Decision for dispute CAC-UDRP-102485

Case number	CAC-UDRP-102485
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Domain names	bollorecleaningservices.com

Case administrator

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

Complainant

Organization	BOLLORE

Complainant representative

Organization	Nameshield (Laurent Becker)

Respondent

Organization	kinetic

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

Complainant owns international trademark registration No. 704697 for the trademark BOLLORÉ in relation to a wide range of goods and services such as paper and plastic products, advertising and business management services, insurance underwriting, telecommunications, and transportation and packaging of goods for others.

FACTUAL BACKGROUND

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

Complainant is a French multinational company that has been in business since 1822. It operates in three main areas: transportation and logistics, communication and media, and electricity storage and solutions. Complainant also hosts its main company website at www.bollore.com which was registered in 1997.

The disputed domain name <bollorecleaningservices.com> was registered on April 25, 2019 and resolves to a website with no substantive content (it is a parked index page with three links to items labeled „cgi-bin/“, „mailserver.zip“, and „office2010.zip“.

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

A. The disputed domain name is confusingly similar to a trademark or service mark in which the Complainant has rights

Paragraph 4(a)(i) of the Policy is a standing requirement which is satisfied if the disputed domain name is identical or confusingly similar to a trademark in which the Complainant has rights. Furthermore, it is not as extensive as the “likelihood of confusion” test for trademark infringement applied by many courts. Rather, under the Policy confusing similarity is commonly tested by comparing the Complainant’s trademark and the disputed domain name in appearance, sound, meaning, and overall impression. Please see Administradora de Marcas RD, S. de R.L. de C.V. v. DNS Manager / Profile Group, Case No. 101341 (CAC, November 28, 2016).

In this case, Complainant owns the BOLLORÉ trademark and operates in the areas of transportation and logistics, communication and media, and electricity storage and solutions. Complainant also hosts its main company website at <www.bollore.com>.

The domain name in dispute reproduces Complainant’s trademark in its entirety and merely adds the words “cleaning service“ and the .com TLD. The addition of these words to the well-known BOLLORÉ trademark, does not reduce the confusing similarity of the disputed domain name since it might lead internet users to wrongly believe that the said domain name is endorsed by Complainant. Please see Ecolab USA Inc. v. kristina matveeva, Claim No. FA 1459241 (FORUM, October 2, 2012) („the disputed domain name [ecolabcleaning.com] includes the entire ECOLAB mark, while adding the descriptive term ‚cleaning‘ and the generic top-level domain (‚gTLD‘) ‚.com.‘“)

Further, as it adds no meaning or context, the extension “.com” is not to be taken into consideration when examining the identity or similarity between the Complainant’s trademarks and the . Please see Bentley Motors Limited v. Domain Admin / Kyle Rocheleau, Privacy Hero Inc., Case No. D2014-1919 (WIPO, December 26, 2014) (when considering the issue of confusing similarity, “it is well-established that the top-level domain name “.com” may be disregarded for this purpose.“)

Accordingly, this Panel finds that the disputed domain name is confusingly similar to Complainant’s BOLLORÉ trademark and that Complainant has satisfied paragraph 4(a)(i) of the Policy.

B. The Respondent has no rights or legitimate interests in respect of the disputed domain name

Pursuant to paragraph 4(a)(ii) of the Policy, a complainant has the burden of making a prima facie showing that the respondent has no rights or legitimate interests in the disputed domain name. Cephalon, Inc. v. RiskIQ, Inc., Case No. 100834 (CAC, September 12, 2014). Once this burden is met, it shifts to the respondent to demonstrate that it does have rights or legitimate interests in the disputed domain name.

Paragraph 4(c) of the Policy offers respondents several examples of how to demonstrate their rights or legitimate interests to a disputed domain name.

The Complainant states that it does not carry out any activity for, nor does it have any business with the Respondent. The Respondent has not contested this. As such, it is reasonable to conclude that the Respondent is not affiliated with Complainant, nor authorized or licensed to use the trademark BOLLORÉ or to seek registration of any domain name incorporating the aforementioned trademark.

The Respondent has not demonstrated use of, or demonstrable preparations to use, the disputed domain name in connection with a bona fide offering of goods or services under paragraph 4(c)(i) of the Policy. Indeed, the disputed domain name does not resolve to any website content apart from a static index page and Complainant has submitted a screenshot of this page into evidence. Respondent cannot be said to have gained any rights or legitimate interests in the disputed domain name from such activity. Please see Emerson Electric Co. v. dwee cddsa / Macbook productions llc, Claim No. FA 1796907 (FORUM, August 8, 2018) („Here, the <emerson-com.us> domain resolves to a website displaying little more than the text ‚Index of /' and a link to a file called ‚cgi-bin'. In the absence of any submission from the Respondent, it may be concluded that such non-substantive content indicates that the Respondent has no intention to make a bona fide offering of goods or services and thus confers no rights or legitimate interests in the domain name."); Boursorama SA v. johnny legend, Case No. 102170 (CAC, October 28, 2018) (where the disputed domain resolved to a page displaying the message „Index of", the Panel held that "the disputed domain name points to an inactive website since its registration" and found that this was not a bona fide use of the domain name).

With respect to paragraph 4(c)(ii) of the Policy, the Respondent does not appear to be commonly known by the name BOLLORÉ nor the name <bollorecleaningservices.com>. The Whois record for the disputed domain lists Respondent as " Domain holder (Registrant) / kinetic". As Respondent has filed no Response to the Complaint or made any other submission in this case, this Panel cannot conclude that it is known otherwise than as identified in the Whois record.

Finally, paragraph 4(c)(iii) of the Policy looks at whether a respondent is "making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers." The disputed domain name does not resolve to any substantive website and so it does not fit into any accepted category of fair use such as news reporting, comment, criticism, or the like.

For all of the above-cited reasons, this Panel finds, by a preponderance of the evidence, that Complainant has met its burden of proof but that Respondent has not refuted this to show that it has any rights or legitimate interests in the disputed domain name. Thus, it is held that Respondent has no rights or legitimate interests in respect to the disputed domain name in dispute under Paragraph 4(a)(ii) of the Policy.

C. The disputed domain name was registered and is being used in bad faith

Complainant must demonstrate both that the disputed domain name was registered and is being used in bad faith. Further guidance on that requirement is found in paragraph 4(b) of the Policy, which sets out four examples of actions by a respondent that may satisfy this burden of proof. However, the examples of paragraph 4(b) of the Policy are not exhaustive and panels are free to look beyond them for evidence of bad faith. Please see LA POSTE v. RIVERA BERNARD, Case No. 101139 (CAC, February 10, 2016).

A threshold question here is whether, at the time that it registered the disputed domain name, Respondent was aware of

Complainant's BOLLORÉ trademark. The origin of Complainant's trademark rights preceded the registration of the disputed domain name by many decades. Given the fact that Complainant's trademark is quite well-known it seems more likely than not (i.e., by a preponderance of the evidence) that Respondent was aware of Complainant when it registered the disputed domain name. This conclusion has been reached by prior Panels who have considered the same trademark. BOLLORE SA v. Delonte Wood, Case No. 101501 (CAC, May 10, 2017) ("Given the worldwide notoriety of the Complainant and the Complainants' trademarks <BOLLORE> and <BOLLORE LOGISTICS> as well as its reputation it is highly unlikely that the Respondent would have been unaware of this facts at the time of registration.") This Panel thus concludes that the Respondent intentionally sought to copy Complainant's trademark when it registered the disputed domain name.

Next, attention is given to Complainant's claim that the Respondent uses the disputed domain name in bad faith. It is well accepted that the scenarios of paragraph 4(b) of the Policy are not exclusive and so Panels are free to consider other circumstances that may give rise to a finding of bad faith registration and use. Beginning with the decision in Telstra Corporation Limited v. Nuclear Marshmallows, Case No. D2000-0003 (WIPO, February 18, 2000), many UDRP panels have held that, after considering all the circumstances of a given case, it is possible that a "[r]espondent's passive holding amounts to bad faith." The Telstra decision states that "paragraph 4(b) recognizes that inaction (e.g., passive holding) in relation to a domain name registration can, in certain circumstances, constitute a domain name being used in bad faith.... [I]n considering whether the passive holding of a domain name, following a bad faith registration of it, satisfies the requirements of paragraph 4(a)(iii), the Administrative Panel must give close attention to all the circumstances of the Respondent's behaviour.") See also, Autoshop 2 Di Battaglia Ferruccio C. S.N.C. v. Willamette RF Inc., WIPO Case No. D2004-0250 (collecting cases citing Telstra); and Chartered Professional Accountants of Canada v. Zakaria Frouni, FA 1795339 (FORUM August 6, 2018) ("Respondent is simply passively holding the disputed domain name. Respondent's inactive use of the disputed domain name constitutes bad faith registration and use under paragraph 4(a)(iii) of the Policy.") In view of the evidence presented in this case, including the facts that the disputed domain name copies the Complainant's distinctive and well-known trademark, the non-use of the disputed domain name since its registration, and Respondent's failure to present a Response or make any other submission in this case, the circumstances support the conclusion that Respondent registered and uses the non-resolving disputed domain name in bad faith under paragraph 4(a)(iii) of the Policy.

Finally, Complainant submits evidence that Respondent had previously registered another disputed domain name that copies its trademark. The registration of multiple domain names that copy the trademarks of a complainant or of third parties may provide additional evidence of bad faith under paragraph 4(b)(ii). Rolls-Royce PLC v. Ragnar Kallaste, Case No. D2014-2218 (WIPO, March 3, 2015) (where "at least one other UDRP proceeding relating to the registration of a domain name corresponding to another well-known trademark" the Panel held that "the record shows that the Respondent has engaged in a pattern of registering domain names that correspond to well-known marks"). Here, Complainant submits evidence that Respondent registered the domain name <bollorecleaningservices.co.ke>. This domain name was found to be an abusive registration and was terminated on April 15, 2019 by Chief Executive Officer of the keNIC in Nairobi, Kenya. Such a prior adverse finding against Respondent supports Complainant's claim that the currently disputed domain name was registered and used in bad faith.

Consequently, in view of the above-mentioned circumstances including the lack of a Response or any other submission in this case by Respondent, this Panel finds, by a preponderance of the evidence, that the disputed domain name was registered and used in bad faith and that Complainant has satisfied paragraph 4(a)(iii) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **BOLLORECLEANINGSERVICES.COM**: Transferred

PANELLISTS

Name	**Steven M. Levy, Esq.**

2019-06-03

DATE OF PANEL DECISION 2019-06-03

Publish the Decision