Decision for dispute CAC-UDRP-103086

Case number	CAC-UDRP-103086
Time of filing	2020-06-01 11:31:58
Domain names	bollore-logistcs.com

Case administrator

Name	Šárka Glasslová (Case admin)

Complainant

Organization	BOLLORE SE

Complainant representative

Organization	Nameshield (Enora Millocheau)

Respondent

Name	Frank Lucas

OTHER LEGAL PROCEEDINGS

The Panel is unaware of any other legal proceedings relating to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant owns the international trademark BOLLORE LOGISTICS, registration n°1025892, registered since July 31, 2009, and the international trademark BOLLORE LOGISTICS, registration n° 1302823, registered since January 27, 2016.

FACTUAL BACKGROUND

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

Founded in 1822, the Complainant is one of the 500 largest companies in the world. Its subsidiary BOLLORE LOGISTICS is one of the 10 leading worldwide transport and logistics companies.

The Complainant owns a large portfolio of trademarks including BOLLORE LOGISTICS in several countries. The Complainant communicates on the Internet through, inter alia, the <bollore-logistics.com> domain name, registered since January 20, 2009.

The disputed domain name <bollore-logistcs.com> was registered on May 25, 2020. It has been set up with mail exchanger records (MX records) and does not resolve to an active web page.

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

In accordance with paragraph 4(a) of the UDRP, to obtain transfer of the disputed domain name, the Complainant must prove the following three elements: (i) the Respondent's domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; (ii) the Respondent has no rights or legitimate interests in respect of the domain name; and (iii) the Respondent has registered the domain name and is using it in bad faith.

Under paragraph 15(a) of the Rules, "A Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable".

A Respondent is not obliged to participate in a proceeding under the Policy, but if it fails to do so, asserted facts may be taken as true and reasonable inferences may be drawn from the information provided by the Complainant. See Reuters Limited v. Global Net 2000, Inc, WIPO Case No. D2000-0441.

As to the first element, the Panel accepts the Complainant's contention that the disputed domain name <bollore-logistcs.com> is confusingly similar to the trademark BOLLORE LOGISTICS, in which the Complainant has rights, the addition of a hyphen and the deletion of the letter "l" being insufficient to avoid the likelihood of confusion with the Complainant's trademark. The inconsequential gTLD ".com" may be disregarded.

As to the second element, Paragraph 4(c) of the UDRP sets out three illustrative circumstances as examples which, if established by the Respondent, shall demonstrate rights to or legitimate interests in the domain name for purposes of paragraph 4(a)(ii) of the UDRP, i.e.

(i) before any notice to the Respondent of the dispute, the use by the Respondent of, or 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 (as an individual, business or other organization) has been commonly known by the domain name, even if the Respondent has acquired no trademark or service mark rights; or

(iii) the Respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert customers or to tarnish the trademark or service mark at issue.

The Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name because the Respondent is not known by the disputed domain name, but, according to the Whois information, as “Frank Lucas”; the Respondent is not affiliated with nor authorized by the Complainant in any way; the Complainant does not carry out any activity for, nor has any business with the Respondent; neither licence nor authorization has been granted to the Respondent to make any use of the Complainant’s trademark BOLLORE LOGISTICS, nor to apply for registration of the disputed domain name, which is a typosquatted version of the trademark BOLLORE LOGISTICS; finally, since its registration the disputed domain name points to an inactive website, so the Respondent has not made any use of disputed domain name and has no demonstrable plan to use the disputed domain name.

The Panel finds that the BOLLORE LOGISTICS mark is distinctive and widely known, as has been found in CAC Case No. 102031, BOLLORE v. Donald Shillam (“The Panel concludes that the Complainant's BOLLORE LOGISTICS trademark has a significant reputation and is of distinctive character.”) and in CAC Case No. 101500, BOLLORE SA v. JESSICA SAXTON ("the Complainant’s trademark [BOLLORE LOGISTICS] has a strong reputation and is widely known").

The Panel also finds that the disputed domain name, registered on May 25, 2020, appears to be a typosquatted version of the Complainant's mark i.e. a domain name registered in an attempt to take advantage of Internet users’ typographical errors. The fact that the disputed domain name has been set up with mail exchanger records (MX records) indicates an intention to use the disputed domain name to send emails impersonating the Complainant.

These circumstances, together with the Complainant’s assertions, are sufficient to constitute a prima facie showing of absence of rights or legitimate interests in respect of the domain name on the part of the Respondent. The evidentiary burden therefore shifts to the Respondent to show that it does have rights or legitimate interests in the domain name. See Cassava Enterprises Limited, Cassava Enterprises (Gibraltar) Limited v. Victor Chandler International Limited, WIPO Case No. D2004-0753. The Respondent has made no attempt to do so.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in respect of the domain name.

As to bad faith registration, the Panel is satisfied, based on the fame of the Complainant's mark, the evidence put forward with the Complaint and the absence of any Response, that this is a case of deliberate typosquatting, which is itself evidence of bad faith: see Morgan Stanley v. Doniqish Doniqish, FA2005001898199 (FORUM June 24, 2020): (“The Domain Name seeks to take advantage of the situation where Internet users may make a typographical error. Typosquatting itself is evidence of relevant bad faith registration and use. See Diners Club int'l Ltd. v Domain Admin ****** It's all in the name ******, FA 156839 (FORUM June 23, 2003) (registering a domain name in the hope that Internet users will mistype the Complainant’s mark and be taken to the Respondent’s site is registration and use in bad faith). Typosquatting also indicates the Respondent had knowledge of the Complainant and its rights. See InfoSpace, Inc. v. Greiner, FA 227653 (FORUM Mar. 8, 2004) (“Respondent’s domain name is a simple and popular variation of a trademark commonly used by typosquatters … Such a domain name evidences actual knowledge of the underlying mark prior to the registration of the domain name, and as Respondent failed to submit any evidence to counter this inferrence [sic], Respondent’s actions evidence bad faith registration of the disputed domain name.”)”.

As to bad faith use, the Panel accepts the Complainant's contention that although the disputed domain name does not resolve to an active website, the fact that it has been set up with MX records suggests that it may be used for email purposes. This would inevitably constitute bad faith use because any email emanating from the disputed domain name could not be used for any good faith purpose. See CAC Case No. 102827, JCDECAUX SA v. Handi Hariyono (“There is no present use of the disputed domain name but there are several active MX records connected to the disputed domain name. It is concluded that it is inconceivable that the Respondent will be able to make any good faith use of the disputed domain

name as part of an e-mail address.”).

According to the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, (“WIPO Jurisprudential Overview 3.0”), paragraph 3.3: "From the inception of the UDRP, panelists have found that the non-use of a domain name (including a blank or “coming soon” page) would not prevent a finding of bad faith under the doctrine of passive holding. While panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant’s mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent’s concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put."

In the present case, the fact that the disputed domain name does not resolve to an active web page does not prevent a finding of bad faith use. Having regard to the fame and distinctiveness of the Complainant's BOLLORE LOGISTICS mark, of which the Respondent could not have been unaware when registering the disputed domain name; the typosquatted nature of the disputed domain name; the fact that it has been set up with MX records so as to enable it to be used for emails impersonating the Complainant; and the failure of the Respondent to take part in this proceeding, the Panel concludes that the disputed domain name is being used in bad faith.

Accordingly the Panel finds that the disputed domain name was registered and is being used in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **BOLLORE-LOGISTCS.COM**: Transferred

PANELLISTS

Name	**Alan Limbury**

DATE OF PANEL DECISION 2020-06-30

Publish the Decision