Decision for dispute CAC-UDRP-101790

Case number	CAC-UDRP-101790
Time of filing	2017-12-04 09:58:57
Domain names	bollores.com

Case administrator

Name	Aneta Jelenová (Case admin)

Complainant

Organization	BOLLORE

Complainant representative

Organization	Nameshield (Laurent Becker)

Respondent

Name	Tom Fey

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 registrant of the international trademark registration No. 704697, "Bolloré", registered on December 11, 1998, for goods and services in classes 16, 17, 34, 35, 36, 38, 39.

The Disputed domain name was registered by the Respondent on September 21, 2017.

FACTUAL BACKGROUND

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

The Complainant states that the Bolloré group, which is one of the 500 largest companies in the world, was founded in 1822.

The Complainant points out that it is listed on the Paris Stock Exchange and that it holds strong positions in Transportation and Logistics, Communication and Media, Electricity Storage and solutions.

The Complainant underlines that the majority interest of the group's stock is controlled by the Bolloré family.

The Complainant adds that the group also manages a number of financial assets including plantations and financial investments.

The Complainant points out that it is the owner of several international trademarks containing the word "BOLLORE".

The Complainant adds that it is also the owner of number of domain names that contain the distinctive word "BOLLORE", including the domain name <bollore.com>, registered on July 25, 1997.

The Complainant argues that the Disputed domain name is confusingly similar to its trademark "BOLLORE". The Complainant observes that the trademark "BOLLORE" is included in the Disputed domain name.

The Complainant contends that the addition of the letter “S” and the generic top-level domain suffix “.COM” do not change the overall impression of the designation as being connected to the trademark "BOLLORE" of the Complainant.

The Complainant submits that the Respondent is not commonly known by the Disputed domain name.

The Complainant states that the Respondent is not authorized to use the Complainant's trademark "BOLLORE" and that there is no affiliation between the Complainant and the Respondent.

The Complainant clarifies that it does not carry out any activity for, nor has any business with the Respondent.

The Complainant submits that the Disputed domain name redirects to a parking page with commercial links in relation to the Complainant.

On the basis of the above-mentioned elements the Complainant contends that the Respondent has no right or legitimate interests in respect of the Disputed domain name.

The Complainant considers that the Disputed domain name, which differs from the Complainant's trademark "BOLLORE" by the mere addition of the letter "S", represents a clear example of typosquatting. The Complainant reminds that domain names panel decisions have consistently considered typosquatting as evidence of bad faith.

The Complainant states that it sent a cease and desist letter to the Respondent. The Complainant submits that the Respondent failed to provide any evidence of good faith. The Complainant adds that the Respondent was available to the transfer of the Disputed domain name only on specific financial conditions.

The Complainant contends that the Respondent was using the domain name in bad faith by intentionally attempting to attract, for commercial gain, Internet users to his website, by creating a likelihood of confusion with the "BOLLORE" mark as to the source, sponsorship, affiliation, or endorsement of his website and the products and services on his website.

On these bases the Complainant concludes that the Respondent has registered and is using the Disputed domain name in bad faith.

In light of the above, the Complainant requests the transfer in its favor of the Disputed domain name.

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

In accordance with paragraph 4(a) of the Policy, in order to obtain the transfer of the Disputed domain name, the Complainant has to demonstrate that:

(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.

IDENTICAL OR CONFUSINGLY SIMILAR

The first requirement that the Complainant must establish is that the Disputed domain name is identical with, or confusingly similar to, the Complainant’s trademark or service mark.

There are two elements of this test: the Complainant must demonstrate that it has rights in a trademark or service mark and, if so, the Disputed domain name must be shown to be identical or confusingly similar to the trademark or service mark.

The Complainant has provided two print-outs from the ROMARIN database.

The first one shows the details of the international trademark registration No. 704697, “Bolloré”. The holder of this registration is the Complainant. The Panel accepts this document as a proof of the Complainant's rights on the trademark “Bolloré”.

The second one shows the details of the international trademark registration No. 595172, “BOLLORE”. The holder of this registration is not the Complainant.

The Complainant has not submitted any evidence of the fact that the owner of the international trademark registration No. 595172 is one of its subsidiaries, or that any license or authorization exists. When the Complainant is not the owner of a trademark, relevant evidence on license, authorization or parent-subsidiary structure is necessary (see WIPO case No. D2008-1859). Therefore, the international trademark registration No. 595172, "BOLLORE", has not been taken into account by the Panel.

The Complainant has proven ownership of the registered trademark "Bolloré" only, identified in section "Identification of rights" above.

On the question of identity or confusing similarity, what is required is simply a comparison and assessment of the Disputed domain name itself to the Complainant’s trademark.

The Disputed domain name differs from the Complainant's trademark "Bolloré" only by the use of letter "e" without accent, of the letter "s" at the end of the word, and of the top-level domain ".com".

It is well established that the difference between the use of a letter without accent and the use of a letter with accent is immaterial to the purpose of the comparison (see, for example, WIPO case No. D2016-1300).

Furthermore, the mere addition of the common plural signifier "s" does not avoid the confusing similarity between the Disputed domain name and the mark (see, for example, WIPO case No. D2014-1859).

It is also well established that the top-level domain may generally be disregarded in the confusing similarity test (see, for example, WIPO case No. D2016-2547).

Therefore, the Panel considers that the Disputed domain name is confusingly similar to the Complainant's trademark "Bolloré".

Accordingly, the Panel finds that the Complainant has satisfied paragraph 4(a)(i) of the Policy.

RIGHTS OR LEGITIMATE INTERESTS

The second requirement that the Complainant must prove is that the Respondent has no rights or legitimate interests in the Disputed domain name.

Paragraph 4(c) of the Policy provides that the following circumstances can be situations in which the Respondent has rights or legitimate interests in the Disputed domain name:

(i) before any notice to [the Respondent] of the dispute, [the Respondent's] use of, or demonstrable preparations to use, the [Disputed] domain name or a name corresponding to the [Disputed] domain name in connection with a bona fide offering of goods or services; or

(ii) [the Respondent] (as an individual, business, or other organization) [has] been commonly known by the [Disputed] domain name, even if [the Respondent] [has] acquired no trademark or service mark rights; or

(iii) [the Respondent] [is] making a legitimate non-commercial or fair use of the [Disputed] domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

This is a non-exhaustive list of circumstances in which a respondent can show rights or legitimate interests in a domain name.

The onus of proving this requirement falls on the Complainant. UDRP panels have recognized that proving that a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of "proving a negative".

Accordingly, it is usually sufficient for a complainant to raise a prima facie case against the respondent and the burden of proof on this requirement shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the Disputed domain name.

The Panel finds that the Complainant has made out a prima facie case that the Respondent does not have rights or legitimate interests in the Disputed domain name.

In particular, the Complainant states that:

- it does not carry out any activity for the Respondent;

- the Respondent is not affiliated to the Complainant;

- the Respondent does not have any business with the Complainant;

- the Respondent has not been authorized to make any use of the Complainant's trademarks;

- the Respondent is not commonly known by the Disputed domain name.

In the absence of a Response, there is no indication in the present case that the Respondent is commonly known by the Disputed domain name.

Furthermore, the Respondent has failed to demonstrate any of the other non-exclusive circumstances evidencing rights or legitimate interests under the Policy, paragraph 4(c) or other evidence of rights or legitimate interests in the Disputed domain name.

The Respondent does not appear to be commonly known by the name "BOLLORES" or by a similar name.

The Respondent does not appear to make any legitimate non-commercial or fair use of the Disputed domain name, nor any use in connection with a bona fide offering of goods or services.

Accordingly, the Panel finds that the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

REGISTERED AND USED IN BAD FAITH

Under the third requirement of the Policy, the Complainant must establish that the Disputed domain name has been both registered and used in bad faith by the Respondent.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, including:

(i) circumstances indicating that [the Respondent] [has] registered or [has] acquired the [Disputed] domain name primarily for the purpose of selling, renting, or otherwise transferring the [Disputed] 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 [the Respondent's] documented out-of-pocket costs directly related to the [Disputed] domain name; or

(ii) [the Respondent] [has] registered the [Disputed] 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 [the Respondent] [has] engaged in a pattern of such conduct; or

(iii) [the Respondent] [has] registered the [Disputed] domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the [Disputed] domain name, [the Respondent] [has] intentionally attempted to attract, for commercial gain, Internet users to [the Respondent's] 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 [the Respondent's] web site or location or of a product or service on [the Respondent's] web site or location.

The Panel, on the basis of the evidence presented, agrees with the Complainant's contentions that the Disputed domain name was registered in bad faith and that it has been used in bad faith.

As regards the Respondent's offer to sell the Disputed domain name on specific financial conditions, the Panel does not consider this circumstance a sufficient indication of bad faith within the meaning of paragraph 4(b)(i) of the Policy. Indeed,

the wording of the offer is too vague to be interpreted as being meaningfully in excess of registration costs (see, for example, WIPO case No. D2017-1593).

The Panel accepts the Complainant's view that the Disputed domain name is an example of typosquatting. This practice has been considered by UDRP panels as evidence of registration in bad faith (see, for example, WIPO case No. D2006-0845).

The Panel agrees also that directing Internet users to a web page containing commercial links in relation to the Complainant, like in the present case, is evidence of use in bad faith (see, for example, WIPO case No. D2017-0890).

The Panel observes that if the Respondent had legitimate purposes in registering and using the Disputed domain name it would have filed a Response in this proceeding.

The Panel, having taken into account that the Disputed domain name is an example of typosquatting, the fact that no response to the complaint has been filed and the use of the Disputed domain name in a website containing commercial links in relation to the Complainant, considers that the Disputed domain name was registered and is being used in bad faith.

Accordingly, the Panel finds that the Disputed domain name was registered and is being used in bad faith within the meaning of paragraph 4(b)(iv) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **BOLLORES.COM**: Transferred

PANELLISTS

Name	**Michele Antonini**

DATE OF PANEL DECISION 2018-01-17

Publish the Decision