Decision for dispute CAC-UDRP-102015

Case number	CAC-UDRP-102015
Time of filing	2018-05-21 10:03:34
Domain names	bolloree.com

Case administrator

Name	Sandra Lanczová (Case admin)

Complainant

Organization	BOLLORE SA

Complainant representative

Organization	Nameshield (Enora Millocheau)

Respondent

Name	mich john

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

The Complainant adduced evidence of a figurative mank portraying the name "Bolloré" which was registered internationally as trademark 704697 under the Madrid System in relation to Nice Classification System classes 16,17,34,35,36, 38 and 39. This trademark became effective on 18 November 2018 and remains valid. It was introduced on the basis of a French mark. The only limitation of the scope of protection under the international registration with respect to any designated State relates to class 39 (transport services).

The Complainant states that it own further trademarks but has adduced no evidence for them.

The Complainant adduced proof of its registration of four domain names incorporating the Bolloré trademark-protected name, including bollore.com. None contains any further characters.

FACTUAL BACKGROUND

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

The Complainant is a well-known French company with its headquarters near Paris. The company was founded in 1822 and

has remained in family majority ownership despite being listed on the Paris stock exchange. The Bolloré group today is an operation diversified across different economic sectors, from transport and logistics services, to energy, to communication and media alongside its traditional paper manufacturing business. It is one of the five hundred largest companies in the world.

The Respondent is only known by his name and contact details as furnished by the registrar of the disputed domain name <bolloree.com> to the Case Administrator for the purposes of this proceeding. He registered the disputed domain name on 16 May 2018. The disputed domain name is hosted but only the web host's automatically generated folder on the server is visible. No website content is thus currently hosted.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

PARTIES' CONTENTIONS:

COMPLAINANT:

Previous panels have found that slight spelling variations do not prevent a domain name from being confusingly similar to a complainant’s trademark. Please see prior UDRP cases:

- WIPO Case No. D2016-1853, Arcelormittal S.A. v. Cees Willemsen, <arclormittal.com> and <arelormittal.com>;
- CAC Case No. 101390, BOLLORE v. Roy <boll0re.com>

The Respondent is not known as “BOLLOREE”, but as “MICH JOHN”, and has not acquired trademarks or mark rights on the relevant term. 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, for instance:

- FORUM Case No. FA 1781783, Skechers U.S.A., Inc. and Skechers U.S.A., Inc. II v. Chad Moston / Elite Media Group <bobsfromsketchers.com> (“Here, the WHOIS information of record identifies Respondent as “Chad Moston / Elite Media Group.” The Panel therefore found under paragraph 4(c)(ii) of the Policy that Respondent was not commonly known by the disputed domain name under that paragraph.)

- FORUM Case N° FA 699652, Braun Corp. v. Loney (“concluding that Respondent was not commonly known by the disputed domain names where the WHOIS information, as well as all other information in the record, gave no indication that Respondent was commonly known by the domain names, and Complainant had not authorized Respondent to register a domain name containing its registered mark”).

Furthermore, the website in relation with the disputed domain name displays the message “Index of”. Past panels have established that, in this case, the Respondent fails to make an active use of the domain name, and therefore, has no legitimate interest regarding the domain name:

- FORUM Case No. 1745812, Dell Inc. v. Suchada Phrasaeng (“Complainant claims the disputed domain names currently redirect users to a website that lacks any content, except for the message “Index of /” (essentially a directory listing for the domain names). Failure to make active use of a confusingly similar domain name evidences a lack of a bona fide offering of goods or services or a legitimate noncommercial or fair use. […] Respondent has not made a bona fide offering of goods or services or a legitimate noncommercial or fair use with the disputed domain names“ under paragraph 4(c)(i) and (iii) of the Policy.)

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.");

- CAC Case No. 101696, BOLLORE v. Hubert Dadoun ("As the Complainant is also one of the largest 500 companies in the world, the Panel accepts the Complainant's contention that their trademark has a strong reputation and is in fact to be considered well-known.")";

- CAC Case No. 101494, BOLLORE SA v. Dillan Dee Jackson ("the Panel finds that, in light of the distinctiveness of the Complainant's trademark, with which the Disputed domain name is confusingly similar, and of the prior registration and use of the trademark BOLLORÉ by the Complainant, including in the Respondent's country, the Respondent was more likely than not aware of the Complainant's trademark at the time of the registration of the Disputed domain names.").

By registering the disputed domain name with the misspelling of the trademark BOLLORE by the addition of the letter "E" in the trademark, the Complainant can state that this misspelling was intentionally designed to be confusingly similar with the Complainant's trademarks. Previous UDRP panels have seen such actions as evidence of bad faith, for instance:

- FORUM Case No. FA 877979, Microsoft Corp. v. Domain Registration Philippines: finding bad faith registration and use of the <microssoft.com> domain name as it merely misspelled the complainant's MICROSOFT mark.

- FORUM Case No. 157321, Computerized Sec. Sys., Inc. v. Bennie Hu ("The Panel finds that Respondent's registration and use of a domain name that differs from Complainant's mark by only one letter indicates "typosquatting", which is evidence of bad faith registration and use.").

Thus, given the distinctiveness of the Complainant's trademarks and reputation, the Complainant contends that it is inconceivable that the Respondent could have registered the disputed domain name without actual knowledge of Complainant's rights in the trademark. Past Panels have held that a registration is constitutive of bad faith, for instance FORUM Case No. FA 744444, Yahoo! Inc. v. Butler ("finding bad faith where the respondent was "well-aware" of the complainant's YAHOO! mark at the time of registration.").

As prior WIPO UDRP panels have held, the incorporation of a famous mark into a domain name, coupled with an inactive website, may also be evidence of bad faith registration and use, for instance:

- WIPO Case No. D2000-0003, Telstra Corporation Limited v. Nuclear Marshmallows
- WIPO Case No. D2000-0400, CBS Broadcasting, Inc. v. Dennis Toeppen.

RESPONDENT: None.

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 that there is no other reason why it would be inappropriate to provide a decision. It notes in particular the return of the postal communication concerning this

proceeding and the apparent delivery of the e-mails from the Case Administrator to the Respondent's e-mail account specified upon registration.

PRINCIPAL REASONS FOR THE DECISION

The Panel has no difficulty in accepting the Complainant's main contention that this is a case of typosquatting.

The distinctiveness of the Complainant's well-known brand makes it probable, without any alternative explanation being apparent from the Case File, that the mere addition of the letter "e" was aimed to produce confusing similarity with the brand's name. That name is protected by trademark -- expressed in a figurative yet fully legible form -- whereas there is no evidence of any right on the Respondent's part to use the protected name or of any other legitimate interest in it. Thus the first and second criteria of the UDRP cumulative three-part test are fulfilled.

As regards the third UDRP criterion that must be met, that of bad faith, the Panel takes note, again, of the distinctiveness of the Complainant's brand and the intention that must be presumed to exist in registering a domain name bearing such confusing similarity with well-known brand name. It is one that may, moreover, sound to some people in English like the French pronunciation of the brand name.

The Panel further notes, but only as a subsidiary consideration, that earlier instances of domain name abuse have occurred with respect to the Complainant's brand, indicating that it might also be attractive to a typosquatter.

The Panel does not attach any great significance to the absence of user-loaded content on a website, especially given that the registration of the disputed domain name is still very recent.

But this last consideration does not detract from the conclusion that it is difficult to conceive of a purpose sought in holding the disputed domain name other than one which would deliberately exploit the confusing similarity with the Complainant's protected brand, presumably for profit or to cause a disadvantage to the Complainant. The circumstances here therefore approximate sufficiently, as previous panels have found in similar cases, to the kind of examples of bad faith enumerated by way of guidance in Paragraph 4(b) of the Policy.

The Panel accordingly finds that the final criterion of bad faith has been met and thus holds for the Complainant.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **BOLLOREE.COM**: Transferred

PANELLISTS

Name	**Kevin J. Madders**

DATE OF PANEL DECISION 2018-07-02

Publish the Decision