Decision for dispute CAC-UDRP-102976

Case number	CAC-UDRP-102976
Time of filing	2020-03-20 09:34:29
Domain names	balenciaga.fun

Case administrator

Organization	Iveta Špiclová (Czech Arbitration Court) (Case admin)

Complainant

Organization	BALENCIAGA

Complainant representative

Organization	INSIDERS

Respondent

Name	Andrey Ivanov

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings which are pending or decided and which relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

In this proceeding, the Complainant relies on the following word trademarks “BALENCIAGA”:

- the International trademark 397506, registered since April 13, 1973, protected in a number of countries including Russia; and

- the EU trademark registration No. 11865805, registered since September 19, 2013.

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:

THE DISPUTED DOMAIN NAME IS IDENTICAL OR CONFUSINGLY SIMILAR TO A TRADEMARK OR SERVICE MARK IN WHICH THE COMPLAINANT HAS RIGHTS

The Complainant states that the word BALENCIAGA is registered by the Complainant in several different classes of goods

and refers to the International trademark registration No. 397506 and the European Union trademark registration number No. 11865805.

The disputed domain name contains the BALENCIAGA mark in its entirety so that it is identical to the registered BALENCIAGA word marks, the extension .fun being the only difference between the official domain name <balenciaga.com> and the disputed domain name.

THE RESPONDENT HAS NO RIGHTS OR LEGITIMATE INTERESTS IN RESPECT OF THE DISPUTED DOMAIN NAME

The Complainant asserts that the Respondent is not affiliated with the Complainant in any way and was not authorized by the Complainant to use the registered BALENCIAGA trademark.

The Respondent has no legitimate interest in the disputed domain name, since the whois records show no business name that may justify an interest in the disputed domain name. The Respondent is also not an authorized BALENCIAGA retailer, nor commonly known by the disputed domain name and is not known via WHOIS records.

THE DISPUTED DOMAIN NAME WAS REGISTERED AND BEING USED IN BAD FAITH

The Complainant claims that it is a well-known company existing since June 24, 1937, present in over 90 countries all over the world, where it promotes and offers for sale its products under the trademark BALENCIAGA in both physical boutiques and on the website www.balenciaga.com.

The Complainant states that the Respondent registered the disputed domain name in bad faith because the sole purpose of the registration of the disputed domain name was to offer it to the highest bidder afterwards, as the description on the website suggests. The Respondent was aware of the BALENCIAGA brand and the disputed domain name in question is being used in bad faith. The Complainant adds that the website displays BALENCIAGA logo as its favicon, the Respondent had therefore intended to exploit BALENCIAGA’s popularity and reputation for his own gain.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant has, to the satisfaction of the Panel, shown the Respondent to have no rights or legitimate interests in respect of the disputed domain name (within the meaning of paragraph 4(a)(ii) of the Policy).

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name has been registered and is being used in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy).

PROCEDURAL FACTORS

The Panel is satisfied that all procedural requirements under UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

The language of the Registration Agreement is Russian and the Complainant requested that this proceeding should be

conducted in English.

The Complainant has provided information that the website under the disputed domain name had an English language version on March 10, 2020.

The Panel agrees with the Complainant, taking into account the circumstances of the case, Panel's obligation under paragraph 10(a) of the UDRP Rules to ensure that the administrative proceeding takes place with due expedition and the fact that the Respondent has been given a fair chance to object but has not done so and considering previous UDRP decisions (e.g. Instagram, LLC v. lu xixi, PRIVATE, WIPO Case No. D2015-1168 and Sanofi and AVENTISUB II Inc. v. Nikolay Fedotov, WIPO Case No. D2013-2121), and determines in accordance with paragraph 11(a) of the UDRP Rules that the language of the proceeding shall be English.

PRINCIPAL REASONS FOR THE DECISION

A. Identical or confusingly similar with Complainant's trademark

The Complainant owns "BALENCIAGA" trademark registrations effective in various jurisdictions.

As confirmed by WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0"), see paragraph 1.2.1: "Where the complainant holds a nationally or regionally registered trademark or service mark, this prima facie satisfies the threshold requirement of having trademark rights for purposes of standing to file a UDRP case".

The disputed domain name fully incorporates the Complainant's trademark without any alterations or additions and is identical with the "BALENCIAGA" trademark.

The .fun domain zone shall be disregarded under the identity or the confusing similarity test as it does not add anything to the distinctiveness of the disputed domain name.

The Panel finds that the first requirement of the Policy has been satisfied.

B. Rights or Legitimate Interests

The general rule is the following:

(i) a complainant is required to make out a prima facie case that a respondent lacks rights or legitimate interests in a domain name; and

(ii) once such prima facie case is made, the burden shifts to the respondent who has to demonstrate his rights or legitimate interests in respect of the domain name under paragraph 4 (c) of the Policy.

If the respondent fails to do so, the second element of the Policy is satisfied (see Julian Barnes v. Old Barn Studios, WIPO Case No. D2001-0121; Belupo d.d. v. WACHEM d.o.o., WIPO Case No. D2004-0110; Croatia Airlines d.d. v. Modern Empire Internet Ltd., WIPO Case No. D2003-0455 and CAC Case No. 101284).
The Respondent did not respond.

While failure to respond does not per se demonstrate that the Respondent does not have rights or legitimate interests, it allows all reasonable inferences of fact in the allegations of the complaint to be deemed true (see paragraph 14(b) of the Rules and FORUM Case No. FA0006000095095, Vertical Solutions Management, Inc. v. webnet-marketing, inc.).

The Complainant has made a prima facie case in respect of Respondent's lack of rights or legitimate interests, in particular absence of any affiliation or any authorization from the Complainant to use its trademark in the disputed domain name, no business connection that may justify an interest in the disputed domain name and the fact that the Respondent is not known by the disputed domain name. The Respondent is an individual from Russia who does not have any apparent connection

with the Complainant and there is no evidence of any rights or legitimate interests of the Respondent available in this case.

Therefore the Panel finds that the Complainant has satisfied the second element of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy lists non-exhaustive circumstances indicating registration and use in bad faith.
These circumstances are non-exhaustive and other factors can also be considered in deciding whether the disputed domain name is registered and used in bad faith.

The Complainant claims that the disputed domain name was offered for sale to the highest bidder and has provided evidence to support its claim (a screenshot of the English language version of the web site). In such circumstances Respondent's conduct may fall under paragraph 4(b) (i) of the Policy.

The disputed domain name on the date of the decision is offered sale and brokerage services are also offered. The disputed domain name was registered on January 6, 2020.

UDRP panels have found that the practice as such of registering a domain name for subsequent resale (including for a profit) would not by itself support a claim that the respondent registered the domain name in bad faith with the primary purpose of selling it to a trademark owner (or its competitor) (see paragraph 3.1.1 of WIPO Overview 3.0).

Circumstances indicating that a domain name was registered for the bad-faith purpose can be highly fact-specific; the nature of the domain name (e.g., whether a typo of a famous mark, a domain name wholly incorporating the relevant mark plus a geographic term or one related to the complainant's area of commercial activity, or a pure dictionary term) and the distinctiveness of trademark at issue, among other factors, are relevant to this inquiry.

The Panel finds that the following circumstances of the present case indicate bad faith of the Respondent:

1) The nature of the disputed domain name that is identical with the Complainant's distinctive trademark and

2) The distinctiveness of the trademark at issue – the "BALENCIAGA" trademark is highly distinctive and the Complainant's BALENCIAGA brand has a long history and is popular in many countries including Russia. The Complainant has been a party to numerous UDRP proceedings and its "BALENCIAGA" trademark has been frequently targeted by bad faith registrants (see e.g. Balenciaga v. Zhifeng Rao, WIPO Case No. D2013-0575; Balenciaga v. Rudy Gay, WIPO Case No. D2012-2299; Balenciaga v. Xin Tong, WIPO Case No. D2012-2298 – "The Panel accepts that the trademark BALENCIAGA is well-known"; Balenciaga v. Zhihu Fan, WIPO Case No. D2010-2083 – "Given the fame of the Complainant's marks…" and Balenciaga v. Domain Admin, PrivacyProtect.org / Registrant ID: DI_11510492 Wan Hao, Danshi, WIPO Case No. D2010-2082 – "the long standing renown of the BALENCIAGA mark and brand…").

Taking into account all of the above and in the absence of any explanations of the Respondent, all the circumstances and evidence indicate that the Respondent has targeted the Complainant and registered the disputed domain name to take advantage of Complainant's trademark, its reputation and fame.

The Respondent in these circumstances cannot credibly claim to have been unaware of the Complainant's mark.

Based on the above, the Panel holds that the third requirement of the Policy has been satisfied.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

AND THE DISPUTED DOMAIN NAME(S) IS (ARE) TO BE

1. **BALENCIAGA.FUN**: Transferred

PANELLISTS

Name	**Igor Motsnyi**

DATE OF PANEL DECISION 2020-05-01

Publish the Decision