Decision for dispute CAC-UDRP-101492

Case number	CAC-UDRP-101492
Time of filing	2017-03-31 10:19:59
Domain names	HRBOLLOREMAILS.COM

Case administrator

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

Complainant

Organization	BOLLORE SA

Complainant representative

Organization	Nameshield (Maxime Benoist)

Respondent

Name	Inna Ivanova

OTHER LEGAL PROCEEDINGS

The Panel is not aware of other legal proceedings, pending or decided, which relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of several international trademark registrations BOLLORE®, such as the international registration BOLLORE number 704697 registered since 1992 in many countries.

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:

The Complainant was founded in 1822. Its activities cover three business lines, 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. In addition to its activities, the Group manages a number of financial assets including plantations and financial investments.

Besides its trademarks, the Complainant owns and communicates on the Internet through various domain names, the main one being <bollore.com>, registered on July 25, 1997.

A couple of UDRP decisions have confirmed the Complainant’s trademark and domain name rights such as:

- 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>

The disputed domain name <hrbolloremails.com> has been registered on March 7, 2017, by the Respondent.

The disputed domain name displays a suspended website. It has been suspended by the Registrar, because the email address of the Registrant / Respondent could not been verified.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

COMPLAINANTS CONTENTIONS:

I. The Complainant states that the disputed domain name is confusingly similar to its trademarks BOLLORE and its domain names associated.

Indeed, the disputed domain name <hrbolloremails.com> contains the Complainant's registered trademark BOLLORE in its entirety.

The Complainant contends that the addition at the beginning of the disputed domain name <hrbolloremails.com> of the generic word "HR" (in reference of Human Resource) and at the end of the disputed domain name the generic word "MAILS", after the term BOLLORE, are not sufficient elements to escape the finding that the disputed domain names are confusingly similar to the Complainant's trademarks and linked to the Complainant.

Numerous UDRP decisions have also held that the addition of a generic term associated with a trademark does not create a new or different right to the mark or diminish confusing similarity. Therefore, the use of the generic terms "HR" and "MAILS" reinforces the confusion between the disputed domain name and the Complainant's trademark (WIPO Case no. D2014-0556, Wim Bosman Holding B.V. v. Ipower, Inc.: "the prefix "hr-", far from distinguishing the disputed domain name from that mark, serves to reinforce its distinctiveness by conveying the idea that the disputed domain name emanates from the HR department of the Complainant", WIPO case no. DNL2016-0006, Koninklijke KPN N.V. v. Gaststaette Rasthaus: "the use of the suffix "mail" is insufficient to differentiate this disputed domain name and the trademarks KPN").

Furthermore, the disputed domain name is registered with the gTLD ".COM". It is well established that gTLDs may typically be disregarded in the assessment under paragraph 4(a)(i) of the Policy when comparing the disputed domain name and trademark (e.g. CAC case no. 101376 Credit Agricole SA v. Lina Maria: "for all the disputed domain names the suffixes ".info" and ".com" are to be disregarded when making the comparison.").

Finally, a Google search on the term BOLLORE® provides several results, all of them being linked to the Complainant.

Thus, the disputed domain name <hrbolloremails.com> is confusingly similar to a trademark in which the Complainant has rights.

II. The Complainant states that the Respondent does not have any rights or legitimate interest in the disputed domain name.

According to WIPO case no. D2003-0455 Croatia Airlines d.d. v. Modern Empire Internet Ltd., the Complainant is required to

make out a prima facie case that the Respondent lacks rights or legitimate interests. 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.

According the whois information of the disputed domain name <hrbolloremails.com>, the Respondent is identified as “Inna Ivanova” from “Moscow” in “Russia”.

The Respondent is not known by the Complainant. The Complainant contends that the Respondent is not affiliated with nor authorized by the Complainant in any way. The Complainant does not carry out any activity for, nor has any business with the Respondent.

Neither license nor authorization has been granted to the Respondent to make any use of the Complainant’s trademarks, or apply for registration of the disputed domain name <hrbolloremails.com> by the Complainant.

Furthermore, the disputed domain name points to a suspended website since its registration on 2017-03-07. Indeed, the website displays the following information: “this domain name is suspended”, because the email address of the Respondent has not been verified. The Respondent has failed to make use of this disputed domain name’s website and has not demonstrated any attempt to make legitimate use of the disputed domain name and website, which evinces a lack of rights or legitimate interest in the disputed domain name (Please see for instance NAF Case no. FA 0296583, Bloomberg L.P. v. SC Media Servs. & Info. SRL: “Respondent is using the Disputed Domain Name to resolve to an empty page featuring no substantive content or links is further evidence that Respondent's failure to actively use the Disputed Domain Name(s) suggests a lack of rights and legitimate interests in the Disputed Domain Name(s) as blank pages are neither a bona fide offering of goods or services nor a legitimate noncommercial or fair use under the Policy").

This behavior demonstrates that the Respondent has no plan to use the disputed domain name. The Respondent registered the disputed domain name, and it did not take the time to answer to the Registrar email address verification’s request.

Finally, the Respondent could not have use the disputed domain name without infringing the Complainant's intellectual property rights on the expression BOLLORE. Internet users may unfairly believe that the disputed domain name redirects to a Human Resource Complainant’s website, or may believe that an email sent via this domain name originates from the Human Resource department of the Complainant.

Accordingly, the Respondent has no rights or legitimate interests on the disputed domain name <hrbolloremails.com>.

III. The Complainant contends that the disputed domain name has been registered and is being used in bad faith.

Given the distinctiveness of the Complainant's trademarks and reputation, it is reasonable to infer that the Respondent has registered the disputed domain name with full knowledge of the Complainant's trademarks (Please see for instance: WIPO case no. D2004-0673 - Ferrari S.p.A v. American Entertainment Group. Inc.).

A Google search on the term BOLLORE displays several results, all of them being related to the Complainant and its trademark.

The Complainant contends that the Respondent has registered the disputed domain name with the sole aim to create a likelihood of confusion with the Complainant’s trademark and domain names.

Moreover, the Respondent has not demonstrated any activity in respect of the disputed domain name. Indeed, the disputed domain name points to a suspended website since its registration on 2017-03-07. The website displays the following information: “this domain name is suspended”, because the e-mail address of the Respondent has not been verified.

The Respondent has not verified its e-mail address to the Registrar. It demonstrates a passive holding constitutive of bad

faith (please see for instance: NAF case no. FA 93761 Twentieth Century Fox Film Corp. v. Risser: “The requirement in the ICANN Policy that a complainant proves that domain names are being used in bad faith does not require that it proves in every instance that a respondent is taking positive action. Use in bad faith can be inferred from the totality of the circumstances even when the registrant has done nothing more than register the names”., WIPO case no. D2000-1260, Alitalia-Linee Aeree Italiane S.p.A v. Colour Digital: finding bad faith where the Respondent made no use of the disputed domain name in question and there are no other indications that the Respondent could have registered and used the disputed domain name in question for any non-infringing purpose.).

Furthermore, given the construction of the disputed domain name, by the association of the terms “HR” and “MAILS” to the Complainant’s trademark, the Respondent could not have used it without infringing the Complainant’s intellectual property rights.

The Respondent is thus passively holding the disputed domain name and at the same time deprives the trademark owner of reflecting its own trademark in the domain name.

On these bases, the Complainant concludes that the Respondent has registered and is using the disputed domain name <hrbolloremails.com> in bad faith.

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

I.
The Panel agrees that the Complainant‘s trademark “BOLLORE” is confusingly similar to the disputed domain name <HRBOLLOREMAILS.COM>.

Firstly, the disputed domain name incorporates the trademark “BOLLORE” of the Complainant, completely. Secondly, the Panel agrees with the view of the WIPO Panel in Case No. D2014-0556, Wim Bosman Holding B.V. v. Ipower, Inc that the prefix “hr” will likely be understood as the abbreviation for “Human Resources” in relation to a company like the Complainant. Further, the additional use of the suffix “mails” does not render the disputed domain name non-similar to the Complainant’s trademark. Particularly in the internet, the term “mails” is understood in a generic way. Further, as held in many other decisions of numerous Panels before, the use of a top-level-domain-name like “.com” shall be disregarded in this respect (e.g. CAC 101311, TEVAPHARMACEUTICALS.XYZ).

Therefore, the term “BOLLORE” is the only distinctive term within the disputed domain name.

Accordingly, the Panel concludes that the disputed domain name is confusingly similar to the Complainant’s trademark “BOLLORE”.

II.
In the absence of a compliant response of the Respondent, the Panel may draw such inferences therefrom as it considers appropriate. The Panel may accept the contentions of the Complainant as admitted by the Respondent.

The Complainant has presented proof that the Respondent has never used a website linked to the disputed domain name. Further, it seems that the Respondent has provided the Registrar with a wrong e-mail address, which was proven by the Complainant by a copy of the “who is” excerpt. Further, the Complainant has found no links of the Respondent to the disputed domain name. The Complainant argues that “no use” of any website renders prima facie proof that the Respondent lacks rights or legitimate interests in the disputed domain name.

Upon providing prima facie proof, of the Respondent’s lack of legitimate interests or rights in the disputed domain name, the burden of proof shifts to the Respondent. Due to the lack of any response of the Respondent, the Panel accepts the facts provided by Complainant as proven. Accordingly, the Panel holds that the Respondent has no such rights or legitimate interests in the disputed domain name.

III.
The Complainant has provided proof that the term “BOLLORE” is related to the Complainant by, inter alia, a respective Google search. As the Complainant has been established in 1822 and as its trademarks have been used and registered since, at least, 1992 and, further, as the Complainant is using, inter alia, the domain name <bollore.com> since 1997, it may well be argued and assumed that the Respondent has not registered the disputed domain name without knowing the Complainant’s trademark. This assumption is supported by the generic elements added to the term “BOLLORE” in the disputed domain name by the Respondent. The prefix “hr” will probably be understood as an abbreviation of “Human Resources”, which can well be associated with the Complainant. Further, the generic suffix “mails” adds to the assumption that the use of the disputed domain name may confuse the public as it invokes the impression that the disputed domain name is a domain name used by the Complainant to receive e-mails in human resources matters. The Complainant has also provided proof that its trademark “BOLLORE” has been confirmed as being distinctive in several ADR-decisions, such as CAC Case No. 101390 – BOLLORE v. Roy, <boll0re.com>.

Further, the lack of providing the domain name registrar with a proper e-mail address and the lack of using a website linked to the disputed domain name supports the impression that the Respondent does not make any proper use of the disputed domain name.

The Complainant further stated, the concept of the domain names “been used in bad faith” is not limited to positive action, but rather incorporates inaction. As held before (CAC 101311, TEVAPHARMACEUTICALS.XYZ), the Panel agrees. The Complainant has proven that its trademark is a distinctive one that has been used for many years. It further has proven that its company is one of the five hundred largest in the world. In such a case with no apparent connection between the disputed domain name and the trademark in question, the use of the trademark suggests opportunistic bad faith (CAC 101311, TEVAPHARMACEUTICALS.XYZ with further citations).

Therefore, the Panel holds the Respondent’s conduct to be the manifestation of registering and use of the disputed domain name in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **HRBOLLOREMAILS.COM**: Transferred

PANELLISTS

Name	**Dominik Eickemeier**

DATE OF PANEL DECISION 2017-05-09

Publish the Decision