Decision for dispute CAC-UDRP-102913

Case number	CAC-UDRP-102913
Time of filing	2020-02-12 09:45:15
Domain names	bollorelogistic.com, bolloreusa.com

Case administrator

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

Complainant

Organization	BOLLORE

Complainant representative

Organization	Nameshield (Enora Millocheau)

Respondent

Organization	FTS, LLC

OTHER LEGAL PROCEEDINGS

The Panel is not aware of other proceedings related to the disputed domain names.

IDENTIFICATION OF RIGHTS

The Complainant registered figurative trademarks, bollore IR 704697 registered since 1998-12-11 and bollore logistics IR 1302823 registered since January 27, 2016. Both trademarks are active and were registered before the Respondent registered the disputed domain name.

The Complainant also provided evidence that he registered a domain name containing the name “bollore“ with the TLD .com, well before the Respondent registered the two disputed domain names. Further the Complainant provided evidence that he provides a website www.bollore.com.

FACTUAL BACKGROUND

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

The Complainant is a Company Group, founded 1822, based in France and with commercial activities in Europe, U.S. and other continents. Its subsidiary BOLLORE LOGISTICS is one of the 10 leading worldwide groups in transport organization and logistics. With a presence on the five continents, 609 agencies in 107 countries and more than 20.600 employees.

The Respondent is an U.S. Company. A few month ago the Respondent registered the disputed domain names.

The Complainant filed the Complaint against the Respondent claiming that the Respondent registered the disputed domain names without rights or legitimate interest and in bad faith. Therefore the registration should be declared abusive and the two disputed domain names transferred to the Complainant.

In detail the Complainant remarked:

CAC Case No. 102031, BOLLORE v. Donald Shillam <bollorelogitics.com> ("The Panel finds that the Disputed Domain Name is nearly identical with the Complainant's BOLLORE LOGISTICS trademarks since the deletion of the letter "S" of the word "LOGISTICS" and the deletion of the space between two words of the trademark, which is actually obligatory in domain names, is not sufficient to vanish the similarity.").

It is well-established that "a domain name that wholly incorporates a Complainant's registered trademark may be sufficient to establish confusing similarity for purposes of the UDRP". WIPO Case No. D2003-0888, Dr. Ing. h.c. F. Porsche AG v. Vasiliy Terkin.

Forum Case No. FA 1781783, Skechers U.S.A., Inc. and Skechers U.S.A., Inc. II v. Chad Moston / Elite Media Group <bobsfromsketchers.com> ("Here, the WHOIS information of record identifies Respondent as "Chad Moston / Elite Media Group." The Panel therefore finds under Policy § 4(c)(ii) that Respondent is not commonly known by the disputed domain name under Policy § 4(c)(ii).").

Forum Case No. FA 1654759, Upwork Global Inc. v. Shoaib Malik ("Previous panels have found such use by a respondent, whether to run a phishing scheme or to run a competing website, is neither a bona fide offering of goods or services, nor a legitimate noncommercial or fair use."); and

Forum Case No. FA 1796494, Bittrex, Inc. v. Monty Rj / Media Hub ("Complainant demonstrates that Respondent uses the disputed domain name to resolves to a website that purports to offer cryptocurrency services, in competition with Complainant. The Panel finds that this use is not a bona fide offering of goods or services or a legitimate noncommercial or fair use under Policy §§ 4(c)(ii) or (iv).").

Past panels have confirmed the notoriety of the trademarks in the following cases:

- CAC Case No. 102015, BOLLORE SA v. mich john ("the Panel takes note, again, of the distinctiveness of the Complainant's brand [BOLLORE] and the intention that must be presumed to exist in registering a domain name bearing such confusing similarity with well-known brand name."); and

- CAC Case No. 102031, BOLLORE v. Donald Shillam ("The Panel concludes that the Complainant's BOLLORE LOGISTICS trademark has a significant reputation and is of distinctive character.").

Forum Case No. FA 1796494, Bittrex, Inc. v. Monty Rj / Media Hub ("Use of a disputed domain name to offer competing goods or services demonstrates bad faith under Policy § 4(b)(iv).");

Forum Case No. FA 1795426, Bed Bath & Beyond Procurement Co. Inc. n/k/a Liberty Procurement Co. Inc. v. Fermon Broome / Broome International Consortium LLC ("Use of a domain name to disrupt complainant's business by diverting internet users to a webpage which offers goods and services that compete directly with those offered by complainant may be evidence of bad faith under Policy §§ 4(b)(iii) and (iv)."); and

Forum Case No. FA 1612750, Xylem Inc. and Xylem IP Holdings LLC v. Yens BaoHu YiKaiQi ("The Panel agrees that Respondent's use of the website to display products similar to Complainant's, imputes intent to attract Internet users for commercial gain, and finds bad faith per Policy § 4(b)(iv).").

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain names are 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 names (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 names have been registered and are 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

It is necessary for the complainant, if it is to succeed in this administrative proceeding, to prove each of the three elements referred to in paragraph 4(a) of the Policy, namely that:

(i) the domain name is identical or confusingly similar to a trade mark in which the complainant has rights; and
(ii) the respondent has no rights or legitimate interest in respect of the domain name; and
(iii) the domain name has been registered and is being used in bad faith.

1.
The Panel finds that the disputed domain name <bollorelogistic.com> is confusingly similar to the trademark "bollore logistics" of the Complainant.

The Complainant has shown that the Respondent has no rights or legitimate interests in respect of the disputed domain name <bollorelogistic.com>. Further the Panel granted that the Respondent is a competitor to the Complainant.

Moreover, the Complainant has, to the satisfaction of the Panel, provided evidence that the disputed domain name <bollorelogistic.com> resolves to a website that offers Complainants products in competition with the Complainant. The Complainant further rightfully contends that the Respondent has not developed a legitimate use in respect of the disputed domain name. Competing use is not considered a bona fide offering of goods or services, nor a legitimate non-commercial or fair use. The Complainant contends that the Respondent was seeking to use the disputed domain name only to divert consumers to its own website and that the Respondent has no legitimate interests in respect of the disputed domain name.

In lack of any Response from the Respondent, or any other information indicating the contrary, the Panel concludes that the Respondent has no rights or legitimate interests in respect of the disputed domain name <bollorelogistic.com>.

The Complainant also asserted and proved that the Respondent tried to attract internet users for commercial gain by creating a likelihood of confusion with the Complainant's trademarks. The Complainant rightfully contended that <bollorelogistic.com> is confusingly similar to the prior trademark of the Complainant, as registered. The Complainant also referred to the distinctiveness and reputation of its trademark.

This makes it highly unlikely that the Respondent had no knowledge of the Complainant's prior trademark rights at the time of registration of the disputed domain name. The Complainant rightfully contended that the Respondent has used the

disputed domain name intentionally to attract visitors for commercial gain by creating confusion with the Complainant's trademark <bollorelogistic.com>, and that the Respondent has used the disputed domain name with that intention, namely in bad faith. Bad faith is evident in form of typosquatting. Reference is made also to eg. CAC Case No. 102221, CAC case No. 101036, Boehringer Ingelheim Pharma GmbH & Co. KG vs. SKYRXSHOP - dulcolax.xyz and WIPO Case no. D2014-0306 Boehringer Ingelheim Pharma GmbH & Co. KG v. Klinik Sari Padma, BAKTI HUSADA.

2.
The Panel finds that the disputed domain name <bolloreusa.com> is confusingly similar to the international trademark "bollore" of the Complainant. Indeed, the trademark BOLLORE is included in its entirety, see e.g. WIPO Case No. D2003-0888, Dr. Ing. h.c. F. Porsche AG v. Vasiliy Terkin.

The geographical suffix does not prevent the likelihood of confusion between the disputed domain name and the Complainant and its trademark. Please see for instance CAC Case No. 102656, BOLLORE v. Chris Bull <bollore-uk.com>.

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

Moreover, the Complainant contends and provides evidence that the disputed domain name resolves to a website that offers Complainants products in competition with the Complainant. The Complainant further rightfully contends that the Respondent has not developed a legitimate use in respect of the disputed domain name. Competing use is not considered a bona fide offering of goods or services. The Complainant contends that the Respondent was seeking to use the disputed domain name only to divert consumers to its own website, please see e.g. Forum Case No. FA 1654759, Upwork Global Inc. v. Shoaib Malik.

In lack of any Response from the Respondent, or any other information indicating the contrary, the Panel concludes that the Respondent has no rights or legitimate interests in respect of the disputed domain name <bolloreusa.com>.

The Complainant also asserted and proved that the Respondent tried to attract internet users for commercial gain by creating a likelihood of confusion with the Complainant's trademarks. The Complainant rightfully contended that <bolloreusa.com> is confusingly similar to the prior trademark of the Complainant, as registered. The Complainant also referred to the distinctiveness and reputation of its trademarks.

This makes it highly unlikely that the Respondent had no knowledge of the Complainant's prior trademark rights at the time of registration of the disputed domain name. The Complainant rightfully contended that the Respondent has used the disputed domain name intentionally to attract visitors for commercial gain by creating confusion with the Complainant's trademarks, and that the Respondent has used the disputed domain name with that intention, namely in bad faith. Reference is made also to: CAC case N° 101036, Boehringer Ingelheim Pharma GmbH & Co. KG vs. SKYRXSHOP - dulcolax.xyz and WIPO Case no. D2014-0306 Boehringer Ingelheim Pharma GmbH & Co. KG v. Klinik Sari Padma, BAKTI HUSADA.

Accordingly, the Panel finds that both disputed domain names were registered and used in bad faith and that the Complaint succeeds under the third element of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **BOLLORELOGISTIC.COM**: Transferred
2. **BOLLOREUSA.COM**: Transferred

PANELLISTS

Name	**Dr. jur. Harald von Herget**

2020-03-20

DATE OF PANEL DECISION 2020-03-30

Publish the Decision