Decision for dispute CAC-UDRP-102999

Case number	**CAC-UDRP-102999**
Time of filing	**2020-04-06 11:28:45**
Domain names	**boilore.com**

Case administrator

Name	**Šárka Glasslová (Case admin)**

Complainant

Organization	**BOLLORE**

Complainant representative

Organization	**Nameshield (Enora Millocheau)**

Respondent

Name	**Julie Dusenberry**

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

The Complainant has submitted evidence, which the Panel accepts, showing that it is the registered owner of the IR trademark BOLLORE (Registration n°704697).

Moreover, the Complainant is also the owner of the domain names bearing the sign “BOLLORE” such as <bollore.com> registration dated July 24, 1997.

FACTUAL BACKGROUND

The Complainant, BOLLORE, as a company listed on the Paris Stock Exchange, is one of the 500 largest companies in the world and engaged in transportation and logistics, communication and media, electricity storage and solutions sectors.

The Complainant holds the international trademark registration for “BOLLORE” (registration n°704697) and the Complainant also holds domain names bearing “BOLLORE” such as <bollore.com> registration dated July 24, 1997.

On March 30, 2020, the Respondent registered the disputed domain name <boilore.com>. The domain name is currently

inactive.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant is a leading company mainly controlled by the Bolloré family and specialized in different sectors such as transportation and logistics, communication and media, electricity storage and solutions.

The Complainant holds international trademark registration for the trademark “BOLLORE” and also is the owner of the domain names bearing the sign “BOLLORE” such as <bollore.com>.

1. THE DISPUTED DOMAIN NAME IS CONFUSINGLY SIMILAR

The Complainant alleges that the disputed domain name <boilore.com> is confusingly similar to the Complainant’s trademark “BOLLORE” as both of them are composed of seven letters and six of those letters are identical and placed in the same order.

The Complainant states that substitution of the letter “L” by the letter “I” in the disputed domain name is a clear example of typo-squatting, where the disputed domain name is a slight alphabetical variation from the Complainant’s trademark.

The Complainant refers to WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, (“WIPO Overview 3.0”), section 1.9.: “A domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element”.

Moreover, the Complainant alleges that the addition of the gTLD “.COM” does not change the overall impression of the designation as being connected to the Complainant’s trademark “BOLLORE”.

The Complainant refers to earlier Panel decision WIPO Case No. D2006-0451, F. Hoffmann-La Roche AG v. Macalve e-dominios S.A.
The Complainant states that prior Panel decisions have accepted the Complainant’s rights such as:
- CAC Case No. 102675, Bollore v. Bill Brown Construction Co <boiiore.com>;
- CAC Case No. 102254, Bollore v. Milton Liqours ILC <bollcre.com>;
- CAC Case No. 101974, Bollore v. Adileo Barone <bollorè.com>.

2. NO RIGHTS OR LEGITIMATE INTERESTS IN RESPECT OF THE DISPUTED DOMAIN NAME

The Complainant states that the Respondent has no rights on the disputed domain name as the Respondent is not known as the disputed domain name. The past panel decisions e.g. 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).”)

The Complainant also alleges that the Respondent has no rights to the disputed domain name since the Respondent has no relationship with BOLLORE. In fact, the Respondent and the Complainant do not carry out any activity or business together.

Moreover, the Complainant states that neither license nor authorization has been granted to the Respondent to use the Complainant’s trademark “BOLLORE” or to apply for registration of the disputed domain name.

The Complainant argues that the disputed domain name is a typo-squatted version of the Complainant’s trademark. Thus, the Complainant argues that the typo-squatting is being used to take advantage of Internet users’ typographical errors and

typo-squatting may demonstrate the lack of rights or legitimate interests.

The Complainant refers to earlier Panel decision Forum Case No. 1597465, The Hackett Group, Inc. v. Brian Herns / The Hackett Group. (“The Panel agrees that typosquatting is occurring, and finds this is additional evidence that Respondent has no rights or legitimate interests under Policy”).

The Complainant also argues that the Respondent did never use the disputed domain name since its registration and it demonstrates the lack of rights or legitimate interests.

3. THE DISPUTED DOMAIN NAME WAS REGISTERED AND IS USED IN BAD FAITH

The Complainant states that the “BOLLORE” is a widely known trademark and its notoriety has been accepted within the earlier decisions such as 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.”) and 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 Complainant states that taking into account the distinctive character and the well-known status of the “BOLLORE” trademark; the Respondent was aware of such trademark while registering the disputed domain name.

The Complainant asserts that the disputed domain name is created by the substitution of the letter “L” by the letter “I” which is an example of typo-squatting and does not eliminate the confusingly similarity. Further, the Respondent has intentionally used the typo-squatting to create a domain name that is similar to the Complainant’s trademark.

The Complainant states that prior Panel decisions have accepted the bad faith of the Respondent in similar cases such as Forum Case No. 157321, Computerized Sec. Sys., Inc. v. Bennie Hu (“The Panel finds that Respondent’s registration and use of a domain name that differs from Complainant’s mark by only one letter indicates “typosquatting”, which is evidence of bad faith registration and use.”).

The Complainant alleges that the bad faith of the Respondent is supported within the fact that the disputed domain name is inactive and the Respondent never used the disputed domain name.

RESPONDENT:

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

Paragraph 15 of the Rules provides that the Panel is to decide the Complaint on the basis of the statements and documents submitted and in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

In this context, the Panel also notes that the burden of proof is on the Complainant to make out its case and past UDRP panels have consistently said that a Complainant must show that all three elements of the Policy have been made out before any order can be made to transfer a domain name.

For the Complainant to succeed it must prove, within the meaning of paragraph 4(a) of the Policy, that:
A. The disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
B. the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
C. the disputed domain name has been registered and is being used in bad faith.

The Panel will therefore deal with each of these requirements in turn.

A. IDENTICAL OR CONFUSINGLY SIMILAR

The Policy simply requires the Complainant to demonstrate that the disputed domain name is identical or confusingly similar to a trademark in which the Complainant has rights. The Panel is satisfied that the Complainant is the owner of registration of the “BOLLORE” trademark.

The Panel finds that the disputed domain name is nearly identical with the Complainant’s ”BOLLORE” trademark since the different letters “L” and “I” are not sufficient to vanish the similarity.

In particular, this case represents a clear example of typo-squatting, where the disputed domain name only differs with one letter with the Complainant's trademark where all of the other letters are identical.

Moreover, the addition of the gTLD “.COM” is not enough to abolish the similarity.

The Panel is of the opinion that the Internet users will easily fall into false impression that the disputed domain name is an official domain name of the Complainant. The Panel recognizes the Complainant's rights and concludes that the disputed domain name is confusingly similar with the Complainant's trademark. Therefore, the Panel concludes that the requirements of paragraph 4(a)(i) of the Policy is provided.

B. NO RIGHTS OR LEGITIMATE INTERESTS

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

It is open to a Respondent to establish its rights or legitimate interests in a domain name, among other circumstances, by showing any of the following elements:

(i) before any notice to the respondent of the dispute, the use or making 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) the respondent of the dispute (as an individual, business, or other organization) has been commonly known by the domain name, even if it has acquired no trademark or service mark rights; or
(iii) the respondent of the dispute is making a legitimate non-commercial or fair use of the domain name, without an intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

Thus, if the Respondent proves any of these elements or indeed anything else that shows that it has a right or legitimate interest in the disputed domain name, the Complainant will have failed to discharge its burden of proof and the Complaint will fail. The burden is on the Complainant to demonstrate a prima facie case that the Respondent does not have rights or legitimate interests in the disputed domain name. Once the Complainant has made out a prima facie case, then the Respondent may, inter alia, by showing one of the above circumstances, demonstrate rights or legitimate interests in the disputed domain name.

The Complainant contends that the Respondent has nothing to do with the Complaint and any use of the trademark “BOLLORE” has to be authorized by the Complainant and there is no such authorization. Moreover, the disputed domain name has no relation with the Respondent and the Respondent is not commonly known as the disputed domain name. Finally, the Respondent never used the disputed domain name since its registration.

In the absence of a response, the Panel accepts the Complainant's allegations as true that the Respondent has no authorization to use the Complainant’s trademark in the disputed domain name. Hence, as the Complainant has made out its prima facie case, and as the Respondent has not demonstrated any rights or legitimate interests as illustrated under paragraph 4(c) of the Policy, nor has the Panel found any other basis for finding any rights or legitimate interests of the Respondent in the disputed domain dame, the Panel concludes that the Complainant has satisfied the requirements of paragraph 4(a)(ii) of the Policy.

C. BAD FAITH

The Panel concludes that the Complainant's “BOLLORE” trademark has a significant reputation and is of distinctive character. Therefore, the Panel is of the opinion that due to the earlier rights of the Complainant in the “BOLLORE” trademark and the associated domain names, the Respondent, was aware of the Complainant and its trademark at the time of registration of the disputed domain name (see e.g., Ebay Inc. v. Wangming, WIPO Case No. D2006-1107). Referring to Parfums Christian Dior v. Javier Garcia Quintas and Christiandior.net, WIPO Case No. D2000-0226, the Panel believes that the awareness of the Complainant’s trademark at the time of the registration of the disputed domain name is to be considered an inference of bad faith registration.

Moreover the link http://boilore.com/ is currently inactive.

Therefore, in light of the above-mentioned circumstances in the present case, the Panel finds that the disputed domain name has been registered and is being used in bad faith and that the Complainant has established the third element under 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. **BOILORE.COM**: Transferred

PANELLISTS

Name	**Mrs Selma Ünlü**

DATE OF PANEL DECISION 2020-05-13

Publish the Decision