Decision for dispute CAC-UDRP-103033

Case number	CAC-UDRP-103033
Time of filing	2020-04-27 09:52:27
Domain names	bollore.energy

Case administrator

Name	Šárka Glasslová (Case admin)

Complainant

Organization	BOLLORE

Complainant representative

Organization	Nameshield (Enora Millocheau)

Respondent

Organization	MOODHYPE

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

The Complainant is the owner of several trademarks including the term “BOLLORE”, such as the international trademark registration for the mark BOLLORE (in stylization with a device) Reg. No. 704697 registered on December 11, 1998.

The Complainant also owns several trademarks “BOLLORE ENERGY”, such as the international trademark BOLLORE ENERGY (with a device) Reg. No. 1303490 registered on January 22, 2016.

The Complainant also owns the domain name <bollore.com>, registered on July 24, 1997.

FACTUAL BACKGROUND

The Complainant, the BOLLORE group 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. Its subsidiary BOLLORE ENERGY is a key player in oil distribution and oil

logistics in France, Switzerland and Germany. BOLLORE ENERGY is the leading French independent distributor of domestic fuel, with a national market share over 15% and more than 600,000 customers.

The Complainant is the owner of several trademarks including the term “BOLLORE”, such as the international trademark registration for the mark BOLLORE (in stylization with a device) Reg. No. 704697 registered on December 11, 1998.

The Complainant also owns several trademarks “BOLLORE ENERGY”, such as the international trademark BOLLORE ENERGY (with a device) Reg. No. 1303490 registered on January 22, 2016.

The Complainant also owns the domain name <bollore.com>, registered on July 24th, 1997.

The disputed domain name <bollore.energy> was registered on April 22, 2020 and points to a parking page with commercial links.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

i) The Complainant has rights in the mark BOLLORE (in stylization with a device) as international registration number 704697 registered on December 11, 1998 as well as the mark BOLLORE ENERGY (with a device) as international trademark registration number 1303490 registered on January 22, 2016. The disputed domain name is confusingly similar to the Complainant’s trademarks BOLLORE (in stylization with a device) and BOLLORE ENERGY (with a device) on the grounds that it incorporates the Complainant's marks in its entirety without any addition or deletion; and TLDs may typically be disregarded in the assessment under paragraph 4(a)(i) of the Policy when comparing disputed domain names and trademarks.

ii) The Respondent has no rights or legitimate interests in respect of the disputed domain name: the Respondent is not identified in the WHOIS database as the disputed domain name, and thus it is not commonly known by the disputed domain name; the Respondent is not related in any way with the Complainant; the Complainant does not carry out any activity for, nor has any business with the Respondent; neither license nor authorization has been granted to the Respondent to make any use of the Complainant’s trademark; the disputed domain name points to a parking page with commercial links; and it is not a bona fide offering of goods or services or legitimate non-commercial or fair use.

iii) Respondent has registered and is using the disputed domain name: i) the Complainant’s trademark BOLLORE is well-known and distinctive; ii) the new gTLD ".ENERGY” makes reference to the Complainant’s subsidiary BOLLORÉ ENERGY; iii) the Complainant is the owner of the trademark BOLLORE ENERGY; iv) the Respondent likely wanted to create confusion or a sense of association with the Complainant and its trademark; v) it is unconceivable that the Respondent chose to register the disputed domain name without the Complainant’s trademarks in mind at the moment of the registration of the disputed domain name; vi) the disputed domain name redirects to a parking page with commercial links; and vii) the Respondent has attempted to attract Internet users for commercial gain to his own website thanks to the Complainant’s trademark for its own commercial gain.

RESPONDENT:

i) A domain name is not a brand; <www.bollore.energy> is not registered as a brand; and no trademark filing under bollore / bollore.energy is not previously registered as domain names.

ii) The Respondent is in the process of creation of an energy drink business with the disputed domain name; and domain names are allocated and managed in the general interest according to non-discriminatory and transparent rules, guaranteeing respect for freedom of communication, freedom to conduct business and intellectual property rights.

iii) A proposal has been sent to the BOLLORÉ GROUP for the purchase of the disputed domain name; and any proposal for the buyout of the domain names may be made before the site is set up and before the marketing of <www.bollore.energy>.

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 for the UDRP ('the Policy') 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 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 Respondent is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
(2) 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.

Rights

The Complainant contends that it has rights in the mark BOLLORE (in stylization with a device) as international registration number 704697 registered on December 11, 1998 as well as the mark BOLLORE ENERGY (with a device) as international trademark registration number 1303490 registered on January 22, 2016. The Complainant has provided the Panel with each copy of the trademark registrations at issue. Registration of a mark with international trademark authorities (WIPO) sufficiently establishes the required rights in the mark for purposes of the Policy. As such, the Panel finds that the Complainant has established its rights in the marks BOLLORE (in stylization with a device) and BOLLORE ENERGY (with a device).

The Complainant further contends that the disputed domain name is confusingly similar to the Complainant’s trademarks BOLLORE (in stylization with a device) and BOLLORE ENERGY (with a device) on the grounds that it incorporates the Complainant's marks in its entirety without any addition or deletion; and TLDs may typically be disregarded in the assessment under paragraph 4(a)(i) of the Policy when comparing disputed domain names and trademarks.

The Respondent rebuts that a domain name is not a brand; <www.bollore.energy> is not registered as a brand; and no trademark filing under bollore / bollore.energy is not previously registered as domain names.

The Panel notes that the combination of the word 'BOLLORE' and TLD 'energy' of the disputed domain name is identical with

the Complainant's trademark BOLLORE ENERGY. The Panel agrees with the Complainant, and thus it finds that the disputed domain name is confusingly similar to the Complainant's trademarks BOLLORE (in stylization with a device) and BOLLORE ENERGY (with a device).

No rights or legitimate interests

Complainant must first make a prima facie case that Respondent lacks rights and legitimate interests in the disputed domain name under Policy paragraph 4(a)(ii), then the burden shifts to Respondent to show it does have rights or legitimate interests. See Croatia Airlines d. d. v. Modern Empire Internet Ltd., WIPO Case No. D2003-0455 (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). See also Advanced International Marketing Corporation v. AA-1 Corp, FA 780200 (Forum November 2, 2011) (finding that a complainant must offer some evidence to make its prima facie case and satisfy Policy paragraph 4(a)(ii)).

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name: the Respondent is not identified in the WHOIS database as the disputed domain name, and thus it is not commonly known by the disputed domain name; the Respondent is not related in any way with the Complainant; the Complainant does not carry out any activity for, nor has any business with the Respondent; neither license nor authorization has been granted to the Respondent to make any use of the Complainant's trademark; and the disputed domain name points to a parking page with commercial links.

The WHOIS information of record notes 'redacted for privacy' as the registrant and no information suggests that the Complainant has authorized the Respondent to use the Complainant's trademarks BOLLORE and BOLLORE ENERGY in any way. Therefore, the Panel finds that the Respondent is not commonly known by the disputed domain name under paragraph 4(c)(ii) of the Policy.

The Complainant contends that the disputed domain name points to a parking page, and it is not a bona fide offering of goods or services or legitimate non-commercial or fair use.

Given the considerations above, the Panel finds that the Complainant has made out a prima facie case. As the onus thus shifts to the Respondent, the Panel must now see if the Respondent has rebutted the prima face case and shown that it has a right or legitimate interest in the disputed domain name.

The Respondent rebuts that it is in the process of creation of an energy drink business with the disputed domain name; and domain names are allocated and managed in the general interest according to non-discriminatory and transparent rules, guaranteeing respect for freedom of communication, freedom to conduct business and intellectual property rights.

The Panel finds that the Respondent failed to rebut the prima face case and to show that it has a right or legitimate interest in the disputed domain name, and thus the Panel concludes that the Respondent has no rights or legitimate interests in the disputed domain name.

Bad faith

Paragraph 4(b) of the Policy provides a non-exclusive list of circumstances that evidence registration and use of a domain name in bad faith. Any one of the following is sufficient to support a finding of bad faith:
(i) circumstances indicating that the respondent has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that the complainant, for valuable consideration in excess of the respondent's documented out-of-pocket costs directly related to the domain name; or
(ii) the respondent has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such

conduct; or
(iii) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
(iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the respondent's website or location or of a product or service on the respondent's website or location.

The Complainant contends that the Respondent has registered and is using the disputed domain name on the grounds that i) the Complainant's trademark BOLLORE is well-known and distinctive as past panels have confirmed the notoriety of the trademark BOLLORE in the cases: CAC Case No. 102015, BOLLORE SA v. mich john; and CAC Case No. 101696, BOLLORE v. Hubert Dadoun; ii) the new gTLD ".ENERGY" makes reference to the Complainant's subsidiary BOLLORÉ ENERGY, a key player in oil distribution and oil logistics in France, Switzerland and Germany; iii) the Complainant is also the owner of the trademark BOLLORE ENERGY; iv) and thus, by choosing the disputed domain name, the Respondent likely wanted to create confusion or a sense of association with the Complainant and its trademark; and v) consequently, it is unconceivable that the Respondent chose to register the disputed domain name without the Complainant's trademarks in mind at the moment of the registration of the disputed domain name <bollore.energy>. The Complainant further contends that the disputed domain name redirects to a parking page with commercial links, and thus the Respondent has attempted to attract Internet users for commercial gain to his own website thanks to the Complainant's trademark for its own commercial gain, which is an evidence of bad faith.

The Respondent rebuts that a proposal has been sent to the BOLLORÉ GROUP for the purchase of the disputed domain name; any proposal for the buyout of the domain names may be made before the site is set up and before the marketing of <www.bollore.energy>.

The Panel finds that that the disputed domain name redirects to a parking page with commercial links, and thus the Respondent has attempted to attract Internet users for commercial gain to his own website in light of the notoriety of the Complainant's trademark for its own commercial gain, which is an evidence of bad faith.

The Panel observes that while constructive knowledge is insufficient to support a finding of bad faith, actual knowledge can be used to demonstrate a respondent's bad faith registration and use. See Orbitz Worldwide, LLC v. Domain Librarian, FA 1535826 (FORUM February 6, 2014) ("The Panel notes that although the UDRP does not recognize 'constructive notice' as sufficient grounds for finding bad faith per paragraph 4(a)(iii) of the Policy, the Panel here finds actual knowledge through the name used for the domain and the use made of it."). The Panel infers, due to the notoriety of the Complainant's marks that the Respondent registered the disputed domain name with actual knowledge of the Complainant's rights in the BOLLORE and BOLLORE ENERGY marks and finds that it registered the disputed domain name in bad faith per 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. **BOLLORE.ENERGY**: Transferred

PANELLISTS

Name	**Mr. Ho-Hyun Nahm, Esq.**

DATE OF PANEL DECISION 2020-05-15

Publish the Decision