

Decision for dispute CAC-UDRP-105114

Case number CAC-UDRP-105114

Time of filing 2023-01-04 09:37:21

Domain names baalenciaga.com

Case administrator

Organization Denisa Bilík (CAC) (Case admin)

Complainant

Organization BALENCIAGA

Complainant representative

Organization INSIDERS

Respondent

Name SANTOS LOPEZ

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

The Complainant owns the following trademark registrations:

- International trademark 397506 BALENCIAGA, extended to numerous countries, registered on 13 April 1973 for products in classes 03, 05, 14, 16, 18, 20, 21, 24, 25, 26 and 34;
- European Union trademark registration 11865805 BALENCIAGA, registered on 19 September 2013 for products and services in classes 9, 14, 18, 25 and 35; and
- US trademark registration 101831113 BALENCIAGA, registered on 28 February 1973 for products in class 25.

FACTUAL BACKGROUND

Balenciaga is a luxury fashion company.

The disputed domain name hosts a website with a very succinct content with the title "LAMBS OF GOD".

PARTIES CONTENTIONS

The Complainant submits that the requirements of the Policy have been met and that the disputed domain name should be transferred to it.

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.

PRINCIPAL REASONS FOR THE DECISION

RIGHTS

The disputed domain name fully incorporates the Complainant's earlier BALENCIAGA trademark, with a double AA in the first syllable.

In view of the coincidences, it can only be concluded that the disputed domain name is clearly confusingly similar to the Complainant's trademark.

Precisely in relation to the domain names consisting of a misspelling of a complainant's trademark (i.e. typosquatting), section 1.9 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0") states:

"A domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element".

The Panel therefore finds that the disputed domain name is confusingly similar to the Complainant's trademark as provided under paragraph 4(a)(i) of the Policy.

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant has established a prima facie case that the Respondent has no rights or legitimate interests in respect of the disputed domain name. Having done so, the burden of production shifts to the Respondent to come forward with appropriate evidence demonstrating rights or legitimate interests (see WIPO Overview 3.0, section 2.1). Given that the Respondent has defaulted, it has not met that burden.

Pursuant to paragraph 4(c) of the Policy, a respondent may establish rights to or legitimate interests in a 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 Complainant has provided evidence that the Respondent's website had an appearance similar to that of the Complainant. The very succinct content of the website cannot be considered as a bona fide offering of services or fair use.

BAD FAITH

Panels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos) to a famous or widely known trademark by an unaffiliated entity can by itself create a presumption of bad faith (see WIPO Overview 3.0, section 3.1.4).

The use of a privacy service also seems to confirm the bad faith of the Respondent. While there may be circumstances that make the use of a privacy service legitimate, several decisions have considered it a circumstance that contributes to consider bad faith proven when it is combined with other types of circumstances. In *GVC Holdings plc / ElectraWorks Limited v. Registration Private, Domains By Proxy, LLC / Adnan Atakan Alta*, WIPO Case No. D2016-2563, the panel found that:

"Although privacy services might be legitimate in certain circumstances, it is for the Panel difficult to see in the present case why the Respondent should need to protect its identity except to make it difficult for the Complainant to protect its trademark rights. The Panel rather believes that the choice of the disputed domain names (which fully incorporate the Complainant's trademark), the content as well as the design of the Respondent's corresponding websites rather indicate that the Respondent deliberately opted for a privacy shield in order to prevent an efficient enforcement of legitimate trademark rights by the Complainant."

Thus, the Panel finds that the disputed domain name was registered and is being used in bad faith by the Respondent in accordance with paragraph 4(b) of the Policy. In the light of the above, the Panel finds that the Complainant has established registration and use of the disputed domain name in bad faith and concludes that paragraph 4(a)(iii) of the Policy is satisfied.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **baalenciaga.com**: Transferred

PANELLISTS

Name	José Ignacio San Martín
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DATE OF PANEL DECISION 2023-02-03

Publish the Decision
