Decision for dispute CAC-UDRP-101689

Case number	CAC-UDRP-101689
Time of filing	2017-09-20 09:31:57
Domain names	BOLLROE.COM

Case administrator

Name	Aneta Jelenová (Case admin)

Complainant

Organization	BOLLORE

Complainant representative

Organization	Nameshield (Maxime Benoist)

Respondent

Name	wire lord

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings related to the disputed domain name.

IDENTIFICATION OF RIGHTS

International trademark registration No. 704697 BOLLORE and device, which includes reference to the base registration being French trademark registration No. 98739779 BOLLORE and device.

FACTUAL BACKGROUND

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

The Complainant is a member of the Bollore group of companies ("the Bollore Group"). The Bollore Group operates three lines of business being transport and logistics, communications and electricity storage and solutions. In 2016 the Bollore Group employed 59,411 employees world wide, had a turnover of 10,076 million Euros and a net income of 588 million Euros. It trades under the trade mark BOLLORE.

The Complainant also asserts it is the owner of numerous trade marks in numerous jurisdictions and is the registrant of the domain name <bollore.com>, which it uses in relation to its communications and its website.

Disregarding the gTLD suffix ".com", the disputed domain name, <bollroe.com>, differs from the trade mark BOLLORE only by

the inversion of the letters "O" and "R". The disputed domain name was created on 8 September 2017 and it directs to an inactive website.

The Respondent is not known to the Complainant. The Complainant contends that the Respondent is not affiliated with nor authorized by it in any way. The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name and that it does not carry out any activity for, nor have any business with the Respondent.

Despite the facts in the preceding paragraph, the Respondent has used the disputed domain name to create an e-mail address which it has then subsequently used to send e-mails in which the Respondent falsely identifies himself or herself as female employee of the Complainant called "Rebeccah Nakimbugwe". The e-mail then asserts:

"We concluded a board meeting and want to bring to your attention, Our previous bank account has been submitted for its annual audit and account balancing by our external auditors and finance team. Due to this cannot be used for any incoming remittance until audit is concluded so as to enhance a quality audit, All subsequent payment should be remitted to our Barclays Bank Account.
We want balance payment to be remitted to our Barclays Bank Account.
Kindly acknowledge the receipt of this email with a return email so as to provide you with our Barclays Bank Account details for remittance.
Awaiting for your urgent response."

The Complainant asserts that by sending this e-mail the Respondent has used the disputed domain name in an attempt to "steal money" otherwise payable to it by diverting funds to alternate bank account.

PARTIES CONTENTIONS

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

Paragraph (4)(a) of the Policy lists three elements that the Complainant must prove to merit a finding that the domain name registered by the Respondent be transferred to the Complainant:

1) The domain name is identical or confusingly similar to a trademark or service mark ("mark") in which the Complainant has rights; and
2) the Respondent has no rights or legitimate interests in respect of the domain name; and
3) the domain name has been registered and is being used in bad faith.

The Panel is satisfied the Complainant has satisfied all three elements for the principal reasons set out below.

A. RIGHTS IN AN IDENTICAL OR CONFUSINGLY SIMILAR TRADEMARK

As mentioned above the Complainant asserts it has numerous trademark registrations for the word BOLLORE. As evidence to support this assertion it provides a printed extract from WIPO's Romarin database showing the details for International Trademark Registration No. 704697 BOLLORE and device ("the International Registration"). However, it does not provide any extracts from the trademarks office databases of any particular jurisdictions. The International Registration is indicative that registered rights exist in each particular jurisdiction mentioned therein but is not primary evidence of the current status of those rights.

The International Registration lists French trademark registration No. 98739779 as its base registration, which was filed on 1 July 1998. This is well before the creation date of the disputed domain name, being 8 September 2017.

It is a well established principal that a panel in a UDRP proceeding may use its general powers granted by Rule 10(a) of the Rules for Uniform Domain Name Dispute Resolution Policy (2015) to perform limited factual research into matters of public record to assist in assessing the merits of a case and reaching a decision (WIPO Overview 3.0 at paragraph 4.8). It has further being expressly recognized that this may include reviewing a trademarks registration database (WIPO Overview 3.0 at paragraph 4.8). In the present case the Panel considered it entirely appropriate to review the French Trademarks Office database on its own initiative to confirm the registration status of the above French trademark registration No. 98739779. It did so, and confirmed that trademark is currently registered.

To satisfy paragraph 4(a)(i) of the Policy it is enough that the Panel is satisfied that the Complainant has registered rights in a trademark that predates the registration of the disputed domain name in a single jurisdiction (even if that single jurisdiction is not one in which the Respondent resides or operates) (Koninklijke KPN N.V. v. Telepathy, Inc D2001-0217 (WIPO May 7, 2001); see also WIPO Case Nos. D2012-0141 and D2011-1436). The Panel is satisfied of such.

The next question is whether the disputed domain name is confusingly similar to BOLLORE and device trademark.

The Panel disregards the gTLD suffix ".com" for the purpose of this comparison. However the Panel further notes that if such a suffix were to add anything it would only make the disputed domain name more similar to the Complainant's well used <bollore.com> domain name, which has the same suffix.

The Panel also notes that the registered trademark contains a device element. However the essential feature of the trademark remains the prominent words BOLLORE. These words only differ from "bollroe" by the inversion of "R" and "O". Of particular note is this slight variance occurs amongst those letters located in the middle of the two words as opposed to the beginning or the end. The BOLL prefix in both words first catches the eye whilst the "E" is the common end element that is the last element to leave an impression upon the reader. The slight variation of "R" and "O" is likely to be less noticeable and more inconspicuous in its location in the middle of the words.

The disputed domain name is confusingly similar to the BOLLORE trademark.

NO RIGHTS OR LEGITIMATE INTERESTS

The registrant's name according to the WHOIS extract is "Wire Lord". This unusual name, which given the fraudulent conduct of the registrant is likely a pseudonym, bears no resemblance to "bollroe". Further, the disputed domain name does not resolve to a website so there is no basis to conclude legitimate interests from any such use.

However, what is most telling is that the disputed domain name has been used as part of a fraudulent attempt to obtain funds from recipients of e-mails sent by pretending to be the Complainant. Such conduct could not be further from legitimate.

It is clear the Respondent has no rights or interests in the disputed domain name.

BAD FAITH

As mentioned above, the Panel finds that the Complainant has established that the Respondent has used the recently registered domain name as part of a fraudulent attempt to obtain funds from the recipients of e-mails by pretending to be the Complainant. Such a blatant attempt to dishonestly acquire funds is of the worst category of bad faith that the Policy is designed to address.

It is clear that the Respondent has registered and used 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. **BOLLROE.COM**: Transferred

PANELLISTS

Name	**Mr Andrew Norman Sykes**

DATE OF PANEL DECISION 2017-10-24

Publish the Decision