Decision for dispute CAC-UDRP-101993

Case number	CAC-UDRP-101993
Time of filing	2018-05-14 11:23:14
Domain names	yannickbollore.com

Case administrator

Name	Sandra Lanczová (Case admin)

Complainant

Organization	Bolloré SA

Complainant representative

Organization	Nameshield (Enora Millocheau)

Respondent

Organization	Domain Management MIC

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

Complainant is the owner of international trademark n° 704697 BOLLORE registered on December 11, 1998 for products/services of classes 16, 17, 34, 35, 36, 38 and 39.

FACTUAL BACKGROUND

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

The Complainant contends that incorporation of the trademark BOLLORE® in its entirety and the addition of the related name “Yannick” to it in the disputed domain name is not sufficient to avoid the likelihood of confusion with the Complainant’s trademark. Please see the decisions of the previous panels:

- FORUM Case No. 1754924, State Farm Mutual Automobile Insurance Company v. ANONYMOUSSPEECH ANONYMOUSSPEECH (“Respondent registered the disputed domain name using the STATE FARM mark in its entirety—less the space—and merely adds the name “Nancy Rangel” and the gTLD “.com.” Nancy Rangel is the real name of one of Complainant’s real agents. It is well settled a respondent cannot distinguish a disputed domain name from Complainant’s mark by adding related terms (in this case, the name of an actual agent)”).

Indeed, past panels have held that a Respondent was not commonly known by a disputed domain name if the WHOIS information was not similar to the disputed domain name.
Please see, for instance, FORUM Case No. FA 96356, Broadcom Corp. v. Intellifone Corp.: Panel stated that the Respondent has “no rights or legitimate interests because the respondent is not commonly known by the disputed domain name or using the domain name in connection with a legitimate or fair use”.

Furthermore, the Complainant also asserts that the Respondent’s domain name redirects to a dynamic parking webpage containing pay-per-click links. The Panels found that this did not constitute a bona fide offering of goods or services, or a legitimate noncommercial or fair use under Policy ¶¶4(c)(i) or (iii), regardless of whether or not the links resolve to competing or unrelated websites or if the respondent is itself commercially profiting from the click-through fees. Please see:
- FORUM Case No. 1777859, Coachella Music Festival, LLC v. cunshuo zhang (“Complainant provides screenshot evidence which Complainant maintains demonstrates Respondent’s use of the disputed domain name to host a parking page containing pay-per-click advertisements which redirect users to unrelated commercial services. The Panel finds Respondent’s use of the domain name is not in accordance with Policy ¶¶ 4(c)(i) and (iii) and Respondent has no rights or legitimate interests in respect of the domain name”);
- FORUM Case No. 970871, Vance Int’l, Inc. v. Abend.

Moreover, the Complainant contends that the Respondent’s lack of rights and legitimate interests in the domain name <yannickbollore.com> is evidenced by offering to sell the domain name through one of the links on the disputed domain name website. Please see:
- FORUM Case No. 1764056, Deutsche Lufthansa AG v. Milen Radumilo (“Respondent is not using the domain name for any purpose other than offering a dynamic parking page and advertising the fact the domain name is for sale. Respondent does not have rights or legitimate interests in the domain name under Policy ¶4(a)(ii).”);

The Complainant’s trademark BOLLORE® is well-known and distinctive. Past panels have confirmed the notoriety of the trademarks BOLLORE® in the following cases:
- CAC Case No. 101498, BOLLORE SA v. Naquan Riddick, (“The Respondent registered the Disputed domain name with full knowledge of the Complainant's well-known trademark.”);

Moreover, the Complainant contends that the Respondent registered and used the disputed domain name in bad faith by attempting to confuse Internet users, for commercial gain, as to source, sponsorship, affiliation, or endorsement of Respondent’s website. Respondent’s use of the BOLLORE® trade mark attempts to create the impression to Internet users seeking information regarding Complainant (especially by targeting Yannick Bolloré, the Vice-Chairman of the Board of Directors of the Complainant) and instead redirecting them to parking webpage with pay-per-click links which has nothing to do with the Complainant. Please see:
- FORUM Case No. 680624, Allianz of America Corporation v. Lane Bond (“the Panel finds that Respondent’s diversion of Internet users seeking Complainant’s products to its own website for commercial gain constitutes bad faith registration and use under Policy ¶ 4(b)(iv), because Respondent likely profits from redirecting consumers to its own website and is, therefore, taking advantage of the confusing similarly between Complainant’s ALLIANZ mark and the <allianzfinance.biz> domain name”).

Furthermore, the Complainant also claims that the Respondent knew of Complainant's rights in the BOLLORE® trade mark prior to registration of the domain name since he chose to register a domain name which contains the given name of one of Complainant’s member of the Board of Directors. Please see:
- FORUM Case No. 1754924, State Farm Mutual Automobile Insurance Company v. ANONYMOUSSPEECH ANONYMOUSSPEECH (“Complainant claims Respondent knew of Complainant's rights in the STATE FARM mark prior to registration of the domain names. The Panel believes this because Respondent chose to register a domain name which contains the real name of one of Complainant’s agents. Respondent knew about Complainant and its marks. Respondent knew Nancy Rangel worked for Complainant. Respondent knows too much to claim this was all a simple accident.”).

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

I. RIGHTS

The disputed domain name is confusingly similar to the Complainant's registered trademarks since it reproduces the Complainant's mark 'BOLLORE', merely adding the name "Yannick", which does not avoid the confusing similarity. Furthermore, the Complainant has proven that the name Yannick Bollore corresponds to one of the Bolloré family member and who is also the Vice-Chairman of the Board of Directors of the Complainant.

II. NO RIGHTS OR LEGITIMATE INTERESTS

The Respondent has not submitted any reply. Therefore, it has submitted no information on possible rights or legitimate interests it might hold. On its part, the Complainant has submitted information and arguments which allow it to be reasonably assumed that the Respondent has no rights or legitimate interest in the disputed domain name.

"As mentioned above in section 3, the Respondent has not filed a Response and is therefore in default. In those ircumstances when the Respondent has no obvious connection with the disputed domain names, the prima facie showing by the Complainant that the Respondent has no right or legitimate interest is sufficient to shift the burden of proof to the Respondent to demonstrate that such a right or legitimate interest exists. Please see e.g. WIPO Case No. D20020273 <sachsenanhalt>; WIPO Case No. D20020521 <volvovehicles.com>"

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domainname.

III. BAD FAITH

The Respondent has, as a result of his default, not invoked any circumstances which could invalidate the Complainant´s allegations and evidence with regard to the Respondent´s registration and use of the disputed domain name in bad faith.

Paragraph 4(b) (iiii) of the Policy provides that the following circumstances are deemed to be evidence that the Respondent has registered and is using the disputed domain name in bad faith:

(iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain,

Internet users to its website or other online location, by creating a likelihood of confusion with the Complainant'smark as to the source, sponsorship, affiliation or endorsement of its website or location or of a product orservice on its website or location.

The disputed domain name redirects to a dynamic parking webpage containing what apparently are pay-per-click links.

Furthermore, the Complainant’s trademark BOLLORE is well-known and distinctive. Past panels have confirmed the notoriety of the trademark in CAC Case No. 101498, BOLLORE SA v. Naquan Riddick, CAC Case No. 101696, BOLLORE v. Hubert Dadoun and CAC Case No. 101494, BOLLORE SA v. Dillan Dee Jackson.

As mentioned in Andrey Ternovskiy dba Chatroulette v. Alexander Ochki, WIPO Case No. D20170334:

"It is clear in the Panel's view that in the mind of an Internet user, the disputed domain names could be directly associated with the Complainant's trademark, which is likely to be confusing to the public as suggesting either an operation of the Complainant or one associated with or endorsed by it (see AT&T Corp. v. Amjad Kausar, WIPO Case No. D20030327)."

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **YANNICKBOLLORE.COM**: Transferred

PANELLISTS

Name	**José Ignacio San Martín**

DATE OF PANEL DECISION 2018-06-12

Publish the Decision