to online stores offering for sale counterfeit versions of the Complainant's products. The websites under the Domain Names displayed the logotype of the Maison Francis Kurkdjian, photographs and text from the Complainant's official website. Currently, the Second Domain Name resolves to its own website purportedly devoted to art and travel. The Second Domain Name also sometimes redirects to the website under the First Domain Name.

B. Respondent

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

6. Discussion and Findings

Pursuant to paragraph 4(a) of the UDRP, to succeed in this proceeding, the Complainant must prove each of the following elements with respect to the Domain Names:

(i) the Domain Names are 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 Domain Names; and (iii) the Domain Names have been registered and is being used in bad faith.

A. Identical or Confusingly Similar

Pursuant to paragraph 4(a)(i) of the UDRP, the Complainant must prove that the Domain Names are identical or confusingly similar to the trademark or service mark in which the Complainant has rights.

The submitted evidence shows that the Complainant owns multiple trademark registrations for the BACCARAT and BACCARAT ROUGE 540 trademarks. Pursuant to section 1.2.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), this satisfies the threshold requirement of having trademark rights for purposes of standing to file a UDRP case.

"Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element."¹ It is well-established that the applicable gTLD should be disregarded under the confusing similarity test as a standard registration requirement.²

¹ Section 1.8, [WIPO Overview 3.0](#).

² Section 1.11, [WIPO Overview 3.0](#).

The First Domain Name consists of the Complainant's BACCARAT trademark, the term "perfume540" and the gTLD ".com". The Second Domain Name consists of the Complainant's BACCARAT and BACCARAT ROUGE 540 trademarks and the gTLD ".top." The gTLDs ".com" and ".top" are disregarded from the assessment of confusing similarity. Because the Complainant's BACCARAT trademark is recognizable within the First Domain Name, the addition of the term "perfume540" does not prevent a finding of confusing similarity. The Second Domain Name is identical or confusingly similar to the Complainant's BACCARAT and BACCARAT ROUGE 540 trademarks.

Therefore, the Domain Names are confusingly similar to the Complainant's BACCARAT and BACCARAT ROUGE 540 trademarks. The Complainant has satisfied the first element of the UDRP.

B. Rights or Legitimate Interests

To prove the second UDRP element, the Complainant must make out a *prima facie* case³ in respect of the lack of rights or legitimate interests of the Respondent.

Pursuant to paragraph 4(c) of the Policy, any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on the evidence, shall demonstrate a respondent's rights or legitimate interests in a domain name for the purposes of paragraph 4(a)(ii) of the Policy:

- (i) before any notice 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) has been commonly known by the domain name, even if the respondent has 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 finds that the Complainant satisfied its burden of proof for the following reasons. First, the evidence on file shows that the Respondent has not been commonly known by the Domain Names because the Respondent's name is reportedly Yu Yan Peng. Second, the Complainant contends, and the Respondent does not deny that the Complainant did not authorize the Respondent's use of the Complainant's trademarks in the Domain Names.

Third, the Respondent is not making a legitimate noncommercial or fair use of the Domain Names. Initially, the Respondent used each of the Domain Names to direct to an online store selling purported BACCARAT ROUGE 540 branded products for only a fraction of the price of such products, which likely indicates that the products are counterfeit. It is well-established that the use of a domain name for illegal activity does not confer rights or legitimate interests on its owner.⁴

Fourth, even if the BACCARAT ROUGE 540 branded products sold on the websites at the Domain Names are genuine, previous UDRP panels have recognized that resellers or distributors using domain names containing the complainant's trademark to undertake sales of the complainant's goods may be making a *bona fide* offering of goods and thus have a right or legitimate interest in such domain names in some situations. Outlined in the *Ok! Data* case⁵, the following cumulative requirements must be satisfied for the respondent to make a *bona fide* offering of goods and services:

³ Section 2.1, [WIPO Overview 3.0](#).

⁴ Section 2.13.1, [WIPO Overview 3.0](#).

⁵ *Ok! Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#).

- (i) the respondent must actually be offering the goods or services at issue;
- (ii) the respondent must use the site to sell only the trademarked goods or services;
- (iii) the site must accurately and prominently disclose the registrant's relationship with the trademark holder; and
- (iv) the respondent must not try to corner the market in domain names that reflect the trademark.

The Panel finds the Respondent has failed to meet the *Oki Data* test outlined above. The websites at the Domain Names displayed the Complainant's trademarks and offered for sale purported BACCARAT ROUGE 540 perfume. No specific information as to lack of affiliation between the Complainant and the Respondent was provided, let alone accurately and prominently disclaimers on the websites under the Domain Names. Instead, the following statement was displayed in the bottom part of the websites: "Copyright © 2023 BACCARAT ROUGE 540 Red Perfume Maison Francis Kurkdjian", all of which related to the Complainant, its trademarks and its perfume. Such a statement coupled with the absence of a disclaimer created an impression of an affiliation between the Complainant and the Respondent.

According to the Complaint, the website content under the Second Domain Name may change to a website dealing with art and travel organized under the name "Cereal" or it may redirect Internet users to the online store under the First Domain Name, depending on the location of Internet users.

Based on the above, the Panel finds that the Complainant has made a *prima facie* case in respect to the lack of rights or legitimate interests of the Respondent in the Domain Names. Once a complainant makes a *prima facie* case, the burden of production shifts to the respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the Domain Names.⁶ The Respondent has failed to do so.

Therefore, the Complainant has satisfied the second element of the UDRP.

C. Registered and Used in Bad Faith

Pursuant to paragraph 4(a)(iii) of the Policy, the Complainant must prove that the Domain Names were registered and are being used in bad faith.

The UDRP establishes that, for purposes of paragraph 4(a)(iii) of the Policy, "bad faith" registration and use of a domain name can be established by a showing of circumstances indicating that the respondent is using the domain name to intentionally attempt to attract, for commercial gain, Internet users to the respondent's website or other online location, by creating a likelihood of confusion with the complainant's mark as to 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. See Policy, paragraph 4(b)(iv).

Prior UDRP panels have found "the following types of evidence to support a finding that a respondent has registered a domain name to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the complainant's mark: [...] (ii) seeking to cause confusion (including by technical means beyond the domain name itself) for the respondent's commercial benefit, even if unsuccessful, (iii) the lack of a respondent's own rights to or legitimate interests in a domain name, [...] (vi) absence of any conceivable good faith use."⁷

Here, the websites at the Domain Names were designed to look like websites of an official or authorized reseller of the Complainant's products. The Respondent's websites prominently displayed the Complainant's BACCARAT and BACCARAT ROUGE 540 trademarks, photographs and text copied from the Complainant's official website. Thus, it is likely that the Respondent registered the Domain Names with full knowledge of the Complainant and its trademark rights. Such registration is in bad faith.

⁶ Section 2.1, [WIPO Overview 3.0](#).

⁷ Section 3.1.4, [WIPO Overview 3.0](#).

Both websites at the Domain Names were likely used to offer for sale the counterfeits of the Complainant's goods. The websites that displayed the Complainant's copyrighted images and texts contained no information about its real owner. While currently the Second Domain Name points to the website devoted to art and travel, it also redirects users to the Second Domain Name that points to the store offering likely counterfeit products.

Therefore, the Respondent is using the Domain Names to intentionally attempt to attract, for commercial gain, Internet users to the Respondent's websites or other online locations, by creating a likelihood of confusion with the Complainant's marks as to source, sponsorship, affiliation or endorsement of the Respondent's websites or locations, or of a product or service on the Respondent's websites. Such use is in bad faith.

Finally, the Panel notes additional facts that support a finding of bad faith, such as the Respondent's failure to submit a response; registration of the Domain Names incorporating the well-known BACCARAT trademark. Prior UDRP panels have found that "the mere registration of a domain name that is identical or confusingly similar [...] to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith".⁸

Therefore, the Complainant has satisfied the third element of the UDRP.

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, <baccaratperfume540.com>, and <baccaratrouge540.top>, be transferred to the Complainant.

/Olga Zalomiy/

Olga Zalomiy

Sole Panelist

Date: November 7, 2023

⁸ Section 3.1.4, [WIPO Overview 3.0](#).