Decision for dispute CAC-UDRP-101495

Case number	CAC-UDRP-101495
Time of filing	2017-03-31 09:59:49
Domain names	BOLLORE-US.NET

Case administrator

Name	Aneta Jelenová (Case admin)

Complainant

Organization	BOLLORE SA

Complainant representative

Organization	Nameshield (Maxime Benoist)

Respondent

Name	Jarry Blair

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings that relate to the Disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant is the registered owner of (i) international word trademark “BOLLORE”, reg. no. 595172, registered on 14 August 1992 for goods and services in classes 6, 9, 11, 12, 13, 19, 20, 37, 41 and 42 (ii) international figurative trademark “Bolloré”, reg. no. 704697, registered on 11 December 1998 for goods and services in classes 16, 17, 34, 35, 36, 38 and 39 and (iii) U.S. word trademark “BOLLORE”, reg.no. 85966177, registered on 14 April 2015 for goods and services in classes 6, 9 and 19 (“Complainant’s Trademarks”).

The Disputed domain name <bollore-us.net> was registered on 13 March 2017.

FACTUAL BACKGROUND

As the Respondent did not file any response to the complaint, the Panel took into account the following facts asserted by the Claimant (and supported by the documentary evidence submitted by the Claimant) and unchallenged by the Respondent:

(a) The Bolloré Group (to which the Complainant belongs) was founded in 1822, and provides services to its customers consisting in particular in transportation and logistics, communication and media, electricity storage and solutions. It is one of the 500 largest companies in the world and listed on the Paris Stock Exchange;

(b) the Complainant is the owner of the Complainant’s Trademarks;

(c) the Complainant owns various domain names including the same distinctive wording “Bollore”, of which the domain name <bollore.com> has been registered since 25 July 1997;

(d) the Disputed domain name was registered on 13 March 2017;

(e) under the Disputed domain name there is no active website;

(f) Google search on the term “Bollore” displays several results, all of them being related to the Complainant and its trademarks; and

(g) the Complainant has a strong worldwide presence, with many locations in the United States, such as Washington, Miami, Chicago or Los Angeles.

The Complainant seeks transfer of the Disputed domain name to the Complainant.

PARTIES CONTENTIONS

The Parties' contentions are the following:

THE COMPLAINANT:

In addition to the above factual assertions, the Complainant also contends the following:

(i) the Disputed domain name is confusingly similar to Complainant’s Trademarks as it contains the denomination „Bollore“ and the additional element “US” is not sufficient to avoid confusing similarity. The top-level suffix in the Disputed domain name (i.e. the ".net") must be disregarded under the identity / confusing similarity test as it is a necessary technical requirement of registration.

(ii) The Respondent is not known by or affiliated with the Complainant. Neither license nor authorization has been granted by the Complainant to the Respondent to use the Complainant’s Trademarks or apply for registration of the Disputed domain name.

(iii) The Panels have already confirmed the distinctiveness and reputation of the Complainant's Trademarks in cases of cybersquatting, in particular:
- WIPO case no. D2016-2489 - BOLLORE v. Assiom SITTI – Newtek, <bollore.top>
- CAC case no. 101390 - BOLLORE v. Roy, <boll0re.com>
- NAF case no. 1706884 - BOLLORE v. Cameron Jackson, <bollore.us>
- WIPO case no. D2016-1979 - BOLLORE v. Bollore, <bolloore.com>
- WIPO case no. D2015-2113 - BOLLORE v. Pastel Nathaniel Karl-loic, <bollore-credits.com>
- CAC case no. 101128 - BOLLORE v. Mbah Sylvester, Mr IT, <bolloreholdings.com>

(iv) The Respondent has no rights or legitimate interests in respect of the Disputed domain name. The Complainant does not carry out any activity for, nor has any business with the Respondent. Furthermore, the disputed domain name points to an inactive website since its registration on 13 March 2017.

(v) Given the distinctiveness and reputation of the Complainant's Trademarks, and based on all the above facts, it is reasonable to infer that the Respondent has registered the domain name with full knowledge of the Complainant's trademarks with the sole aim to create a likelihood of confusion with the Complainant’s trademark and domain names. The Respondent is thus making passive holding of the Disputed domain name and at the same time deprives the Complainant as the trademark owner of reflecting the Complainant’s Trademarks in the domain name.

THE RESPONDENT:

The Respondent did not provide any response to the complaint.

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 Uniform Domain Name Dispute Resolution Policy ("Policy").

For details, please see "Principal Reasons for the Decision".

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).

For details, please see "Principal Reasons for the Decision".

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).

For details, please see "Principal Reasons for the Decision".

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

Paragraph 4(a) of the Policy requires that the Complainant proves each of the following three elements to obtain an order that the Disputed domain name should be transferred or cancelled:

(i) the Disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and

(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.

The Panel will now analyze whether the three elements of paragraph 4(a) of the Policy are satisfied in these proceedings.

IDENTITY / CONFUSING SIMILARITY

The Disputed domain name is confusingly similar with the Complainant’s Trademark as it contains the element “Bollore” which is identical to Complainant’s Trademarks and the additional element “us” is not sufficient to distinguish the Disputed domain name from Complainant’s Trademarks. Here, the Panel fully agrees with the findings made in the WIPO case No. D2015-1775, Sanofi v. Tulip Trading Company <sanofi-us.com> where it has been held that “the mere adjunction of the term "us" to the trademark SANOFI is not enough to distinguish the disputed domain name from one that may be legitimately associated with the Complainant's marks and to escape a finding of confusing similarity”.

In line with the long-established UDRP practice the Panel also concludes that the top-level suffix in the domain name (i.e. the

".net") must be disregarded under the identity / confusing similarity test as it is a necessary technical requirement of registration.

Therefore, the Panel concludes that the Complainant satisfied the requirement under paragraph 4(a)(i) of the Policy.

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant is required to make out a prima facie case that the Respondent lacks rights or legitimate interests to the Disputed domain name. Once such prima facie case is made, the Respondent carries the burden of demonstrating rights or legitimate interests in the Disputed domain name. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy (please see, for example, WIPO case No. D2003-0455, Croatia Airlines d.d. v. Modern Empire Internet Ltd. <croatiaairlines.com>).

As asserted by the Complainant (and unchallenged by the Respondent), the Respondent is not commonly known by the Disputed domain name. Neither is the Respondent in any way related to the Complainant. No website is operated under the Disputed domain name. The Respondent failed to provide any information and evidence that it has relevant rights or legitimate interests in respect of the Disputed domain name (within the meaning of paragraph 4(a) (ii) of the Policy). The denomination “Bollore” has no common meaning in English or French language, it clearly points out to the Complainant (and not much else) when entered into the internet search engines. This also supports the conclusion that no legitimate interest exists on the side of the Respondent.

Therefore, the Panel concludes that the Respondent did not establish any right or legitimate interest to the Disputed domain name (within the meaning of paragraph 4(a)(ii) of the Policy).

BAD FAITH

The Complainant has not presented evidence establishing any of the typical cases of bad faith in registration and use of the domain name listed in paragraph 4(b) of the Policy. Nevertheless, such list is not exhaustive and bad faith in registration and use of the Disputed domain name may also be found in other cases taking into account all relevant facts and circumstances of the case at hand (please see the WIPO case No. D2000-0003, Telstra Corporation Limited v. Nuclear Marshmallows <telstra.org> and WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Second Edition, Section 3.2).

Here the Panel noted that the Complainant is a global company and the Complainant’s Trademarks are registered and enjoy good reputation in many countries worldwide. The Complainant is present and has registered trademark “Bollore” also in the United States of America where the Respondent (apparently) resides. The denomination “Bollore” has no common meaning in English language (as the language of the country where the Respondent resides) or French language (as the language of the country where the Complainant is established), it clearly points out to the Complainant and its owners (and not much else) when entered into the internet search engines. Hence the Panel is convinced that such denomination is clearly distinctive to the Complainant. Distinctiveness and reputation of Complainant’s Trademarks has already been established by the Panels in number of previous cases where Complainant has been subjected to cybersquatting (please see above). In this respect, the Panel also deems appropriate to refer to paragraph 2 of the Policy under which it is the responsibility of the Respondent as the registrant of Disputed domain name to determine whether its registration infringes or violates someone else's rights.

In the light of the above circumstances the Panel failed to find any plausible good faith reasons for registration and use of the Disputed domain name by the Respondent. The Respondent has not submitted any response to the Complaint and therefore has not presented any facts or arguments that could counter the above conclusions of the Panel. As a result, the Panel holds that the Disputed domain name has been registered and used by the Respondent in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy).

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **BOLLORE-US.NET**: Transferred

PANELLISTS

Name	**Michal Matějka**

DATE OF PANEL DECISION 2017-05-03

Publish the Decision