Decision for dispute CAC-UDRP-101771

Case number	CAC-UDRP-101771
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Domain names	us-bollore.com

Case administrator

Name	Aneta Jelenová (Case admin)

Complainant

Organization	BOLLORE

Complainant representative

Organization	Nameshield (Laurent Becker)

Respondent

Name	james white

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

Complainant owns international trademark registration No. 704697 for the trademark BOLLORÉ in relation to a wide range of goods and services such as paper and plastic products, advertising and business management services, insurance underwriting, telecommunications, and transportation and packaging of goods for others.

FACTUAL BACKGROUND

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

Complainant is a French multinational company that has been in business since 1822. It operates in three main areas: transportation and logistics, communication and media, and electricity storage and solutions. Complainant also hosts its main company website at www.bollore.com which was registered in 1997.

The disputed domain name <us-bollore.com> does not resolve to any website. However, on November 8, 2017, an email was sent from an address using the format [firstname].[lastname]@us-bollore.com, to the travel department of Complainant's offices in Indonesia, seeking to book air travel to Johanesburg for a number of individuals. However, these travel

arrangements were never completed due to the intervention of an Indonesian representative of Complainant.

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

A. The domain name is confusingly similar to a trademark or service mark in which the Complainant has rights;
(Policy, Paragraph 4(a) (i); Rules, Paragraphs 3(b)(viii), (b)(ix)(1))

Paragraph 4(a)(i) of the Policy is a standing requirement which is satisfied if the disputed domain name is identical or confusingly similar to a trademark in which the Complainant has rights. Furthermore, it is not as extensive as the “likelihood of confusion” test for trademark infringement applied by many courts. Rather, under the Policy confusing similarity is commonly tested by comparing the complainant’s trademark and the disputed domain name in appearance, sound, meaning, and overall impression. Please see Administradora de Marcas RD, S. de R.L. de C.V. v. DNS Manager / Profile Group, Case No. 101341 (CAC, November 28, 2016).

In this case, Complainant owns the BOLLORÉ trademark and operates in the areas of transportation and logistics, communication and media, and electricity storage and solutions. Complainant also hosts its main company website at www.bollore.com.

The domain name in dispute reproduces Complainant’s trademark in its entirety and merely adds the letters “US“, a hyphen, and the .com TLD. The addition of these characters, particularly the geographic term, to the BOLLORÉ trademark, does not reduce but actually can enhance the confusing similarity of the disputed domain name since it might lead internet users to wrongly believe that the said domain name is endorsed by Complainant and is related to its business in the United States of America. Please see Disney Enterprises, Inc. v. ORIENTS RUGS & MORE / NA, Claim No. FA 1555495 (FORUM, May 21, 2014) (Inserting the word “India” after the famous DISNEY trademark does “not diminish the similarity between the domain name and Complainant’s mark.”)

Futher, as it adds no meaning or context, the extension “.com” is not to be taken into consideration when examining the identity or similarity between the Complainant’s trademarks and the disputed domain name. Please see Bentley Motors Limited v. Domain Admin / Kyle Rocheleau, Privacy Hero Inc., Case No. D2014-1919 (WIPO, December 26, 2014) (when considering the issue of confusing similarity, “it is well-established that the top-level domain name “.com” may be disregarded for this purpose.“)

Accordingly, this Panel finds that the <us-bollore.com> domain name is confusingly similar to Complainant's BOLLORÉ trademark and that Complainant has satisfied paragraph 4(a)(i) of the Policy.

B. The Respondent has no rights or legitimate interests in respect of the domain name;
(Policy, Paragraph 4(a)(ii); Rules, Paragraph 3(b)(ix)(2))

Pursuant to paragraph 4(a)(ii) of the Policy, a complainant has the burden of making a prima facie showing that the respondent has no rights or legitimate interests in the disputed domain name. Cephalon, Inc. v. RiskIQ, Inc., Case No. 100834 (CAC, September 12, 2014). Once this burden is met, it shifts to the respondent to demonstrate that it has rights or legitimate interests in the disputed domain name.

Paragraph 4(c) of the Policy offers respondents several examples of how to demonstrate their rights or legitimate interests to a disputed domain name.

The Complainant states that it does not carry out any activity for, nor does it have any business with the Respondent. The Respondent has not contested this. As such, it is reasonable to conclude that the Respondent is not affiliated with Complainant, nor authorized or licensed to use the trademark BOLLORÉ or to seek registration of any domain name incorporating the aforementioned trademark.

The Respondent has not demonstrated use of, or demonstrable preparations to use, the disputed domain name in connection with a bona fide offering of goods or services under paragraph 4(c)(i) of the Policy. Indeed, the <us-bollore.com> domain name does not resolve to any website content but Complainant has submitted evidence that it was used as part of a fraudulent scheme to book travel services under the pretense of Respondent's association with the Complainant. Respondent cannot be said to have gained any rights or legitimate interest in the disputed domain name from such activity. Please see W.W. Grainger, Inc. v. Nathan Millikan, Claim No. FA 1512400 (FORUM, September 4, 2013) (Panel held that "Respondent has no rights or legitimate interests in … the <agrainger.com> domain name pursuant to Policy ¶¶ 4(c)(i) or 4(c)(iii) [where] Respondent uses the at-issue domain name to send e-mails in which Respondent fraudulently purports to be a subsidiary company of Complainant.")

With respect to paragraph 4(c)(ii) of the Policy, the Respondent does not appear to be commonly known by the name BOLLORÉ nor the name <us-bollore.com>. The Whois record for the disputed domain lists Respondent as "James White". As Respondent has submitted no Response to the Complaint, it makes no claim that it is known otherwise.

Finally, paragraph 4(c)(iii) of the Policy looks at whether a respondent is "making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers." The <us-bollore.com> domain name does not resolve to any website and its use for a fraudulent email scheme does not fit into any accepted category of "fair use" such as news reporting, comment, criticism, or the like. In any event, its use by Respondent is not noncommercial or without intent for commercial gain.

For all of the above-cited reasons, this Panel finds, by a preponderance of the evidence, that Respondent has no rights or legitimate interests in respect to the domain name in dispute under Paragraph 4(a)(ii) of the Policy.

C. The domain name was registered and is being used in bad faith.
(Policy, paragraphs 4(a)(iii), 4(b); Rules, paragraph 3(b)(ix)(3))

Complainant must demonstrate both that the disputed domain name was registered and is being used in bad faith. Further guidance on that requirement is found in paragraph 4(b) of the Policy, which sets out four examples of actions by a respondent that may satisfy this burden of proof. However, the examples of paragraph 4(b) are not exhaustive and panels are free to look beyond them for evidence of bad faith. Please see LA POSTE v. RIVERA BERNARD, Case No. 101139 (CAC, February 10, 2016).

A threshold question here is whether, at the time it registered the disputed domain name, Respondent was aware of

Complainant's BOLLORÉ trademark. The registration of the trademark preceded the registration of the disputed domain name by many years. Given Respondent's email phishing activity impersonating Complainant and directed at a Complainant's own travel department, It is clear that Respondent was fully aware of Complainant when it registered the disputed domain name. Please see Credit Agricole SA v. Cesar Denirio, N/A, Case No. 101739 (CAC, November 30, 2017) (Panel held that use of a domain name for phishing "indicates that the Respondent was likely aware of the Complainant and had the Complainant's marks in mind when registering the disputed domain name.")

This Panel thus concludes that the Respondent intentionally sought to copy Complainant's trademark when it registered the disputed domain name.

Next, attention is given to Complainant's claim that the Respondent used the <us-bollore.com> domain in bad faith. It is well-established that using a domain name for purposes of phishing or other fraudulent activity constitutes solid evidence of bad faith use with intent for commercial gain under paragraph 4(b)(iv) of the Policy. Please see e.g., Accor v. SANGHO HEO / Contact Privacy Inc., Case No. D2014-1471 (WIPO, November 13, 2014) ("The un-opposed allegation of phishing, and the evidence submitted in support of phishing, combined with the likelihood of confusion, is sufficient evidence of bad faith")

Consequently, in view of the above-mentioned circumstances, this Panel finds, by a preponderance of the evidence, that the disputed domain name was registered and used in bad faith and that Complainant has satisfied 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. **US-BOLLORE.COM**: Transferred

PANELLISTS

Name	**Steven M. Levy, Esq.**

DATE OF PANEL DECISION 2017-12-15

Publish the Decision