Decision for dispute CAC-UDRP-106518

Case number	CAC-UDRP-106518
Time of filing	2024-05-17 09:38:20
Domain names	baracuta-italia.com, baracutaitalia.com

Case administrator

Name	Olga Slanařová (Case admin)

Complainant

Organization	G & G srl

Complainant representative

Name	Avvocato Pierfrancesco Carmine Fasano

Respondent

Name	Bogdan Tighineanu

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 different registered BARACUTA trademark, including European Union device mark with registration number 018210143 of March 12, 2020 for goods in classes 18 and 25; and European Union trademark with registration number 018666656 of March 3, 2022 for goods and services in classes 9, 25, 35 and 41.

The trademarks are hereinafter referred to as the "BARACUTA trademark".

FACTUAL BACKGROUND

The Complainant is an Italian fashion company which acquired the "Baracuta" brand in 2012. This brand was started in Manchester, England.

The Respondent registered the disputed domain name <baracutaitalia.com> on October 8, 2023 and the disputed domain name <baracuta-italia.com> on December 8, 2023. The disputed domain names are currently inactive, but used to resolve to a website which mimicked the Complainant's original website at "www.baracuta.com", while the Respondent's website was in Italian and offered the Complainant's products at heavily discounted prices. The Complainant contends that the disputed domain names became inactive shorly before the submission of the Complaint.

PARTIES CONTENTIONS

The Complainant contends 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 names are 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 names (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 names have been registered and are 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

1. The Panel finds that the disputed domain names are confusingly similar to the BARACUTA trademark, as the Respondent has taken this trademark in its entirety and added "Italia", and “Italia” with a hyphen, to the BARACUTA trademark, which does not distinguish the disputed domain names from the Complainant’s trademarks.
2. The Panel takes note of the various undisputed allegations of the Complaint that no authorization has been given by the Complainant to the Respondent to use or register the disputed domain names, and that the Respondent has not been commonly known by the disputed domain names. The Complainant also showed that the disputed domain names have been used to mimic the Complainant’s website, with the implied intent for commercial gain to misleadingly divert consumers or to tarnish the BARACUTA trademark. Because the Respondent did not provide any explanation for its conduct, the Panel infers that the Respondent has no rights or legitimate interests in the disputed domain name (cf. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“WIPO Jurisprudential Overview 3.0”), par. 2.13.1).
3. The BARACUTA trademark has been used well before the registration of the disputed domain names, and Panel is satisfied that the Respondent copied the Complainant’s BARACUTA device mark and images of its products on the website to which the disputed domain names resolved. Therefore, in the Panel's opinion, the Respondent must have had the BARACUTA trademark in mind at the time of registration of the disputed domain names. In the Panel's opinion, it is sufficiently clear that the use of the disputed domain names to resolve to a website which seemingly imitates the Complainant’s original website and allegdly sold fake products for heaviliy discounted prices compared to those of the Complainant's original products, without any plausible explanation from the Respondent, constitutes use of the disputed domain names in bad faith. The fact that the disputed domain names are currently inactive do not makes this finding differently (cf. WIPO Jurisprudential Overview 3.0, par. 3.3).

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **baracuta-italia.com**: Transferred
2. **baracutaitalia.com**: Transferred

PANELLISTS

Name	**Alfred Meijboom**

DATE OF PANEL DECISION 2024-06-16

Publish the Decision