Decision for dispute CAC-UDRP-102794

Case number	CAC-UDRP-102794
Time of filing	2019-12-03 12:00:35
Domain names	boillore.com

Case administrator

Name	Šárka Glasslová (Case admin)

Complainant

Organization	BOLLORE

Complainant representative

Organization	Nameshield (Enora Millocheau)

Respondent

Name	Elsie D Smith

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 registrant of the international trademark registration No. 704697, “Bolloré”, registered on December 11, 1998, for goods and services in classes 16, 17, 34, 35, 36, 38, 39.

The disputed domain name was registered by the Respondent on November 11, 2019.

FACTUAL BACKGROUND

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

The Complainant states that the Bolloré group, which is one of the 500 largest companies in the world, was founded in 1822.

The Complainant points out that it is listed on the Paris Stock Exchange and that it holds strong positions in Transportation and Logistics, Communication and Media, Electricity Storage and solutions.

The Complainant underlines that the majority interest of the group's stock is controlled by the Bolloré family.

The Complainant adds that the group also manages a number of financial assets including plantations and financial investments.

The Complainant points out that it is the owner of several international trademarks containing the word “BOLLORE”.

The Complainant adds that it is also the owner of number of domain names that contain the distinctive word “BOLLORE”, including the domain name <bollore.com>, registered on July 24, 1997.

The Complainant observes that the disputed domain name refers to a page displaying the message "Index of".

The Complainant argues that the disputed domain name is confusingly similar to its trademark.

The Complainant notes that the disputed domain name includes the Complainant's trademark in its entirety.

The Complainant contends that addition of the letter “l” in the trademark does not change the overall impression of the designation as being connected to the Complainant’s trademark.

The Complainant considers that the addition of the letter "i" is a clear case of typosquatting.

The Complainant contends that the addition of the top-level domain “.COM” does not change the overall impression of the designation as being connected to the Complainant's trademark.

The Complainant argues that the Respondent does not have any rights or legitimate interest in the disputed domain name.

The Complainant observes that it is required to make out a prima facie case that the Respondent lacks rights or legitimate interest and, once such prima facie case is made, the Respondent carries the burden of demonstrating rights or legitimate interests in the disputed domain name. The Complainant adds that if the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy.

The Complainant argues that the Respondent is not known as "Boillore", but has a completely different name.

The Complainant contends that the Respondent is not affiliated with nor authorized by it in any way.

The Complainant states that it does not carry out any activity for, nor has any business with the Respondent.

The Complainant underlines that neither licence nor authorization has been granted to the Respondent to make any use of the Complainant’s trademark.

The Complainant points out that it has never authorized the Respondent to apply for registration of the disputed domain name on behalf of the Complainant.

The Complainant claims that the disputed domain name is a typosquatted version of its trademark and that typosquatting could be considered as evidence of lack of rights or legitimate interests.

The Complainant asserts that Respondent uses the disputed domain name to pass itself off as a credit controller of one of the Complainant’s subsidiaries, in order to receive undue payment.

The Complainant argues that the Respondent has registered and is using the disputed domain name in bad faith.

The Complainant states that, as noted by other panels, its trademark is distinctive and well-known.

The Complainant recalls that the Respondent has used the domain name in a phishing scheme.

The Complainant contends that it is inconceivable that the Respondent could have registered the disputed domain name without knowledge of Complainant's rights in its trademark.

The Complainant observes that the misspelling of its trademark was intentionally designed to be confusingly similar with the Complainant’s trademark.

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

In accordance with paragraph 4(a) of the Policy, in order to obtain the transfer of the disputed domain name, the Complainant has to demonstrate that:

(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.

IDENTICAL OR CONFUSINGLY SIMILAR

The first requirement that the Complainant must establish is that the disputed domain name is identical with, or confusingly similar to, the Complainant’s trademark or service mark rights.

There are two elements of this test: the Complainant must demonstrate that it has rights in a trademark or service mark and, if so, the disputed domain name must be shown to be identical or confusingly similar to the trademark or service mark.

The Complainant has proven ownership of the registered trademark “Bolloré”, identified in section “Identification of rights” above.

The Panel observes that the registration of the Complainant's trademark predates the registration of the disputed domain name.

On the question of identity or confusing similarity, what is required is simply a comparison and assessment of the disputed domain name itself to the Complainant's trademark.

It is well established that a domain name which contains a common or obvious misspelling of a trademark normally will be found to be confusingly similar to such trademark, where the misspelled trademark remains the dominant or principal component of the domain name (see, for example, WIPO Case No D2016-2545).

Unlike the disputed domain name, the last letter of the Complainant's trademark has an accent. However, the Panel observes that it has been held that the addition of accents is irrelevant and does not prevent a finding of confusing similarity with a trademark (see, for example, WIPO Case No. D2013-0710).

In the present case, the Panel considers that the disputed domain name is confusingly similar to the Complainant's "Bolloré" trademark for the following reasons: (a) "Bolloré" is a distinctive word; (b) the only difference between the "Bolloré" trademark and the disputed domain name is that in the latter the letter "I" has been inserted between the letter "O" and the letter "L" and the last letter has no accent; (c) the fact of inserting the letter "I" in the disputed domain name and using the last letter without accent does not create any new word, or give the disputed domain name any distinctive meaning; (d) the disputed domain name is a deliberate misspelling of the Complainant's "Bolloré" trademark; and (e) visually the disputed domain name is so close to the Complainant's well-known "Bolloré" trademark that confusion is inevitable between them.

It is also well established that the top-level domain may generally be disregarded in the confusing similarity test (see, for example, WIPO case No. D2016-2547).

Therefore, the Panel considers that the disputed domain name is confusingly similar to the Complainant's trademark.

Accordingly, the Panel finds that the Complainant has satisfied paragraph 4(a)(i) of the Policy.

RIGHTS OR LEGITIMATE INTERESTS

The second requirement that the Complainant must prove is that the Respondent has no rights or legitimate interests in the disputed domain name.

Paragraph 4(c) of the Policy provides that the following circumstances can be situations in which the Respondent has rights or legitimate interests in the disputed domain name:

(i) before any notice to [the Respondent] of the dispute, [the Respondent's] use of, or demonstrable preparations to use, the [disputed] domain name or a name corresponding to the [disputed] domain name in connection with a bona fide offering of goods or services; or

(ii) [the Respondent] (as an individual, business, or other organization) [has] been commonly known by the [disputed] domain name, even if [the Respondent] [has] acquired no trademark or service mark rights; or

(iii) [the Respondent] [is] making a legitimate non-commercial or fair use of the [disputed] domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

This is a non-exhaustive list of circumstances in which a respondent can show rights or legitimate interests in a domain name.

The onus of proving this requirement falls on the Complainant. UDRP panels have recognized that proving that a respondent

lacks rights or legitimate interests in a domain name may result in the often impossible task of “proving a negative”.

Accordingly, it is usually sufficient for a complainant to raise a prima facie case against the respondent and the burden of proof on this requirement shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in a domain name.

The Panel finds that the Complainant has made out a prima facie case that the Respondent does not have rights or legitimate interests in the disputed domain name.

In particular, the Complainant states that:

- it does not carry out any activity for the Respondent;

- the Respondent is not affiliated to the Complainant;

- the Respondent does not have any business with the Complainant;

- the Respondent has not been authorized to by the Complainant in any way;

- the Respondent has no license or authorization to make any use of the Complainant's trademarks;

- the Respondent has not been authorized by the Complainant to register the disputed domain name;

- the Respondent is not commonly known by the disputed domain name;

- the disputed domain name is a typosquatted version of the Complainant's trademark and was used for phishing purposes.

In the absence of a Response, there is no indication in the present case that the Respondent is commonly known by the disputed domain name.

Furthermore, the Respondent has failed to demonstrate any of the other non-exclusive circumstances evidencing rights or legitimate interests under paragraph 4(c) of the Policy or other evidence of rights or legitimate interests in the disputed domain name.

The Respondent does not appear to make any legitimate non-commercial or fair use of the disputed domain name, nor any use in connection with a bona fide offering of goods or services. Indeed, the disputed domain name refers to a technical page which seems to contain a "cgi-bin" directory only.

Moreover, it is well established that carrying out illegal activities like phishing can never be considered as bona fide offering of goods or services nor a legitimate noncommercial or fair use of the disputed domain name (see, for example, CAC Case No. 102346).

Taking into account that the Respondent is not commonly known as the disputed domain name, that the Respondent has no connection or business relationship with the Complainant, that the Complainant has not authorized the Respondent to register the disputed domain name or to use the Complainant's trademarks, that the disputed domain name is a typosquatted version of the Complainant's trademark "Bolloré", which points to a technical page without any meaningful content, and was used for phishing purposes, the Panel cannot imagine any possible legitimate justification for this use, and the Respondent has not come forward with any explanation that demonstrates any rights or legitimate interests in the disputed domain name.

Accordingly, the Panel finds that the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

BAD FAITH

Under the third requirement of the Policy, the Complainant must establish that the disputed domain name has been both registered and used in bad faith by the Respondent.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, including:

(i) circumstances indicating that [the Respondent] [has] registered or [has] acquired the [disputed] domain name primarily for the purpose of selling, renting, or otherwise transferring the [disputed] domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of [the Respondent's] documented out-of-pocket costs directly related to the [disputed] domain name; or

(ii) [the Respondent] [has] registered the [disputed] domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that [the Respondent] [has] engaged in a pattern of such conduct; or

(iii) [the Respondent] [has] registered the [disputed] domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the [disputed] domain name, [the Respondent] [has] intentionally attempted to attract, for commercial gain, Internet users to [the Respondent's] web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of [the Respondent's] web site or location or of a product or service on [the Respondent's] web site or location.

The Panel, on the basis of the evidence presented, agrees with the Complainant's contentions that the disputed domain name was registered in bad faith and that it has been used in bad faith.

The Panel observes that it is well established that the scenarios described in UDRP paragraph 4(b) are non-exclusive and merely illustrative. Therefore, even where a complainant is not able to demonstrate the literal application of one of the above-mentioned scenarios, evidence demonstrating that a respondent seeks to take unfair advantage of, abuse, or otherwise engage in behaviour detrimental to the complainant’s trademark would also satisfy the complainant’s burden.

Taking into account the distinctiveness and reputation of the trademark “Bolloré” also recognized by other Panels, and the use of disputed domain name in a phishing scheme, the Panel agrees that it is inconceivable that the Respondent was not aware of the Complainant's rights in the trademark “Bolloré” when registering the disputed domain name. Other panels considered that knowledge of a corresponding mark at the time of the domain name’s registration can suggest bad faith (see, for example, WIPO Case No. D2017-0100). The Panel shares this view.

Moreover, other panels considered typosquatting as evidence of bad faith (see, for example, WIPO Case No. D2004-1039). The Panel shares this view.

Furthermore, other panels considered the use of a domain name to impersonate a third party as evidence of bad faith (see, for example, CAC Case No. 102301) and the use of a domain name for sending fraudulent e-mails has also been considered by other panels as evidence of bad faith (see, for example, CAC Case No. 102138). The Panel shares these views.

The Panel, having taken into account the distinctiveness and reputation of the Complainant's trademark, the fact that no response to the Complaint has been filed, and the use of the disputed domain name - which constitutes a misspelled version of the Complainant's trademark - for impersonating the Complainant and making phishing attempts, considers that the disputed domain name was registered and is being used in bad faith.

Accordingly, the Panel finds that the disputed domain name was registered and is being used 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. **BOILLORE.COM**: Transferred

PANELLISTS

Name	**Michele Antonini**

DATE OF PANEL DECISION 2020-01-19

Publish the Decision