Decision for dispute CAC-UDRP-103261

Case number	CAC-UDRP-103261
Time of filing	2020-08-31 10:56:47
Domain names	bollora.xyz

Case administrator

Name	Olga Slanařová (Case admin)

Complainant

Organization	BOLLORE SE

Complainant representative

Organization	Nameshield (Laurent Becker)

Respondent

Name	bayama moore

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

The Complainant adduced proof that is the owner of international trade mark No. 704697, a figurative mark with the word element "Bolloré". This trade mark was registered on 11 December 1998 in Classes 16, 17, 34, 35, 36, 38 and 39 of the Nice Classification List on the basis of a French mark of origin; its designations provide for the mark's protection in over 40 countries. The Complainant showed that its authorized representative in the present proceeding is the registrar for the domain name <bollore.com>, registered on 25 July 1997, and states that it is the registrant.

The Respondent is the registrant of the disputed domain name <bollora.xyz>, registered on 26 August 2020.

FACTUAL BACKGROUND

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

Founded in 1822, the Complainant's group in 2019 had 84,000 employees world-wide and revenues of nearly €25 billion and is among the 500 largest companies in the world. The Group is prominent in three lines of business: transportation and logistics, communications, and electricity storage and systems.

The Complainant’s trademark "BOLLORE" is well-known and distinctive. Past panels have confirmed the notoriety of its trademarks in the following cases:
- CAC Case No. 102015, BOLLORE SA v. mich john;
- CAC Case No. 101696, BOLLORE v. Hubert Dadoun.

The disputed domain name resolves to a parking page which contains links related to commercial products and services, including for supply of plates and swimming lessons.

The Complainant adduced evidence of the use of the disputed domain name in the form of an e-mail sent on 28 August 2020 to a potential customer of the Complainant. The e-mail's content includes the postal address and contact details of the Complainant's establishment in Shanghai. It falsely purports to have been sent by a manager belonging to that establishment.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

The disputed domain name <bollora.xyz> is confusingly similar to the Complainant’s trade mark "BOLLORE" and contains an obvious misspelling of the trade mark, making this a clear case of typosquatting.

Substitution of the “E” by the “A” in the trade mark is not sufficient to exclude the likelihood of confusing similarity. Nor does addition of the New Generic Top-Level Domain suffix <.xyz> change the overall impression of the name being connected to the trade mark, the Complainant or its domain name.

The Complainant claims that the Respondent is not known by the disputed domain name and asserts that the Respondent is not affiliated with or authorized by the Complainant. It also refers to past ADR Decisions in its favour and cites examples of earlier Panels' views that, once a prima facie case is made out as regards the absence of a legitimate right or interest, the burden of proof then switches to the Respondent.

The Complainant further claims that the Respondent did not make any use of disputed domain name since its registration and that the Respondent has no demonstrable plan to use the disputed domain name.

The Complainant asserts that the Respondent has registered the disputed domain name in bad faith and used it to create a likelihood of confusion with the Complainant’s trademark as to source, affiliation or endorsement within the meaning of Paragraph 4(b)(iv) of the Policy. The Respondent has thus acted in bad faith.

Such conduct is furthermore deceptive and illegal. Past ADR Decisions have notably identified phishing as showing bad faith.

Consequently, the Complainant concludes that the Respondent has registered and is using the disputed domain name <bollora.xyz> in bad faith.

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 that there is no other reason why it would be inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

This is a case of typosquatting for the demonstrated purpose of using the Complainant's name and reputation fraudulently.

The fact that the disputed domain name was used to conduct phishing two days after its registration is conclusive proof simultaneously of the absence of any right or legitimate interest on the Respondent's part and of the Respondent's bad faith registration and use in order to exploit deliberate confusing similarity between the disputed domain name and the Complainant's brand. The Respondent's choice to register the disputed domain name under the <.xyz> Top Level Domain -- <.xyz> having become a leading generic TLD since its introduction in 2014 -- merely added a degree of plausibility to the deceit.

The rights of the Complainant having been amply demonstrated, all elements of the UDRP's three-part cumulative test are met. The Panel therefore orders the disputed domain name to be transferred to the Complainant.

The Panel remarks that the facts are crystal clear in this case. It therefore overlooks inconsistency in the Complainant's contentions as regards use of the disputed domain name. It further considers it unnecessary to consider the Complainant's submission that it has made out a prima facie case in regard to absence of the Respondent's rights or legitimate interest. Any such submission is redundant where sufficient proof exists; as stated, conclusive proof exists here.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **BOLLORA.XYZ**: Transferred

PANELLISTS

Name	**Kevin J. Madders**

DATE OF PANEL DECISION 2020-10-07

Publish the Decision