Decision for dispute CAC-UDRP-102977

Case number	CAC-UDRP-102977
Time of filing	2020-03-25 17:00:48
Domain names	balenciaga-italia.com

Case administrator

Name	Šárka Glasslová (Case admin)

Complainant

Organization	BALENCIAGA

Complainant representative

Organization	INSIDERS

Respondent

Name	zzt yuxiang long

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other proceedings related to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of several trademark registrations, such as :

- the European Union trademark No. 011865805 – BALENCIAGA, registered on May 16, 2013 in classes 9, 14, 18, 25 and 35 ;

- the International trademark No. 397506 – BALENCIAGA, registered on April 13, 1973 in classes 3, 5, 14, 16, 18, 20, 21, 24, 25, 26 and 34 ;

- the U.S. trademark No. 1018311 – BALENCIAGA, registered on August 12, 1975 in class 25.

The disputed domain name is:
- <balenciaga-italia.com> created on December 7, 2018.

The Complainant contends that the disputed domain name is used to resolve to a website reproducing the Complainant's trademark and photos of BALENCIAGA branded products.

FACTUAL BACKGROUND

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

BALENCIAGA 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 BALENCIAGA trademark in both its shops and on the website www.balenciaga.com.

The disputed domain name resolves to a website reproducing the Complainant's trademark and photos of its products.

The Complainant requests the transfer of the disputed domain name.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

PARTIES' CONTENTIONS:

COMPLAINANT:

On the confusing similarity.

The domain name contains in its entirety the word BALENCIAGA, identical to the registered BALENCIAGA word marks.
In the domain name in question, BALENCIAGA is followed by "italia" which allows to determine the country targeted by the domain name in question.

This simple addition does not allow a clear distinction between the registered trademark and the domain name in question, and creates a strong likelihood of confusion among the public.

On the absence of rights or legitimate interest

The Complainant submits that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

It asserts that the Respondent is not affiliated with nor authorized by the Complainant to use its registered BALENCIAGA trademarks. It is not an authorized BALENCIAGA retailer.

The Complainant also claims that the Respondent has no legitimate interest in the disputed domain name, since it is not commonly known by the disputed domain name.

On the registration and use in bad faith.

The Complainant submits that the Respondent has registered and has been using the disputed domain name in bad faith.

BALENCIAGA 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 shops and on the website www.balenciaga.com.

The Respondent knows its trademark and its products. The Complainant asserts that the website to which the disputed

domain name resolves, was designed to create an appearance of connection with the Complainant's business by displaying its products and logo, on the website and as a favicon.

The Respondent has intentionally attracted potential Complainant's clients by creating a likelihood of confusion with the BALENCIAGA trademark.

Therefore, the Respondent has put itself in a perfect position to exploit the Complainant's trademarks popularity and renown, for its own gain.

RIGHTS

Paragraph 4(a)(i) of the Policy requires the Complainant to show that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

The Complainant has submitted evidence of its prior registered BALENCIAGA trademarks which are protected in several countries, worldwide.

The disputed domain name entirely incorporates the Complainant's BALENCIAGA trademark.

The addition of the geographical term "Italia" to the BALENCIAGA trademark aims at designating one of the countries where the BALENCIAGA trademark is protected, and where the Complainant operates and has shops.

Therefore, the addition of the geographical term "Italia" does not prevent a finding of confusing similarity between the disputed domain name and the Complainant's BALENCIAGA trademarks.

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

Pursuant to paragraph 4(c) of the Policy, the Respondent may establish rights or legitimate interests in the disputed domain name by demonstrating any of the following:
(i) before any notice to it 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 has been commonly known by the domain name, even if it 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 Respondent did not respond to the Complaint. Consequently, it did not provide any evidence or allege any circumstance to establish that it has rights or legitimate interests in the disputed domain name.

The Respondent is not related in any way with the Complainant, it is not an official BALENCIAGA retailer and there is no indication that the Respondent is commonly known by the term "BALENCIAGA", or that the Respondent is using the disputed domain name in connection with a bona fide offering of goods or services.

The Respondent used the disputed domain name to resolve to a website that incorporates the Complainant's trademark, logo and photos of BALENCIAGA branded products, without its authorization. Such use does not constitute a bona fide offering of goods and services or a legitimate non-commercial fair use.

In the circumstances of this case, the Panel finds that the Complainant has established a prima facie case of the

Respondent's lack of rights or legitimate interests in relation to the disputed domain names, which the Respondent has not rebutted.

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

Bad faith
Paragraph 4(b) of the Policy sets out examples of circumstances that will be considered by a Panel to be evidence of bad faith registration and use of a domain name. It provides that:
"For the purposes of paragraph 4(a)(iii), the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:
(i) circumstances indicating that the Respondent has registered or the respondent has 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 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 your 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."

Given the notoriety of the Complainant's in fashion industry worldwide and its presence on the internet through its own website www.balenciaga.com and the use of the disputed domain name, the Panel finds that the Respondent was well aware of the Complainant's rights in the well-known BALENCIAGA trademarks when it registered the disputed domain name. It constitutes bad faith registration.

The disputed domain name is used to attract and divert consumers to a website looking like an official BALENCIAGA website and offering BALENCIAGA branded products.

The disputed domain name was registered and used in bad faith with the Complainant in mind, to disrupt the Complainant's activities, by creating a likelihood of confusion with the Complainant's BALENCIAGA trademark.

The Panel finds that, according to Par. 4(b) (iv) of the Policy "by using the domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to your 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 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.

PRINCIPAL REASONS FOR THE DECISION

The disputed domain name incorporates the well-known BALENCIAGA trademark with the addition of the geographic term "Italia" to resolve to a website offering BALENCIAGA branded products, reproducing the logo and even using the BALENCIAGA trademark and logo as a favicon.

Therefore, the disputed domain names is confusingly similar to the BALENCIAGA trademark.

Respondent did not rebut the Complainant's submissions.

The Respondent used the disputed domain name to resolve to a website that incorporates the Complainant's trademark, logo and photos of BALENCIAGA branded products, without its authorization. Such use does not constitute a bona fide offering of goods and services or a legitimate non-commercial fair use. It is not affiliated nor authorized to use the BALECIAGA trademark.

Given the notoriety of the Complainant's in fashion industry worldwide and its presence on the internet through its own website www.balenciaga.com and the use of the disputed domain name, the Panel finds that the Respondent was well aware of the Complainant's rights in the well-known BALENCIAGA trademarks when it registered the disputed domain name. It constitutes bad faith registration.

The disputed domain name is used to attract and divert consumers to a website looking like an official BALENCIAGA website and offering BALENCIAGA branded products.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **BALENCIAGA-ITALIA.COM**: Transferred

PANELLISTS

Name	**Marie-Emmanuelle Haas, Avocat**

DATE OF PANEL DECISION 2020-04-24

Publish the Decision