Decision for dispute CAC-UDRP-102974

Case number	CAC-UDRP-102974
Time of filing	2020-03-19 10:30:12
Domain names	bollorenc.com

Case administrator

Name	Šárka Glasslová (Case admin)

Complainant

Organization	BOLLORE

Complainant representative

Organization	Nameshield (Laurent Becker)

Respondent

Name	Larry Galansky

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

The BOLLORE group (the Complainant) was founded in 1822. Thanks to a diversification strategy based on innovation and international development, it now holds strong positions in all its activities around three business lines: Transportation and Logistics, Communication and Media, Electricity Storage and solutions.

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

The Complainant is the owner of several trademarks including the term “BOLLORE”, such as the international trademark registration BOLLORE® n° 704697.

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 disputed domain name <bollorenc.com> was registered on March 9th, 2020. The disputed domain name is inactive.

The disputed domain name <bollorenc.com> is confusingly similar to the Complainant's trademark BOLLORE®.

Indeed, the addition of letters "NC" (refers to the New-Caledonia) with the trademark BOLLORE® is not sufficient to exclude the likelihood of confusion with the Complainant's trademark.

Moreover, it is well established that TLDs are usually disregarded under the analysis of the identity.

Finally, prior UDRP confirmed the Complaint's rights. Please see for instance:
- CAC Case No. 102675, Bollore v. Bill Brown Construction Co <boiiore.com>;
- CAC Case No. 102254, BOLLORE v. Milton Liqours lLC <bollcre.com>;
- CAC Case No. 101974, BOLLORE v. Adileo Barone <bollorè.com>.

Therefore, the Complainant contends that the disputed domain name <bollorenc.com> is confusingly similar to Complainant's trademark BOLLORE®.

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.

The Respondent is not known as the disputed domain name in the Whois database, and has not acquired trademarks mark rights on this term. Past Panels have held that a Respondent was not commonly known by a disputed domain name if the WHOIS information was not similar to the disputed domain name.

The Complainant contends that the Respondent is not affiliated with nor authorized by BOLLORE in any way. The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant does not carry out any activity for, nor has any business with the Respondent.

Moreover, neither license nor authorization has been granted to the Respondent to make any use of the Complainant's trademark BOLLORE®, or apply for registration of the disputed domain name <bollorenc.com> by the Complainant.

The disputed domain name is inactive. The Complainant contends that Respondent did not make any use of disputed domain name since its registration, and it confirms that Respondent has no demonstrable plan to use the disputed domain name. It demonstrates a lack of legitimate interests in respect of the disputed domain name.

Accordingly, the Respondent has no rights or legitimate interests to the disputed domain name <bollorenc.com>.

The Complainant's trademark BOLLORE® is well-known and distinctive. Past panels have confirmed the notoriety of the trademarks BOLLORE® 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 and the intention that must be presumed to exist in registering a domain name bearing such confusing similarity with well-known brand name.");
- CAC Case No. 101696, BOLLORE v. Hubert Dadoun ("As the Complainant is also one of the largest 500 companies in the world, the Panel accepts the Complainant's contention that their trademark has a strong reputation and is in fact to be considered well-known.")".

Thus, given the distinctiveness of the Complainant's trademarks and reputation, the Complainant contends that it is inconceivable that the Respondent could have registered the disputed domain name <bollorenc.com> without actual knowledge of Complainant's rights in the trademark.

Besides, the disputed domain name is inactive. The Complainant contends that the Respondent has not demonstrated any activity in respect of the disputed domain name, and it is not possible to conceive of any plausible actual or contemplated active use of the domain name by the Respondent that would not be illegitimate, such as by being a passing off, an infringement of consumer protection legislation, or an infringement of the Complainant's rights under trademark law.

Although the domain name now appears to be inactive, it has been set up with MX which suggests that it may be actively used for email purposes. This is also indicative of bad faith registration and use because any email emanating from the disputed domain name could not be used for any good faith purpose.

On these bases, the Complainant concludes that the Respondent has registered and is using the disputed domain name in bad faith.

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).

This is a case of "typosquatting", i.e. the disputed domain name contains an obvious misspelling of the Complainant's trademark. It is well established that the specific top level of a domain name such as ".com", ".org" or in case ".net" does not affect the domain name for the purpose of determining whether it is identical or confusingly similar.

Previous panels have found that the slight spelling variations does not prevent a domain name from being confusingly similar to the complainant's trademark. Adding the letters "nc" to "bollore", irrespective of whether or not "nc" might refer to the geographical location of New Caledonia, does not take away the confusing similarity between the domain name and the trademark.

Simple exchange or adding of letters is not a sufficient element to escape the finding that the disputed domain name is confusingly similar to the Complainant's trademarks and domain names.

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).

The Complainant contends that the Respondent is not affiliated with him nor authorized by him in any way to use his 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.

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).

Given the circumstances of the case, including the provided information of the use and reputation of the Complainant's trademark BOLLORE and the distinctive nature of this mark, it is inconceivable to the Panel in the current circumstances that the Respondent registered the disputed domain name without prior knowledge of the Complainant and the Complainant's mark.
The Panel therefore finds that the disputed domain name was registered in bad faith.

The disputed domain name does not currently resolve to an active website. In this case the Complainant has however evidenced that the disputed domain name enables the Respondent to send emails using an e-mail address that contains the disputed domain name.

It is inconceivable that the Respondent can use the e-mails connected to the disputed domain name for good faith use of the disputed domain name as part of an e-mail address. The Panel notes in this connection that passive holding of a domain name does not prevent a finding of bad faith use under 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

1. The three essential issues under the paragraph 4(a) of the Policy are whether:

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 with respect to the disputed domain name; and

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

2. The Panel reviewed carefully all documents provided by the Complainant. The Respondent did not provide the Panel with any documents or statements. The Panel also visited all available websites and public information concerning the disputed domain name, namely the WHOIS databases.

3. The UDRP Rules clearly say in its Article 3 that any person or entity may initiate an administrative proceeding by submitting a complaint in accordance with the Policy and these Rules.

4. The Panel therefore came to the following conclusions:

a) The Complainant states and proves that the disputed domain name is confusingly similar to its trademarks and its domain names. Indeed, the trademark is partially incorporated in the disputed domain name.

The disputed domain name is therefore deemed identical or confusingly similar.

b) The Respondent is not generally known by the disputed domain name and have not acquired any trademark or service mark rights in the name or mark, nor is there any authorization for the Respondent by the Complainant to use or register the disputed domain name.

The Panel therefore finds that the Respondent does not have rights or legitimate interest with respect to the disputed domain name.

c) It is clear that the Complainant's trademarks and website(s) were used by the Complainant long time before the disputed domain name was registered. There is no present use of the disputed domain name but there are evidence that the disputed domain name is likely used as part of e-mail addresses for fraudulent purposes. It is concluded that the Respondent makes bad faith use of the disputed domain name.

The Panel therefore finds that the disputed domain name has been registered and is being used in bad faith.

For the reasons stated above, it is the decision of this Panel that the Complainant has satisfied all three elements of paragraph 4(a) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **BOLLORENC.COM**: Transferred

PANELLISTS

Name	**Lars Karnoe**

DATE OF PANEL DECISION 2020-04-29

Publish the Decision