

Decision for dispute CAC-UDRP-104890

Case number CAC-UDRP-104890

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Domain names balenciaga-taiwan.com

Case administrator

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

Complainant

Organization Balenciaga

Complainant representative

Organization INSIDERS

Respondent

Name zhang fang

OTHER LEGAL PROCEEDINGS

The Panel is unaware of any other pending or decided legal proceedings in respect of the domain name <balenciaga-taiwan.com> ("the disputed domain name").

IDENTIFICATION OF RIGHTS

The Complainant relies upon the following registered trade marks, amongst others:

- (i) International trade mark registration no. 397506, registered on 13 April 1973, for the word mark BALENCIAGA, in classes 3, 5, 14, 16, 18, 20, 21, 24, 25, 26 and 34 of the Nice Classification;
- (ii) Taiwanese trade mark registration no. 139143, registered on 1 September 1980, for the word mark BALENCIAGA, in class 21 of the Nice Classification;
- (iii) Taiwanese trade mark registration no. 138976, registered on 1 September 1980, for the word mark BALENCIAGA, in class 25 of the Nice Classification;
- (iv) Taiwanese trade mark registration no. 1226055, registered on 1 September 2006, for the word mark BALENCIAGA, in class 18 of the Nice Classification; and
- (v) Taiwanese trade mark registration no. 139185, registered on 1 September 1980, for the word mark BALENCIAGA, in class 14 of the Nice Classification.

(hereinafter, collectively or individually, "the Complainant's trade mark"; "the Complainant's trade mark BALENCIAGA"; or "the trade mark BALENCIAGA" interchangeably).

At the time of writing, the disputed domain name resolves to an “Access denied” error page (“the Respondent’s website”).

FACTUAL BACKGROUND

The Complainant’s contentions can be summarised as follows:

A. Background history

The Complainant was established in 1917 and has become a worldwide renowned luxury brand selling apparel and accessories under the well-known trade mark BALENCIAGA. The Complainant bears the name of its founder and has no dictionary meaning.

The Complainant promotes and offers for sale its products in physical boutiques and online through the website <balenciaga.com>.

By way of relief, the Complainant seeks to obtain the ownership of the disputed domain name <balenciaga-taiwan.com> on the grounds advanced in section B below.

B. Legal grounds

I. The disputed domain name is confusingly similar to a trade mark in which the Complainant has rights

The Complainant avers that the disputed domain name is confusingly similar to the Complainant’s trade mark BALENCIAGA, in so far as the disputed domain name consists of two terms, namely “Balenciaga”, which mimics the Complainant’s trade mark BALENCIAGA, and “Taiwan”, which merely identifies the name of a country.

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

The Complainant asserts that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent is not affiliated with the Complainant in any way. Neither licence nor authorisation has been given to the Respondent to make any use of the Complainant’s trade mark BALENCIAGA. In addition, the Respondent is not known by the disputed domain name, and the Respondent’s name does not resemble the disputed domain name in any manner.

III. The Respondent registered and is using the disputed domain name in bad faith

The Complainant states that the Respondent knows of the BALENCIAGA trade mark and its products. Furthermore, the Complainant claims that the Respondent’s website was designed to create an appearance of connection with the Complainant, such that the Respondent would have been intentionally using the disputed domain name to attract, for commercial gain, Internet users to the Respondent’s website by creating a likelihood of confusion with the Complainant as to the source, sponsorship, affiliation, or endorsement of that website (paragraph 4(b)(iv) of the UDRP Policy).

The Complainant therefore concludes that the Respondent has registered and is using the disputed domain name in bad faith.

PARTIES CONTENTIONS

The Respondent has not submitted a Response to the Complaint within the time prescribed under the UDRP Rules, or at all.

RIGHTS

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

A. General

Pursuant to Rule 15 of the UDRP Rules, the Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the UDRP Policy, the UDRP Rules, and any rules and principles of law that the Panel deems applicable.

Paragraph 4(a) of the UDRP Policy sets out the following threshold for the Complainant to meet for the granting of the relief sought (transfer of the disputed domain name):

- i. The disputed domain name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights;
- 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.

It is incumbent on the Complainant the onus of meeting the above threshold. The evidentiary standard under the UDRP proceedings is the balance of probabilities and, on that basis, the Panel will now proceed to determine each of the three UDRP Policy grounds in turn.

B. Identical or Confusingly Similar

The Panel is satisfied that the Complainant owns trade mark rights in “BALENCIAGA” since 1973.

The disputed domain name was registered on 16 May 2022, and it is composed of the terms “Balenciaga” and “Taiwan”.

The Complainant’s trade mark BALENCIAGA is wholly incorporated into the disputed domain name. The adjacent word “Taiwan” in the disputed domain name string merely identifies the country which carries this name. In fact, in the Panel’s view, the geographic term “Taiwan” enhances the visual and phonetic confusion with the BALENCIAGA trade mark, to the extent that it may well trigger an inference of association with the Complainant.

Accordingly, the Panel finds that the disputed domain name is confusingly similar to the Complainant’s trade mark, the result of which being that the Complainant has succeeded under paragraph 4(a)(i) of the UDRP Policy.

C. Rights or Legitimate Interests

Having reviewed the case file, the Panel notes that the Complainant claims not to have authorised the Respondent to reproduce the Complainant’s logo on the Respondent’s website nor to register the disputed domain name, let alone to commercialise any of the Complainant’s products.

The Panel further notes that the Respondent does not carry out any activity for, or has any business or relationship of any nature with, the Complainant. There is no contractual arrangement between the parties to that effect, nor has the Complainant otherwise authorised the Respondent to make any use of the Complainant’s trade mark. Moreover, there is no evidence on the record to suggest that the Respondent (as an individual, business, or other organisation) has been commonly known by the disputed domain name.

Moreover, there is no evidence on the record to suggest that the Respondent is affiliated with, or endorsed by, the Complainant (and, in any event, any affiliation or endorsement has been denied by the Complainant). On the contrary, the Respondent has submitted no evidence to refute any of the Complainant’s assertions.

In view of the above, the Panel finds that the Complainant has succeeded under paragraph 4(a)(ii) of the UDRP Policy.

D. Registered and Used in Bad Faith

D.1 Registration in bad faith

The following facts are compelling evidence to this Panel that the disputed domain name was registered in bad faith:

- (i) The Complainant’s trade mark has been registered since at least 1973, including in Taiwan, which is in the vicinity of the Respondent’s purported address;
- (ii) The Complainant operates its activities through the domain name <balenciaga.com>, which was registered in 1999;

(iii) The disputed domain name <balenciaga-taiwan.com> was registered in 2022;

(iv) The lack of any credible evidence-backed rationale for the Respondent's choice of the disputed domain name; and

(v) UDRP panels have consistently found that the mere registration of a domain name that is identical or confusingly similar to a famous or widely-known trade mark can by itself create a presumption of bad faith (paragraph 3.1.4 of the WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Jurisprudential Overview 3.0")), and the Panel accepts that the Complainant's trade mark is widely known in its field of business.

D.2 Use in bad faith

The Complainant alleges that the Respondent has engaged in the conduct described in paragraph 4(b)(iv) of the UDRP Policy, which provides as follows:

"(iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its 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."

As mentioned in the above section "Identification Of Rights", the Respondent's website displays an "Access denied" error landing page. Nonetheless, the Complainant has provided evidence of the use of the trade mark BALENCIAGA on the Respondent's website.

In order to further determine this Policy ground, the Panel has taken stock of paragraph 3.1.4 of the WIPO Jurisprudential Overview 3.0, according to which UDRP panels have recognised various types of evidence to support a finding under the above circumstances. In the case at hand, the Panel considers the most conducive factors to a ruling in favour of the Complainant under this Policy ground to be (i) the likelihood of confusion between the disputed domain name and the Complainant's trade mark; (ii) the lack of the Respondent's own rights to, or legitimate interests in, the disputed domain name; (iii) the failure of the Respondent to present a credible-backed rationale for registering the disputed domain name; and (iv) the implausibility of any good faith use to which the disputed domain name may be put.

The Panel therefore finds that the Complainant has succeeded under paragraph 4(a)(iii) of the UDRP Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **balenciaga-taiwan.com**: Transferred

PANELLISTS

Name	Gustavo Moser
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DATE OF PANEL DECISION 2022-11-03

Publish the Decision
