Decision for dispute CAC-UDRP-102675

Case number	CAC-UDRP-102675
Time of filing	2019-09-13 11:39:23
Domain names	boiiore.com

Case administrator

Name	Šárka Glasslová (Case admin)

Complainant

Organization	BOLLORE

Complainant representative

Organization	Nameshield (Enora Millocheau)

Respondent

Organization	Bill Brown Construction Co

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings that relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant is the registered owner of international figurative trademark Bolloré, reg. no. 704679, registered on 11 December 1998 for goods and services in classes 16, 17, 34, 35, 36, 38 and 39 (“Complainant’s Trademark”).

The disputed domain name <boiiore.com> was registered on 10 September 2019.

FACTUAL BACKGROUND

As the Respondent did not file any response to the complaint, the Panel took into account the following facts asserted by the Complainant (and supported by the documentary evidence submitted by the Complainant) and unchallenged by the Respondent:

(a) the Complainant is the BOLLORE group founded in 1822 and now being one of 500 largest companies in the world. Listed on the Paris Stock Exchange, it now holds strong positions in all its activities around three business lines: Transportation and Logistics, Communication and Media, Electricity Storage and solutions;

(b) the Complainant also owns and communicates on the Internet through various domain names, the main one being

<bollore.com>, registered on 24 July 1997;

(c) the Complainant is the owner of the Complainant's Trademark;

(d) the disputed domain name was registered on 10 September 2019; and

((e) under the disputed domain name there is no webpage, i.e. disputed domain name is inactive. However, on 10 September 2019 an e-mail was sent from the address marylene.kouda@boiiore.com purporting to have been sent by Ms. Marylene Kouda working at logistics department of the Canadian branch of the Complainant, informing the recipients at the Canadian company Searchlight Pharma that the bank account to which this company pays invoices issued by the Complainant is inoperable for auditing reasons and that the new account number in HongKong will be communicated in due course.

The Complainant seeks transfer of the disputed domain name to the Complainant.

PARTIES CONTENTIONS

THE COMPLAINANT:

In addition to the above factual assertions, the Complainant also contends the following:

(i) disputed domain name is confusingly similar to Complainant's Trademark as it contains an obvious misspelling of the Complainant's Trademark. The substitution of the letters "L" by the letters "I" in the disputed domain name is not sufficient to exclude the likelihood of confusion with Complainant's Trademark, as they look highly similar from visual perspective. Thus it is a clear case of typosquatting;

(ii) Respondent has no legitimate interest in disputed domain name. He has not been permitted or licensed to use Complainant's Trademark. Respondent is not affiliated with the Complainant nor authorized by it in any way to use its trademarks in a domain name or on a website. The Complainant does not carry out any activity for, nor has any business with the Respondent;

(iii) disputed domain name has been registered and is being used in bad faith. The Complainant's Trademark is well known. Besides, the Respondent has used the domain name in a phishing scheme and attempted to pass off as one of the Complainant's employees. Thus it is inconceivable that the Respondent could have registered the disputed domain name without actual knowledge of Complainant's rights in the trademark.

THE RESPONDENT:

The Respondent did not provide any response to the complaint.

RIGHTS

The Panel concluded that the disputed domain name is confusingly similar to the Complainant's Trademark within the meaning of paragraph 4(a)(i) of the Uniform Domain Name Dispute Resolution Policy ("UDRP" or "Policy").

For details, please see "Principal Reasons for the Decision".

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.

For details, please see "Principal Reasons for the Decision".

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.

For details, please see "Principal Reasons for the Decision".

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

Paragraph 4(a) of the UDRP Policy requires that the Complainant proves each of the following three elements to obtain an order that the disputed domain name should be transferred or revoked:

(i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and

(ii) the respondent has no rights or legitimate interests in respect of the disputed domain name; and

(iii) the disputed domain name has been registered and is being used in bad faith.

The Panel will proceed to analyze whether the three elements of paragraph 4(a) of the Policy are satisfied in this proceeding.

RIGHTS

The disputed domain name is confusingly similar to the Complainant’s Trademark. As the Complainant correctly pointed out, substitution of the letters “L” by the letters “I” in the disputed domain name is not sufficient to exclude the likelihood of confusion with Complainant’s Trademark, as they look highly similar from visual perspective. It is an obvious, and in the opinion of the Panel also deliberate misspelling of Complainant’s Trademark and thus a clear case of typosquatting.

For sake of completeness, the Panel asserts that the top-level suffix in the domain name (i.e. the ".com") must be disregarded under the identity / confusing similarity test as it is a necessary technical requirement of registration.

Therefore, the Panel concludes that the Complainant satisfied the requirement under paragraph 4(a)(i) of the UDRP.

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant is required to make out a prima facie case that the Respondent lacks rights or legitimate interests. Once such prima facie case is made, the Respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(a)(ii) of the UDRP (please see, for example, WIPO case no. D2003-0455, Croatia Airlines d.d. v. Modern Empire Internet Ltd.).

The disputed domain name points to an inactive website. As asserted by the Complainant (and unchallenged by the Respondent), the Respondent is not commonly known by the disputed domain name. Neither is the Respondent in any way related to the Complainant. The Respondent failed to provide any information and evidence that it has relevant rights or legitimate interests in respect of the disputed domain name (within the meaning of paragraph 4(a) (ii) of the Policy). Moreover, the disputed domain name has been used for fraudulent activities in the form of phishing which also excludes any legitimate interest of the Respondent in the disputed domain name.

Therefore, the Panel concludes that the Respondent did not establish any right or legitimate interest to the disputed domain name (within the meaning of paragraph 4(a)(ii) of the Policy).

BAD FAITH

The disputed domain name points to an inactive website. However it has clearly been used for fraud (phishing) as someone was (on the same day when the disputed domain name was registered) sending e-mail messages to customers of the Complainant informing them that the account to which they should pay invoices will be changed. Such activity constitutes criminal offense in many jurisdictions and therefore it is also a clear evidence of bad faith of the Respondent in registration and use of the disputed domain name.

As a result, the Panel found that the disputed domain name has been registered and used by the Respondent in bad faith (within the meaning of 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. **BOIIORE.COM**: Transferred

PANELLISTS

Name	**Michal Matějka**

DATE OF PANEL DECISION 2019-10-14

Publish the Decision