

ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE
(Beijing Office)
ADMINISTRATIVE PANEL DECISION
Case No. CN- 0900314

Complainant: BALENCIAGA

Respondent: hao wang

Domain Name: 巴黎世家.com

Registrar: WEB COMMERCE COMMUNICATIONS LIMITED DBA WEBNIC.CC

1. Procedural History

A Complaint, made by the complainant pursuant to the Uniform Domain Name Dispute Resolution Policy ("Policy") implemented by the Internet Corporation for Assigned Names and Numbers ("ICANN") on 24 October 1999, and under ICANN Rules for UDRP ("Rules")and Asia Domain Name Dispute Resolution Center ("ADNDRC") Supplemental Rules for UDRP, was received by ADNDRC Beijing Office on 13 November 2009. On 19 November 2009, the ADNDRC Beijing Office requested the Registrar by email for the registration information at their WHOIS database in respect of the domain name in dispute, and the registration information was confirmed by the Registrar on the same day.

On 17 December 2009, ADNDRC Beijing Office transmitted the Complaint to the Respondent by email.

On 6 January 2010, ADNDRC Beijing Office notified the Complainant by email that the Complaint was reviewed and forwarded to the Respondent and confirmed with the parties, ICANN and Registrar by email that administrative proceeding of the captioned case was formally commenced. ADNDRC Beijing Office also requested the Respondent to file a Response within the 20 days of the commencement of the proceeding.

On 1 February 2010, the ADNDRC Beijing Office notified the Complaint and the Respondent by email stating that, as Respondent did not file a response within the required time, the ADNDRC Beijing Office would appoint the panelist to make the Decision by default.

On 5 February 2010, ADNDRC Beijing Office gave notice to the potential candidates of Panelist Mr. Gao Lulin, Ms. Xue Hong and Mr. Li Yong, requesting them to confirm whether they would accept the appointment as the Panelist for this case, and if so, whether they could maintain impartiality and independence between the parties in this case.

Having received a declaration of impartiality and independence and a statement of acceptance from Mr. Gao Lulin, Ms. Xue Hong and Mr. Li Yong on 8 February 2010, ADNDRC Beijing Office informed by email the parties that Mr. Gao Lulin would be the presiding panelist, Ms. Xue Hong and Mr. Li Yong would be co-panelists.

On 9 February 2010, the Panel received the file from the ADNDRC Beijing Office and should render the Decision within 14 days, i.e., on or before 23 February 2010.

On 23 February 2010, the ADNDRC Beijing Office informed by email the parties that the Panel requested the Complainant to supplement the evidence. Upon the request of the Panel, the ADNDRC Beijing Office decides to extend the time period of rendering the decision to March 22, 2010.

2. Factual Background

For the Complainant

The Complainant of this case is BALENCIAGA. Its address is at 15 RUE CASSETTE, 75006 PARIS, FRANCE. Its authorized representative is Chen Yun.

For the Respondent

The Respondent is hao wang with address at CHONGQING JIYI METAL FACTORY Jiugonmiao of dadukou district, Chongqing, China. The Respondent registered the domain name in dispute on February 23, 2006 through the Registrar. The domain name in dispute is 巴黎世家.com. The Registrar of the domain name in dispute is WEB COMMERCE COMMUNICATIONS LIMITED DBA WEBNIC.CC. The Respondent made no response in the fixed period of time, and no agent or representative empowered thereof in this case.

3. Parties' Contentions

The Complainant

1) Introduction to the Complainant BALENCIAGA

The complainant, BALENCIAGA, was established and exists in accordance with the laws of France. BALENCIAGA is the complainant's name and the first name of the chief designer CRISTOBAL BALENCIAGA, who is one of the greatest designers in the 21st century. CRISTOBAL

BALENCIAGA was born in Spain and was still very young when it became apparent that he was destined for couture. His first fashion house was opened under the name BALENCIAGA at the age of 16. From the start, a style was created which lived up to its expectations for thirty glorious years. Year after year, the one they call “the couturier of couturiers” created astonishment with his collections and the master of his cut.

According to the Extract of Registration for Commerce and Company issued by the *Greffe du Tribunal de Commerce de Paris* (Office of Tribunal of Commerce in Paris), the complainant was registered on July 7, 1937 before the Office of Tribunal of Commerce in Paris. Besides the headquarter in Paris, the complainant has also a flagship store in New York. All through the years, BALENCIAGA has become a fashion name which everyone aspires.

The complainant has also franchised stores in the cities of China, covering Beijing, Shanghai, Wuhan, Wuxi, Xuzhou, Inner Mengolia, Chengdu, Hong Kong, Macau, etc.. Such a western brand BALENCIAGA of the complainant is not maladjusted in the market of China but wins large recognition among the Chinese customers, who even cherish the brand BALENCIAGA and call it with a pretty Chinese name “巴黎世家”.

2) The Complainant is the Creator and Owner of the Marks “BALENCIAGA”, “”, “” and “巴黎世家”

Even since its establishment, the complainant uses its trade name “BALENCIAGA” as a trademark. Besides, the complainant’s coined marks “” and “” derived from the initial letter of “BALENCIAGA” are so deliberate and impressive that enhances the acceptability and fame of the brand “BALENCIAGA”. The complainant has got registration for the mark “” in various regions and countries, including the OHIM, Australia, Great Britain, France, Brazil, South Korea, Singapore, Japan and Taiwan, China.. The complainant’s mark “” was even recognized as a well-known mark in Taiwan, China.

The complainant designs a Chinese mark “巴黎世家” for the mark “BALENCIAGA”, which not only is a deliberate Chinese transliteration of the mark “BALENCIAGA” but also meets the Chinese customers’ needs for calling the brand in their mother language. Till now the mark “巴黎世家” has established a sole and solid relationship with the complainant’s mark “BALENCIAGA”.

3) The Complainant has the Exclusive Rights on its Marks “BALENCIAGA”, “”, “” and “巴黎世家” in China

The complainant addresses great importance to the protection of its marks “BALENCIAGA”, “”, “” and “巴黎世家” in China and has obtained a series of the trademark registrations for the marks as follows:

	Mark	Class	App./Reg. No.	Filing Date	Reg. Date
1	BALENCIAGA	3	583204	1991-3-04	2002-2-20
2	BALENCIAGA	14	1362996	1998-10-6	2000-2-14
3	BALENCIAG 及图	25	4537910	2005-3-14	
4	Le Dix BALENCIAGA	3	624872	1992-1-16	2003-1-10
5	BALENCIGA 及图	25	4537911	2005-3-14	
6	BALENCIGA 及图	3	2020807	2000-6-7	2004-2-7
7	BALENCIGA 及图	9	2021019	1997-7-23	2003-4-28
8		3	3206869	2002-6-11	
9		9	3206870	2002-6-11	
10		14	1238306	1997-10-28	1999-1-14
11		18	3206871	2002-6-11	2004-2-14
12		25	1070504	1996-4-1	1997-8-7

The complainant intended to apply for registration of the mark “巴黎世家”. On a second consideration of the examination rule in China that Paris as a well-known geographical name cannot be used as a mark, the complainant filed the first application for the mark “世家” with the China Trademark Office on July 6, 1993 and a series of applications for the mark “世家” have been filed in sequence:

	Mark	Class	App./Reg. No.	Filing Date	Reg. Date
1	世家	3	3943292	2004-3-5	
2	世家	9	3943291	2004-3-5	2006-6-28
3	世家	14	3943290	2004-3-5	
4	世家	18	3943289	2004-3-5	
5	世家	25	917354	1993-7-6	1996-12-21

In the business practice, the complainant always uses “世家” after “巴黎”, which have never been alienated from each other. The mark “巴黎世家” appears always together with the complainant's other marks “BALENCIAGA”,  and . The mark “巴黎世家” is as famous as the complainant's other marks and has become an important sign for the origin of the complainant's goods.

The complainant contributes a lot to the protection of its mark “巴黎世家”. On January 11, 2008 the complainant received an official decision from the Shenzhen Administration Office of Commerce

and Industry, which approved the complainant's appeal for closure of the website concerning "东方巴黎世家". On November 28, 2007 the complainant received an official decision from the Shenzhen Administration Office of Commerce and Industry, according to which the Office cancelled two companies, respectively concerned, 东方巴黎世家 and 巴黎世家, on the grounds that the companies infringe upon the complainant's rights of trademark "巴黎世家". (See annex 12. a copy of the official decision issued by the Shenzhen Administration Office of Commerce and Industry). In April 2005 the Xi'an Administration Office of Commerce and Industry confiscated and punished the companies infringing upon the complainant's rights of trademark. (See annex 13. a copy of the materials concerning the confiscation for the companies polarizing the complainant) The complainant has the rights on the mark "巴黎世家", which is not only well-known among the Chinese customers but also recognized by the official administrations of China.

4) The main and recognizable part "巴黎世家" of the domain name in dispute is the same with the complainant's prestigious trademark, which would cause misrecognition among the public

The domain name "巴黎世家.com" in dispute polarizes the complainant's prestigious mark "巴黎世家". The domain name in dispute causes great confusion not only with the complainant's prestigious mark and trade name but also concerning the origin of the registrant of the domain name in dispute. It is clearly indicated in the search result that hao wang being the registrant of the domain name lives in Chongqing, China instead of Paris (巴黎). The adverse party applied for registration of the domain name in dispute in bad faith for obtaining illegal benefits.

5) The registrant of the domain name in dispute preemptively and maliciously registered the domain name in dispute against the complainant's prestigious trademark, his unfair conduct should be prohibited

According to Article 4 (b) of the Policy and Article 5 of the Supreme Court's Interpretation for Trials of the Civil Disputes Concerning Computer Website Domain Name, the domain name in dispute should be cancelled for registration. The registrant of the domain name in dispute preemptively applied for registration of the complainant's prestigious mark as a domain name so as to obtain illegal benefits, which is not allowed by the above rules.

6) The registrant of the domain name violates the rule of honesty and credibility and constitutes unfair competition

According to Article 4 of the Supreme Court's Interpretation for Trials of the Civil Disputes Concerning Computer Website Domain Name and Article 4 of the Anti Unfair Competition Law, the domain name polarizes the complainant's prestigious mark, which violates the rule of fair competition and thus should be prohibited.

To conclude the above, the domain name in dispute is the same as the complainant's mark, which causes the public to be confused as to the origin, sponsor and guarantor.

The Complainant requests the panel to find that the disputed domain name “巴黎世家.com” be transferred to Complainant.

The Respondent

There's no Response came from the Respondent.

4. Findings

As stipulated in the Paragraph 4(a) of the Policy, when claiming dispute to a domain name registered by another, the Complainant must prove each of the following:

- (i) That the domain name of the Respondent's is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) That the Respondent has no rights or legitimate interests in respect of the domain name; and
- (iii) That the domain name has been registered and used in bad faith.

Based on relevant stipulations under the Policy, the Rules and ADNDRC Supplemental Rules, to make the Claim to be supported by the Panel, the Complainant needs to satisfy each of the afore-said prerequisites.

With respect to the case, a fundamental fact is that the Respondent failed to submit a defense or a response of any sort. As stipulated in Paragraph 5(e) of the Rules, “If a Respondent does not submit a response, in the absence of exceptional circumstances, the Panel shall decide the dispute based upon the complaint”. In light of this stipulation, the Panel makes the decision based primarily on the Complainant's contentions and accompanying exhibits unless proven otherwise or that the Panel, based upon its professional experiences, thinks that the Complainant's allegations are not logical or obviously contradictory to a prior judgment or any other enforceable decisions.

Identical or Confusing Similarity

According to the evidence provided by the Complainant, the Panel finds that the Complainant obtained the registration of “世家” as a trademark (Registration No. 917354) in China in 1996,

which by a renewal remains valid at present, and the registration date (February 23, 2006) of the domain name in dispute is much later than that of the Complainant's trademark. Thus, the Panel is of the view that the Complainant enjoys the prior trademark right to “世家”. Additionally, the current evidence reveals that the Complainant's trademark has been used for a long period of time and achieved extensive reputation by such use. As such, what the Panel needs to do is to make a conclusion on the identity or confusing similarity between the Complainant's registered trademark “世家” and the domain name in dispute “巴黎世家.com”.

It is easily observable that the identifying part of the domain name in dispute “巴黎世家” is composed of the geographical name “巴黎” and the part “世家”, which is identical with the Complainant's registered trademark “世家”. Meanwhile, to the users of the Internet, a business name plus a geographical name means “the business in the country or city”. In this case, the Panel finds that the addition of the geographical name “巴黎” to “世家” merely serves a function of identifying the origin, but does not serve to distinguish the domain name in dispute from the Complainant's prior trademark.

Therefore, considering the Complainant has prior rights in trademark “世家”, in combination with its reputation and goodwill in China, the Panel finds that the domain name in dispute is confusingly similar to the Complainant's trademark, and the Complainant has satisfied the first condition under Paragraph 4(a) of the Policy.

Rights or Legitimate Interests of the Respondent

Paragraph 4(c) of the Policy stipulates how a Respondent can effectively demonstrate its rights or legitimate interests with regard to the domain name in dispute, as an argument against the Complainant's claim. The Respondent has not filed any response and failed to demonstrate he has any rights or legitimate interests in respect of the domain name in dispute. Based on the default and the evidence in the Complaint, it is presumed that the Respondent has no rights or legitimate interests in the domain name in dispute.

Accordingly, the Panel finds that the Complainant has satisfied the second condition under Paragraph 4(a) of the Policy.

Bad Faith

The Complainant also needs to establish the Respondent's bad faith as set forth in the Paragraph 4(a)(iii) of the Policy. Under Paragraph 4(b) of the Policy, the following circumstances in particular shall be considered as evidence of the registration and use of a domain name in bad faith:

“(i) Circumstances indicating that you have registered or you have 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 your documented out-of-pocket costs directly related to the domain name; or

(ii) You have 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 you have engaged in a pattern of such conduct; or

(iii) You have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) By using the domain name, you have intentionally attempted to attract, for commercial gain, internet users to your web site 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 your web site or location or of a product or service on your web site or location.”

First of all, various evidences show that the Complainant's trademark “世家” has achieved a high reputation through the Complainant's long-standing commercial activities in China where the Respondent is based. Meanwhile, the Complainant always uses “世家” after “巴黎” in the business practice, and the public has come to recognize and associate “巴黎世家” as originating from the Complainant and no other. This entitles the Panel to infer that the Respondent knew, or should have known, of the existence of the Complainant and its trademark, while the Respondent has registered the domain name in dispute “巴黎世家.com” which thereby inevitably preventing the Complainant from reflecting its trademark in such corresponding domain name. Furthermore, the Respondent has provided no evidence whatsoever of any actual or contemplated good faith use by it of the domain name in dispute. These facts, together with the finding above that the Respondent has no rights or interests in the domain name in dispute lead the Panel to conclude that the domain name in dispute has been registered by the Respondent in bad faith.

In light of the above, the Panel concludes that the Complainant has satisfied the third condition under Paragraph 4(a) of the Policy.

5. Decision

In light of all the foregoing findings and in accordance with Paragraphs 4(a), 8(a) of the Policy and 5(e) of the Rules, the Panel holds:

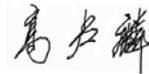
a) That the identifying part of the domain name in dispute “巴黎世家.com” is confusingly similar to the Complainant’s registered trademark “世家”; and

b) That the Respondent has no right or legitimate interest with regard to the identifying part of the domain name in dispute; and

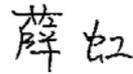
c) That the domain name was registered in bad faith.

As the final decision, the Panel awards that the domain name in dispute “巴黎世家.com” should be transferred to the Complainant.

The presiding Panelist:



The co-panelist:



The co-panelist:



March 22, 2010