Decision for dispute CAC-UDRP-101974

Case number	CAC-UDRP-101974
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Domain names	bollorè.com

Case administrator

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

Complainant

Organization	BOLLORE

Complainant representative

Organization	Nameshield (Laurent Becker)

Respondent

Name	Adileo Barone

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings.

IDENTIFICATION OF RIGHTS

In this proceeding, the Complainant relies on the following trademarks:
- International trademark registration No. 704697, "Bolloré" (device), registered on December 11, 1998, for goods and services in classes 16, 17, 34, 35, 36, 38, 39;
- International trademark registration No. 595172, “"Bolloré" (word), registered on August 14, 1992, for goods and services in classes 06, 09, 11, 12, 13, 19, 20, 37,41 and 42.
The Panel notes, however, that the international trademark registration No. 595172 is owned by a different legal entity. This was also noted by one of the previous Panels (see CAC Case No. 101728). Since the Complainant did not explain the relationship between the Complainant and the company that owns the international trademark registration No. 595172, the Panel disregards this registration for the purpose of this proceeding.

FACTUAL BACKGROUND

The Complainant states that it was founded in 1822 and now holds strong positions in all its activities around three business lines: Transportation and Logistics, Communication and Media, Electricity Storage and solutions.

The Complainant is one of the 500 largest companies in the world and is listed on the Paris Stock Exchange. The

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

The Complainant is the owner of several trademark registrations BOLLORE and various domain names.
The Respondent registered the disputed domain name on February 20, 2018.

The Respondent states in his response that Bollorè is a common last name in France and there was no bad faith behind the registration and use of the disputed domain name.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant contends that the disputed domain name is confusingly similar to the Complainant's trademark as the change of the letter "é" by "è" and the generic Top- Level Domain ("gTLD") suffix ".COM" does not change the overall impression of the designation as being connected to the Complainant's trademark.
This represents a clear case of typosquatting and the disputed domain name contains an obvious misspelling of the Complainant's trademark.

According to the Complainant, the Respondent does not have any rights or legitimate interest in the disputed domain name. The Respondent is not affiliated with nor authorized by the Complainant in any way to use the trademark BOLLORE. The Complainant does not carry out any activity for, nor has any business with the Respondent.

The Complainant states that a domain name holder has no legitimate interest in the absence of credible evidence of use or demonstrable preparation of use of the domain name in connection with a bona fide offer products or services.

The Complainant claims that the disputed domain name has been registered and is being used in bad faith.
The change of the letter "é" by the letter "è" in the trademark is not sufficient to avoid the likelihood of confusion with its trademark. The disputed domain name represents a clear example of typosquatting, an activity which is considered evidence of bad faith by the consistent case law in domain name disputes.

The Complainant also adds that the disputed domain name redirects to a registrar parking page with commercial links in relation to the Complainant and believes that the Respondent has used the disputed domain name to attract, for commercial gain, Internet users to its website, by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website and of products on its website.

RESPONDENT:

The Respondent provided a short response that can be summarized as follows:
- Bollorè is a common last name in France;
- The disputed domain name was not acquired with a bad faith purpose nor to damage the Complainant;
- The web site under the disputed domain is empty and does not refer to the Complainant;
- There are many registered trademarks "Bollore" and "Bollore" is a common last name/company name.

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. Identical or confusingly similar with Complainant's trademark

As confirmed by WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0"), see paragraph 1.2.1: "Where the complainant holds a nationally or regionally registered trademark or service mark, this prima facie satisfies the threshold requirement of having trademark rights for purposes of standing to file a UDRP case".

The disputed domain name represents a misspelling of the Complainant's Bollore trademark.
As stated in WIPO Overview 3.0 "a domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element" (see par. 1.9).
One of the examples of typos is "the use of non-Latin internationalized or accented characters" (see par. 1.9 of the WIPO Overview 3.0, see also SIEMENS AG v. Omur Topkan, WIPO Case No. D2013-1318).

The Complainant's trademark is clearly recognizable in the disputed domain name.

The suffix .com shall be disregarded under the confusing similarity test as it does not add anything to the distinctiveness of the disputed domain name.

Therefore, the Panel finds that the first requirement of the Policy has been satisfied.

B. Rights or Legitimate Interests

The general rule is the following:

(i) a complainant is required to make out a prima facie case that the respondent lacks rights or legitimate interests; and
(ii) once such prima facie case is made, the burden shifts to the respondent who has to demonstrate his rights or legitimate interests in respect of the domain name under paragraph 4 (c) of the Policy.
If the respondent fails to do so, the second element of the Policy is satisfied (see Croatia Airlines d.d. v. Modern Empire Internet Ltd., WIPO Case No. D2003-0455 and CAC Case No. 101284).

The Respondent did not explain his rights and interests in the disputed domain name. The Respondent merely referred to the trademark of the Complainant as a common surname in France and stated that the website was empty and was not designed to cause any harm to the Complainant.

The Respondent is Adileo Barone. The Respondent's arguments in respect of Bollore being a common surname would be valid if he or the website under the disputed domain name had any other connection with the "Bollore" surname.

However, the Respondent failed to explain any connection between the disputed domain name and himself and his reasons for choosing the disputed domain name.

In particular, there is no evidence that the Respondent has been commonly known by the disputed domain name.
There is no information provided by the Respondent or available otherwise that would somehow support his rights or legitimate interests in respect of the disputed domain name.

The Panel finds that the Complainant has established its prima facie case and without any evidence from the Respondent to the contrary, the Complainant satisfied the second requirement of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy lists non-exhaustive circumstances indicating registration and use in bad faith.
These circumstances are non-exhaustive and other factors can also be considered in deciding whether the disputed domain name is registered and used in bad faith.
In particular, the Panel may take into account the following:
- The nature of the disputed domain name;
- the chosen top-level domain;
- a clear absence of rights or legitimate interests coupled with no credible explanation for the respondent's choice of the domain name;
- other indicia generally suggesting that the respondent had somehow targeted the complainant (see WIPO Overview 3.0, par. 3.2.1.).

As stated in par. 3.1 of WIPO Overview 3.0 "the scenarios described in UDRP paragraph 4(b) are non-exclusive and merely illustrative, even where a complainant may not be able to demonstrate the literal or verbatim application of one of the above scenarios, evidence demonstrating that a respondent seeks to take unfair advantage of, abuse, or otherwise engage in behavior detrimental to the complainant's trademark would also satisfy the complainant's burden."

First, the Panel notes that the Complainant's trademark registration predates registration of the disputed domain name.

The Panel also needs to address the Respondent's arguments stated in his response to give a clear analysis of the "bad faith" factor.

The Respondent's arguments are largely related to his statement that "Bollore" is a common last name in France and as such is not associated only with the Complainant. Besides the Respondent refers to numerous "Bollore" trademarks owned by various parties and the absence of bad faith.

It is well accepted in the UDRP jurisprudence that stronger trademarks enjoy wider protection and weaker trademarks (consisting of descriptive, geographic terms or words in common usage) have weaker protection and strength of a trademark is relevant in assessing the bad faith criterion.

In this case it is clear that the "Bollore" trademark is a surname of one of the Complainant's founders and is associated with the Bollore family.
The Complainant provided evidence and information about its history and current business.

The Panel has also conducted its own investigation under paragraph 10(a) of the Rules and discovered multiple Internet references to the Complainant, its group and its business.
While Bollore may indeed be a rather common surname, in a business context it is known largely because of the Complainant. The Complainant has a global presence, including Italy, a country of the Respondent's residence.

Therefore, the Panel finds that the Complainant and its trademark have a strong reputation and the Complainant's mark is highly distinctive.

The Complainant has also been a frequent target of cybersquatters (see e.g. CAC Case No. 101790; CAC Case No. 101771;

CAC Case No. 101689; CAC Case No. 101498; Bollore v. Wuxi Yilian LLC, WIPO Case No. D2017-0442; Bollore v. Tywonia W Hill, WIPO Case No. DCO2017-0012).

The Panel also notes that the Respondent chose the .com domain zone for the disputed domain name. The .com domain zone is usually associated with commercial activities and indicates that the disputed domain name was registered for a business purpose (see CAC Case No. 101696).

The Complainant claims that the disputed domain name redirects to a registrar parking page with commercial links in relation to the Complainant.

The Panel notes that the disputed domain name was not actively used on the date of this decision.
There is a general agreement that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding (see par. 3.3 of the WIPO Overview 3.0).

One has to look at the circumstances of a case taking into account, in particular, the degree of distinctiveness or reputation of the Complainant's mark and the implausibility of any good faith use to which the domain name may be put (see e.g. Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003; "Dr. Martens" International Trading GmbH and "Dr. Maertens" Marketing GmbH v. Godaddy.com, Inc., WIPO Case No. D2017-0246; CAC Case No. 101435, CAC Case No. 101691 and CAC Case No. 101640).

Even though the Respondent provided the response, he failed to explain a purpose of the disputed domain name registration and failed to address the complaint substantially.

In particular, the Respondent did not explain what his connection with the Bollore surname is, why he chose this domain name and what was the intended purpose of registration and use of the disputed domain name.

This case appears to be a case of typosquatting and typosquatting itself can be considered as an additional argument in favor of finding bad faith registration and use (see CAC Case No. 101867) and it is likely that the Respondent's intent was to attract, for commercial gain, Internet users to its website, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website and of products on its website (see e.g. CAC Case No. 101806).

The Panel evaluating overall circumstances of this case, in the absence of any evidence to the contrary, finds that it is likely that the Respondent intended to profit from Complainant's reputation.

The Panel notes that in UDRP disputes the standard of proof is balance of probabilities ("more likely than not") and in the present case the Complainant succeeds on the balance of probabilities.

Taken into account all of the above, the Panel holds that the third requirement of the Policy has been satisfied.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **BOLLORè.COM**: Transferred

PANELLISTS

Name	**Igor Motsnyi**

DATE OF PANEL DECISION 2018-05-16