Decision for dispute CAC-UDRP-102839

Case number	CAC-UDRP-102839
Time of filing	2020-01-06 10:57:42
Domain names	bolloregroup.com

Case administrator

Name	Šárka Glasslová (Case admin)

Complainant

Organization	BOLLORE

Complainant representative

Organization	Nameshield (Enora Millocheau)

Respondent

Name	Alex Thames

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

The Complainant is the owner of many trademarks comprising the term BOLLORÉ . Among these trademarks, the Complainant is the owner of international registration No. 704697 for the figurative trademark BOLLORÉ , covering goods and services in classes 16, 17, 34, 35, 36, 38 and 39.

The Complainant also owns and communicates on the Internet through various domain names, the main one being <bollore.com>, registered on July 24th, 1997.

FACTUAL BACKGROUND

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

The Complainant was founded in 1822 and is one of the 500 largest companies in the world. Listed on the Paris Stock Exchange, the majority interest of the Complainant's stock is controlled by the Bolloré family. This stable majority control of its capital allows the Complainant to develop a long-term investment policy. In addition to its activities, the Complainant manages a number of financial assets including plantations and financial investments.

The disputed domain name <bolloregroup.com> was registered on December 2, 2019 and resolves to a parking page with commercial links related to the Complainant’s activities.

PARTIES CONTENTIONS

The Complainant asserts that the disputed domain name is confusingly similar to the Complainant's trademark because the trademark BOLLORE is fully included in the disputed domain name and the addition of the term "group" is not sufficient to change the overall impression that the disputed domain name is connected to the Complainant's trademark.

The Complainant further contends that the Respondent lacks rights and legitimate interests in the disputed domain name for the following reasons.
Firstly, because the Respondent is not affiliated with the Complainant, nor is authorized to use the Complainant's trademark in any way. Furthermore, the Complainant does not carry out any activity for, nor has any business with the Respondent.
Secondly, because the disputed domain name resolves to a parking page containing commercial links related to the Complainant's activities. Such use of the disputed domain name does not amount to a bona fide offering of goods and services, nor to a legitimate noncommercial or fair use.

The Complainant finally asserts that the Respondent registered and is being using the disputed domain name in bad faith. With respect to registration in bad faith, the Complainant maintains that the BOLLORÉ trademark is well-known and distinctive. Furthermore, the disputed domain name was registered many years after the Complainant established a strong reputation and goodwill in its trademarks. With the addition of the term "group" the Respondent most likely wanted to create confusion or a sense of association with the Complainant, as the same is often identified as the "Bollore Group". Thus, the Complainant contends that it is inconceivable that the Respondent chose to register the disputed domain name without having the Complainant and its trademark in mind.

With respect to use in bad faith, the Complainant points out that disputed domain name redirects to a parking page containing commercial links related to the Complainant's activities. Therefore, the Complainant maintains that the Respondent has attempted to attract Internet users for commercial gain to his own website, which is a clear evidence of bad faith.

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

The Panel finds that the disputed domain name is confusingly similar to the Complainant’s earlier trademark BOLLORÉ.

Indeed, the trademark is entirely reproduced in the disputed domain name. The only differences between the Complainant's trademark and the disputed domain name lie in the fact that in the disputed domain name the word "bollore" is written without an accent on the letter "e", and is followed by the generic term "group". The deletion of the accent on the letter "e" is a minus difference that is hardly perceivable by the Internet user and is certainly not enough to undermine the great similarity of the disputed domain name with the Complainant's trademark. In this respect, see also CAC Case No. 102794, Bollore vs. Elsie D Smith (in relation to the domain name <boillore.com>), stating as follows: "[U]nlike 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)".

With respect to the addition of the term "group", such term is generic and refers to the way the Complainant is organized and operates. Therefore, the addition of the term "group" to the disputed domain name, rather than increasing the differences with the Complainant's trademark, enhances the confusing similarity.

In view of the above, the disputed domain name is confusingly similar to the Complainant's earlier trademark and the Panel is satisfied that the first condition under the Policy is met.

Pursuant to paragraph 4(c) of the Policy, any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate the Respondent's rights or legitimate interests to the disputed domain name:

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

(ii) that the Respondent has been commonly known by the domain name, even if the Respondent has acquired no trademark or service mark rights; or

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

According to UDRP precedent, while the overall burden of proof rests with the complainant, proving a negative, as required by paragraph 4(a)(ii) of the Policy, is often practically impossible as it requires information that is usually primarily within the knowledge of the respondent. Hence, prior UDRP panels have established that in order to satisfy the second requirement under the Policy it is sufficient to make out a prima facie case that the respondent lacks rights or legitimate interests. Once such prima facie case is made, the burden of production shifts to the respondent to provide appropriate allegations or evidence.

In the case at issue, the Complainant pointed out that the Respondent has no relationship with the Complainant and that the Complainant never authorized the Respondent to use the disputed domain name, nor granted the Respondent any other right to register the Complainant trademark within a domain name.
Furthermore, the disputed domain name does not correspond to the name of the Respondent and there is nothing in the file inducing the Panel to believe that the Respondent is commonly known as "bolloregroup". Lastly, there is no fair or legitimate noncommercial use of the disputed domain name as further discussed below.
The Respondent could have objected to the Complainant's statements but failed to do so as he deliberately chose not to file any Response.

In view of the foregoing, the Panel is satisfied that also the second requirement under the Policy is met.

Under paragraph 4(a)(iii) of the Policy, the Complainant must prove both registration and use of the disputed domain name in bad faith.

As far as registration in bad faith is concerned, the Panel notes that other previous UDRP panels have found that the

Complainant's trademark enjoys reputation (see, among others, CAC Case No. 102015, BOLLORE SA vs. mich john, CAC Case No. 101696, BOLLORE vs. Hubert Dadoun, CAC Case No. 102785, Bollore vs. Kali Jim, etc.). It is therefore more likely than not that the Respondent registered the disputed domain name being aware of the Complainant's trademark and of its activities. In the absence of any contrary statement by the Respondent, and considering also the addition of the generic term "group" to the disputed domain name, which refers to the way the Complainant operates and is organized, the Panel is of the opinion that the Respondent registered the disputed domain name with full knowledge of the Complainant's trademark and activities, and therefore in bad faith.

With respect to use in bad faith, the disputed domain name leads to a parking page containing pay-per-clicks, some of which relating to the same commercial activity performed by the Complainant. In the absence of any contrary evidence from the Respondent, the Panel takes the view that the Respondent is deriving commercial gain from these “pay-per-click” links. The Panel therefore finds that the Respondent is deliberately using the disputed domain name to intentionally attract, for commercial gain, Internet users to its website, or other online location, by creating a likelihood of confusion with the Complainant’s trademark as to the source, sponsorship, affiliation or endorsement of the website, in accordance with paragraph 4(b)(iv) of the Policy (see in this respect also CAC Case No. 102254, Bollore vs. Milton Liqours lLC , referring to the domain name <bollcre.com>).

Therefore, the Panel is satisfied that also the third and last condition under the Policy is met.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **BOLLOREGROUP.COM**: Transferred

PANELLISTS

Name	**Angelica Lodigiani**

DATE OF PANEL DECISION 2020-02-19

Publish the Decision