Decision for dispute CAC-UDRP-102857

Case number	CAC-UDRP-102857
Time of filing	2020-01-14 09:52:21
Domain names	bolloreworldtrans.com

Case administrator

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

Complainant

Organization	BOLLORE

Complainant representative

Organization	Nameshield (Enora Millocheau)

Respondent

Organization	issofa international

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings pending or decided related to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of at least one international (figurative) trademark which incorporates the term “BOLLORE” (hereafter the "BOLLORE trademark"). Said trademark is registered in several countries around the world:

– registered WO figurative mark “Bolloré” no. 704697 for goods and services in classes 16, 17, 34, 35, 36, 38 and 39 with application and registration date 11 December 1998.

The Complainant also claims to be the owner of several other trademarks including the term “BOLLORE”, but has not submitted evidence supporting this claim.

FACTUAL BACKGROUND

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

The Complainant is a company based in France which is active in three different lines of business, i.e. Transportation and Logistics, Communication and Media, and Electricity Storage and Solutions. In addition to these activities, the Complainant also manages a number of financial assets, including plantations and financial investments. The Complainant claims to be

among the 500 largest companies in the world, employing over 80.000 people worldwide and generating a revenue of over 23.000 million euros in 2017.

The Complainant is the owner of the domain name <bollore.com>, which was registered on 25 July 1997. The Complainant also claims to be the owner of several other domain names including the term “BOLLORE”, but has not submitted evidence supporting this claim.

The Complainant has submitted evidence that, at the time of filing of the Complaint, the url “https://www.bolloreworldtrans.com/“ refers to an empty or parked webpage.

The disputed domain name was registered on 30 December 2019.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN SUBMITTED.

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

Paragraph 15(a) of the Rules instructs this Panel to "decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable."

Paragraph 4(a) of the Policy requires that a complainant must prove each of the following three elements to obtain an order that a domain name should be cancelled or transferred:

(1) the domain name registered by the respondent is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and

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

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

1. Confusing similarity

The disputed domain name consists of the word component of the Complainant's figurative BOLLORE trademark, adding the terms “world” and “trans” and the “.com” suffix.

The word component of the Complainant's figurative BOLLORE trademark is fully incorporated and recognisable in the disputed domain name. The word component of the Complainant's figurative trademark refers in fact to the family name of the Complainant's majority shareholders (i.e. the Bolloré family).

In the case at hand, the addition of descriptive terms such as "world" and "trans" does not prevent a finding of confusing similarity. Specifically, the addition of the generic term "world" does not prevent a finding of confusing similarity because the Complainant is active worldwide and has registered its trademark in various countries around the world. The addition of the term "trans" does not prevent a finding of confusing similarity either, since this term can be read as an abbreviation of the word "transport" or "transportation", which, as established above, is one of the Complainant's main activities. Lastly, the combination of the two terms "world" and "trans" can lead visitors to believe that the disputed domain name refers to a website regarding the specific international transportation activities of the Complainant.

There is also the addition of the ".com" suffix, which may be disregarded when it comes to considering whether a domain name is confusingly similar to a trademark in which the Complainant has rights.

The Panel concludes that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights within the meaning of paragraph 4(a)(i) of the Policy.

2. Rights or legitimate interests

As regards paragraph 4(a)(ii) of the Policy, while the overall burden of proof rests with the Complainant, it is commonly accepted that this should not result in an often-impossible task of proving a negative. Therefore, numerous previous panels have found that 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 burden of production shifts to a respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the Domain Name. If the respondent fails to come forward with such appropriate allegations or evidence, the complainant is generally deemed to have satisfied paragraph 4(a)(ii) of the Policy. If the respondent does come forward with some allegations or evidence of relevant rights or legitimate interests, the panel then has to weigh all the evidence, with the burden of proof always remaining on the complainant.

The Respondent did not file an administratively complaint (or any) response. The Panel finds from the facts put forward that:

The Complainant contends that:

(1) The Respondent is not known under the disputed domain name.

(2) The Respondent is not affiliated with the Complainant in any way, nor has he been granted any licence or authorisation to make any use of the Complainant's trademark, or to register the disputed domain name. The Complainant does not carry out any activity for the Respondent, nor does he have any business with him.

(3) The disputed domain name redirects to a page without any substantial content except an error message. The Respondent has not made any use of the disputed domain name since its registration, which confirms that the Respondent has no demonstrable plan to use the disputed domain name.

The contentions of the Complainant are not contested by the Respondent.

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

This finding is based on a combination of the following facts and arguments:

(1) the Respondent does not seem to be related to the Complainant, and seems not to have received any licence or authorisation to use the BOLLORE trademark or any variation of it;

(2) the Respondent does not seem to be commonly known by the disputed domain name; and

(3) there is no evidence that the Respondent is making a legitimate non-commercial or fair use of the disputed domain name (or has any future plans to do so), without intent for commercial gain to misleadingly divert consumers or to tarnish the trademarks at issue.

The Panel notes that the contentions of the Complainant are not contested by the Respondent. The Respondent did not provide evidence that it has rights or legitimate interests in the disputed domain name (the Respondent could, inter alia, have provided evidence of the factors mentioned in paragraph 4(c) of the Policy, but did not do so).

On the balance of probabilities, and in the absence of any evidence to the contrary or any administratively compliant response being put forward by the Respondent, the Panel finds that the Respondent does not have any rights or legitimate interests in the disputed domain name within the meaning of paragraph 4(a)(ii) of the Policy.

3. Bad faith

The Panel finds that, on the balance of probabilities, it may be expected that the Respondent had knowledge of the existence of the Complainant and its activities, and of the existence of the Complainant's BOLLORE trademark and the scope of this trademark.

The Panel points to the fact that the Complainant has trademark rights to the term “BOLLORE” for transportation services in various countries around the globe. The registration of the Complainant’s "BOLLORE" trademark predates the registration of the disputed domain name. The term “BOLLORE”, selected by the Respondent, seems to have no meaning in any language (and especially not in Spanish, i.e. one of the main languages of the Respondent’s home country Peru). This term seems selected only for its similarity to the Claimant’s registered BOLLORE trademark. Indeed, the disputed domain name is identical to the distinctive word element of the Complainant's BOLLORE trademark, with the addition of the terms “world” and “trans”. These added terms seem to refer to the Complainant’s worldwide transportation services. The Panel is of the opinion that the disputed domain name might lead customers of the Complainant to believe that the disputed domain is owned by the Complainant, and is being used to provide information regarding its worldwide transportation activities.

In other words, the Panel finds that there is sufficient evidence to conclude that the disputed domain name was registered and is being used in bad faith. In the absence of any evidence to the contrary (or any administratively compliant response) being put forward by the Respondent, the Panel believes from the facts in this case that the Respondent had the BOLLORE trademark of the Complainant in mind when registering and using the disputed domain name.

The Panel did not base its decision of bad faith on the Complainant’s claims (i) that its BOLLORE trademark is particularly well-known or notorious and (ii) that the disputed domain name refers to a parked page:

(i) The Panel did not see sufficient evidence to conclude that the BOLLORE trademark of the Complainant is indeed a “well-known trademark”, but notes that the Complainant argues that previous Panel Decisions have in fact confirmed that this trademark is a well-known trademark (i.e. CAC Case No. 101696, BOLLORE v. Hubert Dadoun; CAC Case No. 101494, BOLLORE SA v. Dillan Dee Jackson; and CAC Case No. 102015, BOLLORE SA v. mich john). The Panel did not study these decisions in detail (as a general side remark: the Panel considers it good practice to submit previous decisions as evidence when a claim is made on the basis of such decisions), but notes that at least the second of these decisions concerned multiple Bollore trademarks and not just the figurative BOLLORE trademark that is invoked in this case. In other words, it may well be that the BOLLORE trademark is well-known, but a such claim needs to be supported by sufficient evidence. In the absence of such evidence, a Panel cannot simply accept a claimant’s claim that a trademark is particularly well-known.

In this case, the Panel is of the opinion that there are in fact sufficient reasons to conclude that the Respondent had knowledge of the Complainant's BOLLERE trademark, without the need to categorise this trademark as a "well-known trademark".

(ii) The Complainant also asserts that the disputed domain redirects to a page without any substantial content except an error message, that the Respondent has not demonstrated any activity in respect of the disputed domain name, and that this is an indication of bad faith. The Panel, however, finds that (1) the Complainant has not provided sufficient evidence of its claim of non-use or passive holding of the disputed domain name. The Panel notes in fact that the Complainant only submitted evidence that, at the time of filing of the Complaint, a sub-page, i.e. the url "https://www.bolloreworldtrans.com/" referred to an empty webpage, and not the disputed domain name ("www.bolloreworldtrans.com") as such; and (2) in this case, the Respondent's purported inactivity of the disputed domain name cannot be seen as an indication of bad faith on itself, given the fact that the complaint was filed relatively shortly after the registration of the disputed domain name. In general, the panel is of the opinion that a respondent should be given a reasonable amount of time to start using a domain name, without the inactive status of the domain name being used against him/her as evidence of bad faith (this always depends on the specific circumstances of the case).

Nonetheless, from the evidence set out in the complaint, and as described above (especially the combination of the word elements BOLLORE and TRANS in the disputed domain name, coupled with the fact that the Complainant's earlier BOLLORE trademark covers transportation services), the Panel finds that it seems highly unlikely that the Respondent would not have been aware of the unlawful character of the disputed domain name at the time of its registration and use. For all of the reasons set out above, the Panel determines that the disputed domain name was registered and is being used 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. **BOLLOREWORLDTRANS.COM**: Transferred

PANELLISTS

Name	**Bart Van Besien**

DATE OF PANEL DECISION 2020-02-18

Publish the Decision