Decision for dispute CAC-UDRP-102044

Case number	CAC-UDRP-102044
Time of filing	2018-06-08 10:19:21
Domain names	bollorecoal.com

Case administrator

Name	Sandra Lanczová (Case admin)

Complainant

Organization	BOLLORE

Complainant representative

Organization	Nameshield (Enora Millocheau)

Respondent

Name	Ethan Wilson

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

The Complainant has evidenced to be the owner of the following International (IR) trademark registration:

- Word-/device mark BOLLORÉ, World Intellectual Property Organization (WIPO), Registration No.: 704697, Registration Date: December 11, 1998, Status: Active, with protection for numerous countries worldwide.

FACTUAL BACKGROUND

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

Please see for instance CAC Case n° 101402, CREDIT AGRICOLE SA v. William Philippe (“the addition of the term <SMS> is only a minor variation and therefore not sufficient to distinguish the disputed domain names <smscreditagricole.com> and <credit-agricole-sms.net> from the Complainant’s trademark CREDIT AGRICOLE; the Complainant’s trademark CREDIT AGRICOLE constitutes the dominant component of the disputed domain names.”)

Besides, it is well-established that “a domain name that wholly incorporates a Complainant’s registered trademark may be sufficient to establish confusing similarity for purposes of the UDRP”. Please see WIPO Case No. D2003-0888, Dr. Ing. h.c. F.

Porsche AG v. Vasiliy Terkin.

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.").

Please see 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.")

Please see for instance FORUM Case No. FA 1762308, LoanDepot.com, LLC v. Kaolee (Kay) Vang-Thao, ("Complainant claims Respondent's use of the domain name to offer competing loan services is likely to further such confusion.")

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant is a company domiciled in France that is part of the BOLLORÉ group of companies founded in 1822, nowadays active, inter alia, in the electricity storage industry. The Complainant is one of the 500 largest companies in the world with presences in 46 countries worldwide. The Complainant communicates on the Internet mainly through its website at "www.bollore.com" (with the domain name <bollore.com> registered back in 1997).
The Complainant contends that the disputed domain name is confusingly similar to the Complainant's BOLLORÉ trademark as it includes the latter in its entirety with the mere addition of the term "coal" which does not change the overall impression of the designation "Bollore" been connected to the Complainant's BOLLORÉ trademark. The Complainant, furthermore, argues that the Respondent has no rights or legitimate interests in respect of the disputed domain name since (1) Respondent is not affiliated with nor authorized by the Complainant in any way, neither by granting a license nor by authorization to make any use of the Complainant's BOLLORÉ trademark or to apply for registration of domain names including the designation "Bollore", (2) the Respondent still chose to headline its website under the disputed domain name by "BOLLORE IMPORT EXPORT PTY LTD" and, thereby, created a likelihood of confusion in the Internet users' mind making them believing the Respondent is in fact affiliated with the Complainant, in particular with the Complainant's South African subsidiary BOLLORÉ AFRICA LOGISTICS SOUTH AFRICA (PTY) LTD, which is not the case, (3) several paragraphs on the website under the disputed domain name have been directly copied from the website of the Complainant's competitor MATURI INTERNATION CO., LTD. under "www.charcoalmarket.com". Finally, the Complainant states that the Respondent has registered and is using the disputed domain name in bad faith since (1) Complainant's BOLLORÉ trademark is well-known and distinctive and it is inconceivable that the Respondent could have registered the disputed domain name without actual knowledge of the Complainant's rights therein, (2) several paragraphs on the website under the disputed domain name have been directly copied from the website of the Complainant's competitor MATURI INTERNATION CO., LTD. under "www.charcoalmarket.com", which is a clear attempt by the Respondent to defraud Internet users for its own profit as the Respondent pretends to be a charcoal reseller which it is not.

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 there is no other reason why it would be inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

The Panel finds that the disputed domain name is confusingly similar to the Complainant's BOLLORÉ trademark since the disputed domain name incorporates the latter in its entirety and the mere addition of the generic term "coal" (which even points to the Complainant's business in the field of electricity storage) is not capable to dispel the confusing similarity arising from the Complainant's trademark's incorporation in the disputed domain name.

Moreover, the Complainant contends, and the Respondent has not objected to these contentions, that the Respondent has neither made use of, or demonstrable preparations to use, the disputed domain name in connection with a bona fide offering of goods or services, nor is the Respondent making a legitimate non-commercial or fair use of the disputed domain name, nor is the Respondent commonly known thereunder. In fact, the Complainant has evidenced that the disputed domain name is being used to resolve to a website at "www.bollorecoal.com" which is headed "BOLLORE IMPORT EXPORT PTY LTD" pretending to derive from a charcoal supplier for professionals while relevant parts of this website obviously have been copied from the website of one of the Complainant's competitors in the electricity business. Such making use of the disputed domain name neither qualifies as bona fide nor as a legitimate non-commercial or fair use under the UDRP. Also, there is no reason for the Panel to believe that the Respondent's name somehow corresponds with the disputed domain name and the Respondent does not appear to have any trademark rights associated with the "Bollore" term on its own. Accordingly, the Panel has no difficulty in finding that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

Finally, the Panel holds that the disputed domain name was registered and is being used in bad faith. The fact that the disputed domain name, which is confusingly similar to the Complainant's BOLLORÉ trademark, resolves to a website that apparently has been set up by copying relevant parts from the website of one of the Complainant's competitors in the electricity business while being headed "BOLLORE IMPORT EXPORT PTY LTD", thereby pointing to the Complainant's own subsidiary BOLLORÉ AFRICA LOGISTICS SOUTH AFRICA (PTY) LTD, is a clear indication that the Respondent has been intentionally attempting to attract, for commercial gain, Internet users to its website under the disputed domain name, by creating a likelihood of confusion with the Complainant's BOLLORÉ trademark as to the source, sponsorship, affiliation or endorsement of the Respondent's website. Such circumstances shall be evidence of registration and use of the disputed domain name 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. **BOLLORECOAL.COM**: Transferred

PANELLISTS

Name	**Stephanie G. Hartung, LL.M.**

DATE OF PANEL DECISION 2018-07-13

Publish the Decision