Decision for dispute CAC-UDRP-103000

Case number	CAC-UDRP-103000
Time of filing	2020-04-06 11:29:01
Domain names	bo11ore.com

Case administrator

Name	Šárka Glasslová (Case admin)

Complainant

Organization	BOLLORE SE

Complainant representative

Organization	Nameshield (Laurent Becker)

Respondent

Organization	clam off Rodziwicz

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

The Complainant has evidenced to be the owner of the following International (IR) trademark registration:

- Word-/device mark BOLLORÉ, World Intellectual Property Organization (WIPO), Registration No.: 704697, Registration Date: December 11, 1998, Status: active, with protection for numerous countries worldwide.

FACTUAL BACKGROUND

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

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.")".

The disputed domain name redirects to commercial links. This is not a bona fide offering of goods or services or legitimate noncommercial or fair use per Policy paragraph 4(c)(i) or (iii). See Spike's Holding, LLC v. Nexperian Holding Limited, FA 1736008 (Forum July 21, 2017) ("Using a confusingly similar domain to display unrelated content can evince a lack of a bona fide offering of goods or services or legitimate noncommercial or fair use"). See also Google Inc. v. Mahmut Karaca / Karaca Grup Ltd. Sti., FA1682647 (Forum Jul. 25, 2016) ("Respondent's use of the confusingly similar domain name to divert Internet users to its own website is neither a bona fide offering of goods or services, nor a legitimate noncommercial or fair use of the domain name.").

By using the disputed domain name in connection with landing pages providing pay-per-click links which promote third parties' products and services, the Respondent was, in all likelihood, trying to divert traffic intended for the Complainant's website to its own for commercial gain as set out under paragraph 4(b)(iv) of the Policy. It is well established that a respondent (as the registered owner of the domain name) is in general ultimately responsible for the information available at the website and for all content posted there, regardless of how and by whom such content was generated and regardless of who profits directly from the commercial use. Such use of a domain name can demonstrate a respondent's bad faith per Policy paragraph 4(b)(iv). See Allianz of Am. Corp. v. Bond, FA 680624 (Forum June 2, 2006) ("finding bad faith registration and use under Policy paragraph 4(b)(iv) where the respondent was diverting Internet users searching for the complainant to its own website and likely profiting"); see also Fossil, Inc. v. wwwfossil-watch.org c/o Hostmaster, Case No. FA 335513 (Forum Nov. 9, 2004) ("finding bad faith where respondent attempted to profit from the fame of complainant's trademark by attracting internet traffic to his website").

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

The Panel finds that the disputed domain name is confusingly similar to the BOLLORÉ trademark in which the Complainant has rights. The disputed domain name incorporates the BOLLORÉ trademark more or less entirely, however in a misspelled/typo-squatted version caused by exchanging the two letters "ll" for the two (similar-looking) numbers "11". Numerous UDRP panels have recognized that incorporating a trademark in its entirety can be sufficient to establish that the disputed domain name is at least confusingly similar to a registered trademark. Moreover, it has been held in many UDRP decisions and has meanwhile become a consensus view among UDRP panels that a domain name which consists of a common, obvious or intentional misspelling of the complainant's trademark (i.e. a typo-squatting) is still considered to be confusingly similar to the relevant trademark for purposes of the first element under the UDRP. Accordingly, the fact that the

disputed domain name obviously includes an intentional misspelling/typo-squatting of the Complainant's BOLLORÉ trademark is not at all inconsistent with the finding of confusing similarity, especially given the fact that the Complainant's BOLLORÉ trademark is still at least recognizable within the disputed domain name.

Therefore, the Complainant has established the first element under the Policy as set forth by paragraph 4(a)(i).

Moreover, the Complainant contends, and the Respondent has not objected to these contentions, that the Respondent has neither made use, or demonstrable preparations to use, the disputed domain name in connection with a bona fide offering of goods or services, nor is the Respondent making a legitimate noncommercial or fair use of the disputed domain name, nor is the Respondent commonly known thereunder. The Respondent has not been authorized to use Complainant's BOLLORÉ trademark, either as a domain name or in any other way. Also, there is no reason to believe that the Respondent's name somehow corresponds with the disputed domain name and the Respondent does not appear to have any trademark rights associated with the term "Bolloré" or "Bo11oré" whatsoever. Moreover, the Complainant has provided evidence that at some point before the filing of this Complaint the disputed domain name redirected to a standard Pay-Per-Click (PPC) website with hyperlinks to a variety of third parties' commercial websites. Many UDRP Panels have found that the generation of PPC revenues by using a domain name that is confusingly similar to a trademark, especially where the disputed domain name constitutes an obvious misspelling/typo-squatting of such trademark, neither qualifies as a bona fide offering of goods or services nor as a legitimate noncommercial or fair use under the UDRP. Accordingly, the Panel has no difficulty in finding that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

Therefore, the Complainant has also satisfied paragraph 4(a)(ii) and, thus, the second element of the Policy.

The Panel finally holds that the disputed domain name was registered and is being used by the Respondent in bad faith. It is undisputed between the Parties that the Complainant's BOLLORÉ trademark enjoys considerable recognition throughout the world; also, the way in which the disputed domain name has been registered (namely as a trademark's typo-squatted version) and is being used leaves little, if no doubt that the disputed domain name aims at targeting the Complainant's BOLLORÉ trademark. Therefore, redirecting the disputed domain name which is confusingly similar (due to an intentional misspelling/typo-squatting) to the Complainant's BOLLORÉ trademark to a typical PPC website which shows a variety of hyperlinks to active third parties' websites for the obvious purpose of generating PPC revenues, is a clear indication that the Respondent intentionally attempted to attract, for commercial gain, Internet users to its own website by creating a likelihood of confusion with the Complainant's BOLLORÉ trademark as to the source, sponsorship, affiliation or endorsement of this website. Such circumstances are evidence of registration and use of the disputed domain name in bad faith within the meaning of paragraph 4(b)(iv) of the Policy.

Therefore, the Complainant has also satisfied the third element under the Policy as set forth by paragraph 4(a)(iii).

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **BO11ORE.COM**: Transferred

PANELLISTS

Name	**Stephanie G. Hartung, LL.M.**

DATE OF PANEL DECISION 2020-05-08

Publish the Decision