

Decision for dispute CAC-UDRP-102231

Case number	CAC-UDRP-102231
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Time of filing	2018-11-23 08:51:33
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Domain names	bollorefreight.com
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Case administrator

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

Organization	BOLLORE
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Complainant representative

Organization	Nameshield (Enora Millocheau)
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Respondent

Name	Benson Dash
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OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

Complainant is the owner of several “BOLLORE” trademarks including, “Bollore” and device (Reg No. 704697 registered in France on December 11, 1998) and “Bollore” and device (Reg No. 1302823 registered in France on January 27, 2016).

The Complainant also owns various domain names including <bollore.com>, registered on July 24, 1997.

FACTUAL BACKGROUND

The Complainant, BOLLORE, was founded in 1822 and is one of the 500 largest companies in the world. Its central business activities include transportation and logistics, communication and media, and electricity storage and solutions. In addition, the Complainant also manages a number of financial assets including plantations and financial investments.

The Complainant’s subsidiary BOLLORE LOGISTICS is one of the 10 leading worldwide groups in transport organization and logistics. With a presence on the five continents, 607 agencies in 106 countries and more than 20,200 employees, BOLLORE LOGISTICS aims to consolidate the strength and reach of its international network through organic growth and targeted acquisitions.

The disputed domain name was registered on November 15, 2018 and presently resolves to an empty page.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

PARTIES' CONTENTIONS:

COMPLAINANT:

Complainant argues that the disputed domain name is identical to the BOLLORE mark because it contains the entire mark and differs only by the addition of the generic term "freight".

Complainant also argues that Respondent does not have rights or legitimate interests in the disputed domain name. Respondent is not commonly known as the domain name or in possession of licensing rights.

Complainant further argues that the disputed domain name was registered and is being used in bad faith. Complainant argues that Respondent possessed actual notice and knowledge of its BOLLORE mark due to its fame and Respondent had acted in bad faith by registering the disputed domain name. Complainant also argues that Respondent has intentionally attempted to attract, for commercial gain, Internet users to Respondent's website by creating a likelihood of confusion with the Complainant's mark.

RESPONDENT:

The Respondent did not file a Response.

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

Paragraph 4(a)(i) of the Policy requires the Complainant to show that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

A registered trademark provides a clear indication that the rights in the mark shown on the trademark certificate belong to its

respective owner.

The Complainant has provided evidence of its trademarks' registrations of the BOLLORE mark in France.

A registered trademark provides a clear indication that the rights in the mark shown on the trademark certificate belong to its respective owner. The disputed domain name <bollorefreight.com> integrates the Complainant's BOLLORE trademark in its entirety (see Wal-Mart Stores, Inc. v. Kuchora, Kal, WIPO Case No. D2006-0033; Hoffmann-La Roche Inc. v. Andrew Miller, WIPO Case No. D2008-1345).

B. Rights or Legitimate Interests

Paragraph 4(a)(ii) of the Policy requires the Complainant to show that the Respondent has no rights or interests in respect of the domain name.

Once the Complainant establishes a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name, the burden of production shifts to the Respondent to show that it has rights or legitimate interests in respect to the disputed domain name (see WIPO Overview 3.0, paragraph 2.1).

In the present case, the Complainant has demonstrated prima facie that the Respondent lacks rights or legitimate interests in respect of the disputed domain name and the Respondent has failed to assert any such rights or legitimate interests.

The Complainant has provided evidence that Respondent, identified as "Benson Dash" in the Whois register, is not commonly known as the disputed domain name, nor is Respondent authorized or licensed to use the BOLLORE mark in any manner. See M. Shanken Commc'ns v. WORLDTRAVELERSONLINE.COM, FA 740335 (Nat. Arb. Forum Aug. 3, 2006) (finding that the respondent was not commonly known by the <cigaraficionada.com> domain name under Policy 4(c)(ii) based on the WHOIS information and other evidence in the record).

The Respondent has not submitted a response and did not provide any evidence to show any rights or legitimate interests in the disputed domain name to rebut the Complainant's prima facie case.

The Panel is therefore of the view that the Respondent has no rights or legitimate interests in respect of the disputed domain name and accordingly, paragraph 4(a)(ii) of the Policy is satisfied.

C. Registered and Used in Bad Faith

Paragraph 4(a)(iii) of the Policy requires the Complainant to show that its domain name has been registered and is being used in bad faith. Paragraph 4(b) of the Policy provides circumstances that may evidence bad faith under paragraph 4(a)(iii) of the Policy.

The Complainant has submitted evidence that the Respondent registered the disputed domain name long after the Complainant registered its trademarks. The Complainant's evidence has shown that it owned the trademark since 1998 whereas the disputed domain name was only registered in November 2018. Under these circumstances, the Complainant's prior registered trademark is suggestive of the Respondent's bad faith (see Sanofi-Aventis v. Abigail Wallace, WIPO Case No. D2009-0735).

The Complainant provided evidence showing that 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's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or location or of a product or service on the Respondent's website or location. Complainant has provided evidence that the Complainant's mark was used in the main title page of the website that the disputed domain name resolved to. The evidence also shows that the Respondent titled the website under the disputed domain name as "BOLLORÉ LOGISTICS BELGIUM N.V. FREIGHT FORWARDING SERVICE" and identified itself solely as "Bolloré Logistics". The evidence shows that the Respondent was aware of the Complainant and its trademark. The evidence also suggests that the Respondent was offering similar services to those of the Complainant under the

Complainant's trademark. Given that BOLLORE is a distinctive mark which is a made-up word that does not have any meaning the Respondent's behavior is clear evidence of bad faith registration and use of the disputed domain name.

Further, the addition of the term “freight” to the disputed domain name is within the Complainant's field of commerce or indicating services related to the BOLLORE mark which likely triggers an inference of affiliation with the Complainant and does not constitute fair use of the disputed domain name. (See WIPO Overview 3.0, section 2.5.1.; Costco Wholesale Corporation and Costco Wholesale Membership, Inc. v. Kenneth Terrill (WIPO Case No. D2010-2124)).

Based on the evidence presented to the Panel, including the registration of the disputed domain name long after the registration of the Complainant's marks, the confusing similarity between the disputed domain name and the Complainant's marks, the Respondent's use of the disputed domain name, the Respondent's failure to present any credible rationale for registering the disputed domain name, and the fact that is no plausible good faith use the Respondent can put the disputed domain name to, the Panel finds that the disputed domain name was registered and is being used in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

- 1. **BOLLOREFREIGHT.COM**: Transferred

PANELLISTS

Name	Mr. Jonathan Agmon
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DATE OF PANEL DECISION 2018-12-30

Publish the Decision