Decision for dispute CAC-UDRP-103034

Case number	CAC-UDRP-103034
Time of filing	2020-04-29 09:35:14
Domain names	bollorelogisticsdrc.com

Case administrator

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

Complainant

Organization	BOLLORE

Complainant representative

Organization	Nameshield (Enora Millocheau)

Respondent

Organization	Whois Privacy Corp.

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any 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 the following International registered trademarks:

Bolloré LOGISTICS, figurative/word mark, registered on July 31, 2009 under number 1025892 in use classes 35, 36 and 39 and designated in respect of 10 territories. The mark has proceeded to grant in several of such territories.

BOLLORÉ LOGISTICS, figurative/word mark, registered on January 27, 2016 under number 1302823 in use classes 4, 9, 35, 36, 39, 40 and 42 and designated in respect of 41 territories. The mark has proceeded to grant in the majority of such territories.

FACTUAL BACKGROUND

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

Founded in 1822, the Complainant is one of the largest companies in the world and holds strong positions in three principal business lines, namely transport and logistics, communication and media, and electricity storage and solutions. The

Complainant has more than 80,000 employees worldwide, turnover of more than EUR 23 billion and operating income of more than EUR 1.3 billion.

The Complainant has a subsidiary named Bolloré Logistics, which is a leading global transport and logistics company with 20,600 employees, a presence on five continents and more than 600 offices in over 100 countries.

The disputed domain name was registered on April 22, 2020, and is confusingly similar to the Complainant's BOLLORÉ LOGISTICS registered trademark, which is included in its entirety together with the abbreviation "DRC" which refers to the Democratic Republic of the Congo. Neither this additional abbreviation nor the gTLD ".com" are sufficient to escape the finding that the disputed domain name is confusingly similar to the Complainant's said trademark.

The Respondent has no rights or legitimate interests in the disputed domain name. The Respondent is not known as the disputed domain name. The Respondent is not affiliated with nor authorized by the Complainant in any way. The Respondent does not carry out any activity for, nor has any business with the Complainant and neither licence nor authorization has been granted to the Respondent to make any use of the Complainant's trademark or to apply for registration of the disputed domain name.

The disputed domain name resolves to a website featuring pictures and information related to the Complainant's logistics and transport activities, which displays the Complainant's registered trademark. The Respondent is attempting to pass itself off as the Complainant's affiliate in the Democratic Republic of the Congo and is not using the disputed domain name in connection with a bona fide offering of goods or services or a legitimate noncommercial or fair use.

Past cases under the Policy have affirmed that the Complainant's mark, as incorporated in the disputed domain name, has a significant/strong reputation, is of distinctive character and widely known. On the website associated with the disputed domain name, the Respondent identifies itself as "BOLLORE LOGISTICS DR CONGO", confirming that it knew of the Complainant and its rights. Given the distinctiveness of the Complainant's international trademark, the Respondent has registered the disputed domain name in the knowledge of the Complainant, which evidences bad faith.

The disputed domain name is being used for a website that passes the Respondent off as the Complainant's affiliate in the Democratic Republic of the Congo. Thus by using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website, by creating a likelihood of confusion with the Complainant's trademarks as to the source, sponsorship, affiliation, or endorsement of the web site, which is evidence of registration and use 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).

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 is satisfied that the disputed domain name features the Complainant's BOLLORÉ LOGISTICS registered trademark in its entirety (substituting an unaccented letter "e" for the acute accented "É" in the Complainant's trademark, which substitution is of no significance to the comparison exercise under the Policy) together with the letters "drc". Whether the letters "drc" may be intended as a geographic indication for the Democratic Republic of the Congo or not, their inclusion along with the Complainant's distinctive mark does not avoid a finding of confusing similarity under the Policy. Said mark is clearly recognizable in the disputed domain name as the first and most dominant element thereof. Neither the letters "drc", nor the absence of spaces between the word elements, nor the absence of the acute accented "É", serve to distinguish the disputed domain name from said mark. The generic Top-Level Domain, in this case ".com", is typically disregarded for the purposes of the comparison exercise.

In all of the above circumstances, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark.

The Panel finds that the Complainant has made out a prima facie case that the Respondent does not have rights or legitimate interests in the disputed domain name. The Complainant asserts that the Respondent is not known as the disputed domain name, is not affiliated with nor authorized by the Complainant in any way, does not carry out any activity for, nor has any business with the Complainant and has received neither licence nor authorization to make any use of the Complainant's trademark or to apply for registration of the disputed domain name.

The Complainant asserts with reference to a screenshot featuring the disputed domain name that it is being used to publish a website reproducing both figurative and word elements of the Complainant's registered trademark which misleadingly indicate that the Respondent is the Complainant's affiliate. The Panel accepts the Complainant's submission that such use does not give rise to rights or legitimate interests under the Policy.

The Respondent has failed to file a Response in this case and accordingly has provided no submissions or evidence which would serve to rebut the Complainant's prima facie case. Accordingly, the Respondent having failed to rebut the Complainant's prima facie case, and there being no facts or circumstances on the present record indicating that the Respondent may otherwise have rights or legitimate interests in the disputed domain name, the Panel finds that the Respondent has no such rights or legitimate interests therein.

The Panel finds that the Complainant has established that the disputed domain name has been registered and is being used in bad faith. The disputed domain name contains the Complainant's distinctive registered trademark. Previous panels under the Policy have determined that such mark has a significant/strong reputation, is of distinctive character and widely known (see, for example, CAC Case No. 102031, BOLLORE v. Donald Shillam and CAC Case No. 101500, BOLLORE SA v. JESSICA SAXTON).

The registration of the Complainant's distinctive trademark pre-dates the creation of the disputed domain name. The website associated with the disputed domain name displays a facsimile of the device and word elements of the Complainant's said mark. In these circumstances, the Panel finds that it is inconceivable that the Respondent selected the disputed domain name without knowledge of the Complainant and/or without intent to target it or its trademark.

The Complainant's unchallenged submissions, supported by screenshot evidence, indicate that the disputed domain name has been used to make a false representation in the Respondent's favor that it is affiliated with the Complainant's logistics and transport business. In failing to file any Response, the Respondent has not availed itself of the opportunity to address the Complainant's contentions or to advance any explanation for the registration and use of the disputed domain name which might have indicated that its actions were in good faith. On the basis of the present record, and in the absence of such a Response, the Panel cannot conceive of any reasonable explanation which might have been tendered by the Respondent regarding the disputed domain name.

The Panel finds that by using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of such website or of a service on such website in accordance with paragraph 4(b)(iv) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **BOLLORELOGISTICSDRC.COM**: Transferred

PANELLISTS

Name	**Andrew Lothian**

DATE OF PANEL DECISION 2020-05-27

Publish the Decision