Decision for dispute CAC-UDRP-102254

Case number	CAC-UDRP-102254
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Domain names	bollcre.com

Case administrator

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

Complainant

Organization	BOLLORE

Complainant representative

Organization	Nameshield (Enora Millocheau)

Respondent

Organization	Milton Liqours llC

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

The Complainant owns several trademarks including the term “BOLLORE”, such as the international trademark registration BOLLORE Reg. No. 704697 registered on December 11, 1998. However having chosen the Registrar’s Jurisdiction the Complainant should have indicated those International Registrations that cover USA (being the Registrar’s Jurisdiction the US Jurisdiction).

While checking the International Registrations indicated in the Compliant, the Panel has also discovered other International registrations regarding different BALLORE composed trademarks that, in spite the fact that they were not included in the Complainant, cover the US Jurisdiction. They are the following: Int Reg. Nos 1025892; 1302823;1008325 and 1302822.

Besides the trademark registrations the Complainant has previous domain names comprising BOLLORE, its trade name Bollore and its trademark reputation was rightly claimed by the Complainant.

The Respondent has chosen not to join the proceeding and therefore has lost its chance to challenge the Complainant's argument and evidence.

FACTUAL BACKGROUND

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

The Complainant was founded in 1822. It holds strong positions in all its activities around three business lines: Transportation and Logistics, Communication and Media, Electricity Storage and solutions. It is one of the 500 largest companies in the world. Listed on the Paris Stock Exchange, the majority interest of the Group's stock is always controlled by the Bolloré family.

The disputed domain name was registered on November 30, 2018. The disputed domain name resolves to a website featuring a parking page with commercial links related to the Complainant's activities.

The Complainant claimed that the Respondent has been using the disputed domain name in a fraudulent way and in this way managed to obtain an unlawful payments.

See for instance:

- CAC Case No. 101390, BOLLORE v. Roy ("On the other hand, it is clear that the Complainant has rights in respect of the trademark BOLLORE, which is similar in many respects to the registered domain name <BOLL0RE.COM>.");

- FORUM Case No. 1807147, Bittrex Inc. v. Kathryn Bates ("The Panel agrees that misspellings, such as the substitution of a letter, do not distinguish the Domain Name from Complainant's BITTREX trade mark pursuant to the Policy.");

- FORUM case No. FA 970871, Vance Int'l, Inc. v. Abend (concluding that the operation of a pay-per-click website at a confusingly similar domain name does not represent a bona fide offering of goods or services or a legitimate non-commercial or fair use, 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);

- WIPO Case No. D2007-1695, Mayflower Transit LLC v. Domains by Proxy Inc./Yariv Moshe ("Respondent's use of a domain name confusingly similar to Complainant's trademark for the purpose of offering sponsored links does not of itself qualify as a bona fide use.").

Past panels have confirmed the notoriety of the trademarks BOLLORE® in the following cases:

- CAC Case No. 102015, BOLLORE SA v. mich john ("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.");

- 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.")".

See for instance CAC Case No. 101990, JCDECAUX SA v. Gemma Purnell <jcdeceux.com> ("Furthermore, the Panel agrees with the Complainant that the use of the disputed domain name is a typical case of typosquatting which in turn is a strong indicator of registration and use of a domain name in bad faith.").

See WIPO Case No. Case No. D2017-2003, Association des Centres Distributeurs E. Leclerc - A.C.D Lec v. Milen Radumilo ("The Panel takes the view that the redirection of the disputed domain name, which is confusingly similar to Complainant's LECLERC trademark, by means of a typical typo-squatting to a generic PPC website in order to generate pay-per-click revenues without Complainant's permission to do so, is a clear indication that Respondent intentionally attempted to attract, for commercial gain, Internet users to his own website, by creating a likelihood of confusion with Complainant's LECLERC trademark as to the source, sponsorship, affiliation or endorsement of Respondent's website. Such circumstances are

evidence of registration and use of the disputed domain name in bad faith within the meaning of paragraph 4(b)(iv) of the Policy.”).

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

Identical and Confusingly Similar Trademark

The Panel notes that the Complainant owns several trademarks including the term “BOLLORE”, such as the international trademark registrations 1025892; 1302823;1008325 and 1302822 all earlier than the disputed domain name.

Registering a mark with a trademark registration authorities is sufficient to establish rights in a mark under Policy 4(a)(i). See Home Depot Product Authority, LLC v. Samy Yosef / Express Transporting, FA 1738124 (FORUM July 28, 2017) (finding that registration with the USPTO was sufficient to establish the complainant’s rights in the HOME DEPOT mark). As such, the Panel finds that the Complainant has established rights in the mark BOLLORE.

The Complainant contends that the disputed domain name is confusingly similar to the Complainant’s mark BOLLORE. It further contends that the substitution of the letter “O” in the middle with a “C” does not change the overall impression especially in relation to those who can read the trademark in printed letters”; This is a clear case of typosquatting as the disputed domain name contains an obvious misspelling of the Complainant’s trademark that may deceive consumers and actually happen with the Complainant’s business partners has claimed in the Complaint.

The Panel notes previous panels have concluded that the addition of a letter and of the generic top-level domain “.com” is insufficient to distinguish the domain name from the mark. The Panel agrees with the Complainant. See FORUM Case No. FA 0956501, T.R. World Gym-IP, LLC v. William D'Addio (“The addition of the letter “s” and of the generic top-level domain “.com” is insufficient to distinguish the domain name from the mark. “).

Thus, the Panel concludes that the disputed domain name is confusingly similar to the Complainant's mark BOLLORE per paragraph 4(a)(i) of the Policy.

Rights or Legitimate Interests

No License or Authorisation

Complainant must first make a prima facie case that Respondent lacks rights and legitimate interests in the disputed domain name under paragraph 4(a)(ii) of the Policy, then the burden shifts to Respondent to show it does have rights or legitimate interests. Complainant must first make out a prima facie case showing that Respondent lacks rights and legitimate interests in respect of an at-issue domain name and then the burden, in effect, shifts to Respondent to come forward with evidence of its rights or legitimate interests").

The Complainant contends that the Respondent is not affiliated with nor authorized by BOLLORE in any way; the Respondent has no rights or legitimate interests in respect of the disputed domain name; the Complainant does not carry out any activity for, nor has any business with the Respondent; neither license nor authorization has been granted to the Respondent to make any use of the Complainant's trademark BOLLORE or similar, or apply for registration of the disputed domain name by the Complainant. The Complainant also claims that the disputed domain name is a typosquatted version of the trademark BOLLORE; typosquatting is the practice of registering a domain name with a misprint or an error which cannot be easily detect by consumers in their normal way of life and in the sector of interest.

Domain Parking

The Complainant contends that the disputed domain name resolves to a parking page with commercial links slightly related to the Complainant's activities; past panels have found it is not a bona fide offering of goods or services or legitimate non-commercial or fair use.

As Respondent decided not to file any response and to rebut the above mentioned arguments the Panel finds that Respondent has no rights or legitimate interests in the disputed domain name per paragraph 4(a)(ii) of the Policy.

Registration and Use in Bad Faith

Well-known Trademark

The trademark is a well-known trademark and even thought the evidence on this point has not been exhaustive and mainly related to past Panel Decisions, the Respondent decided to remain outside the proceeding with no right to rebut the said documentation on reputation and the consequence argument.

Given the distinctiveness of the Complainant's trademarks and their reputation, it is inconceivable that the Respondent could have registered the disputed domain name without actual knowledge of Complainant's rights in the trademark.

As stated, 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.).

Typosquatting

The Complainant further contends that this misspelling was intentionally designed to be confusingly similar with the Complainant's trademarks.

It is in fact very easy not to detect the different between Bollore and Bollcre given that the second has no meaning and it is against the recognize law of phonetics.

Using a typo is a strong indication of bad faith see CAC Case No. 101990 JCDECAUX SA v Gemma Purnell. CAC Case 102249 Bollore v LBOLLORE. CAC Case 101974 BOLLORE v BOLLRè.

Domain Name Parking

The Complainant finally contends that the disputed domain name resolves to a parking page with commercially related to the Complainant's activities; the Respondent attempts to attract Internet users by creating a likelihood of confusion with the Complainant's trademark. The Complainant has submitted previous UDRP precedent which has seen such actions as evidence of bad faith: WIPO Case No. Case No. D2017-2003, Association des Centres Distributeurs E. Leclerc - A.C.D Lec v. Milen Radumilo ("The Panel takes the view that the redirection of the disputed domain name, which is confusingly similar to Complainant's LECLERC trademark, by means of a typical typo-squatting to a generic PPC website in order to generate pay-per-click revenues without Complainant's permission to do so, is a clear indication that Respondent intentionally attempted to attract, for commercial gain, Internet users to his own website, by creating a likelihood of confusion with Complainant's LECLERC trademark as to the source, sponsorship, affiliation or endorsement of Respondent's website. Such circumstances are evidence of registration and use of the disputed domain name in bad faith within the meaning of paragraph 4(b)(iv) of the Policy.").

The Panel agrees with the Complainant's contentions above and finds that the Respondent has registered and is using the disputed domain name in bad faith per paragraph 4(a)(iii) of the Policy.

The Panel concludes that the Complainant has established all three elements required under paragraph 4(a) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **BOLLCRE.COM**: Transferred

PANELLISTS

Name	**Massimo Cimoli**

DATE OF PANEL DECISION 2019-01-17

Publish the Decision