Decision for dispute CAC-UDRP-103345

Case number	CAC-UDRP-103345
Time of filing	2020-10-12 10:50:54
Domain names	bollore-expressmaillogistics.com

Case administrator

Organization	Denisa Bilík (CAC) (Case admin)

Complainant

Organization	BOLLORE SE

Complainant representative

Organization	Nameshield (Enora Millocheau)

Respondent

Organization	FOB'S TECH

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 invokes two registered trademarks in this case:

- international figurative trademark BOLLORÉ LOGISTICS No. 1025892, registered on July 31st, 2009 in classes 35, 36 and 39 and covering various countries; and
- international figurative trademark BOLLORÉ LOGISTICS No. 1302823, registered on January 27th, 2016 in classes 4, 9, 35, 36, 39, 40 and 42 and covering various countries.

FACTUAL BACKGROUND

The Complainant, Bolloré SE, is part of the Bolloré group of companies. The Bolloré Group is active around three business lines: Transportation and Logistics, Communication and Media, Electricity Storage and solutions.

The Complainant is listed on the Paris Stock Exchange but the majority interest of the Group's stock is still controlled by the Bolloré family. The Bolloré Group has 84,000 employees world-wide with a turnover of 24,843 million euros and operating income in the amount of 1,259 million euros based on the results in 2019.

The Complainant's subsidiary Bolloré Logistics is one of the 10 leading worldwide transport and logistics companies, with a presence on the five continents (600 offices in 109 countries and more than 20,950 employees).

The Complainant is the owner of registered marks comprising the terms "BOLLORÉ LOGISTICS" in several classes in numerous countries all over the world.

The disputed domain name has been registered on October 6, 2020. The disputed domain name resolves to a website which appears to offer transport and logistics services similar to the Complainant's services.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

PARTIES' CONTENTIONS:

COMPLAINANT:
The Complainant considers the disputed domain name to be confusingly similar to trademarks in which it has rights. The Complainant claims that the Respondent has no rights or legitimate interests in respect of the disputed domain name. According to the Complainant, the Respondent does not use the disputed domain name in connection with any legitimate use. Also, according to the Complainant, the Respondent has not been authorized to register or use the disputed domain name. Finally, the Complainant considers that the disputed domain name was registered and is being used in bad faith. The Complainant contends that the Respondent knew, or at least should have known, of the existence of the Complainant's trademarks. The Complainant further contends that 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 the Respondent's website or location or of a product or service on the Respondent's website or location.

RESPONDENT:
The Respondent did not reply to the Complainant's contentions.

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 in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

The onus is on the Complainant to make out its case and it is apparent, both from the terms of the Policy and the decisions

of past UDRP panels, that the Complainant must show that all three elements set out in Paragraph 4 (a) of the Policy have been established before any order can be made to transfer a domain name. As the proceedings are civil, the standard of proof is the balance of probabilities.

Thus, for the Complainant to succeed, it must prove, within the meaning of Paragraph 4(a) of the Policy and on the balance of probabilities, that:

1. The domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
2. The 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.

The Panel has therefore dealt with each of these requirements in turn.

1. Identity or confusing similarity

The Complainant must first establish that there is a trademark or service mark in which it has rights. Since the Complainant is the holder of figurative trademarks including the terms “Bolloré Logistics”, which are used in connection with its transport and logistics business, it is established that there are trademarks in which the Complainant has rights.

The Panel’s assessment of identity or confusing similarity involves comparing the (alpha-numeric) domain name and the textual components of the relevant mark. To the extent that design (or figurative/stylized) elements would be incapable of representation in domain names, these elements are largely disregarded for purposes of assessing identity or confusing similarity under the first element (see section 1.10 WIPO Overview 3.0).

The disputed domain name <bollore-expressmaillogistics.com> incorporates the dominant textual components of the Complainant’s BOLLORÉ LOGISTICS trademark in their entirety, merely adding a hyphen and the descriptive terms “express” and “mail”. Where the relevant trademark is recognizable within the disputed domain name, the addition of other descriptive terms would not prevent a finding of confusing similarity under the first element (see section 1.8 WIPO Overview 3.0).

It is well established that the Top-Level Domains (“TLDs”) such as “.com” may be disregarded when considering whether the disputed domain name is confusingly similar to the trademark in which the Complainant has rights (see section 1.11 WIPO Overview 3.0).

For these reasons, the Panel finds that the disputed domain name is confusingly similar to the Complainant’s trademarks. Accordingly, the Complainant has made out the first of the three elements that it must establish.

2. 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 established case law that it is sufficient for the Complainant to make a prima facie showing that the Respondent has no right or legitimate interest in the disputed domain name in order to shift the burden of proof to the Respondent (see section 2.1 WIPO Overview 3.0 and Champion Innovations, Ltd. V. Udo Dussling (45FHH), WIPO case No. D2005-1094; Croatia Airlines d.d. v. Modern Empire Internet Ltd., WIPO case No. D2003-0455; Belupo d.d. v. WACHEM d.o.o., WIPO case No. 2004-0110).

The Panel notes that the Respondent has not been commonly known by the disputed domain name and that the Respondent has not acquired trademark or service mark rights. According to the information provided by the Registrar, the Respondent is “Nkengafac Nkafu” from the organisation “FOB'S TECH”. The Respondent’s use and registration of the disputed domain name was not authorized by the Complainant. There are no indications that a connection between the Complainant and the Respondent existed.

Moreover, the Panel is of the opinion that the Respondent is not making a legitimate non-commercial or fair use of the disputed domain name. According to the evidence provided by the Complainant, the disputed domain name refers to a website which seems to offer transport and logistics services under the name “Bollore Express Mail Logistics”, using the distinctive BOLLORE component of the Complainant’s mark.

Past Panels have held that using a disputed domain name to offer related services to that of a complainant is not a use indicative of rights or legitimate interests (see e.g. NAF Case No. FA 1659965, General Motors LLC v. MIKE LEE: “Past panels have decided that a respondent’s use of a domain to sell products and/or services that compete directly with a complainant’s business does not constitute a bona fide offering of goods or services pursuant to Policy paragraph 4(c)(i) or a legitimate non-commercial or fair use pursuant to Policy paragraph 4(c)(iii).”).

Based on the available record, the Panel finds that the Complainant has established a prima facie case, which was not refuted, and that the Respondent lacks rights or legitimate interests in the disputed domain name. Therefore, the Complainant has satisfied the second requirement that the Respondent has no rights or legitimate interests in the disputed domain name, under paragraph 4(a)(ii) of the Policy.

3. Bad faith

Complainant must prove on the balance of probabilities that the disputed domain name was registered in bad faith and that it is being used in bad faith (see section 4.2 WIPO Overview 3.0 and e.g. Telstra Corporation Limited v. Nuclear Marshmallow, WIPO Case No. D2000-0003; Control Techniques Limited v. Lektronix Ltd, WIPO Case No. D2006-1052).

According to the Panel, the awareness of a respondent of the Complainant and/or the Complainant’s trademark rights at the time of registration can evidence bad faith (see Red Bull GmbH v. Credit du Léman SA, Jean-Denis Deletraz, WIPO Case No. D2011-2209; Nintendo of America Inc v. Marco Beijen, Beijen Consulting, Pokemon Fan Clubs Org., and Pokemon Fans Unite, WIPO Case No. D2001-1070). In the instant case, the Panel finds that the Respondent must have had knowledge of the Complainant’s rights in the BOLLORÉ LOGISTICS trademark at the moment it registered the disputed domain name. The Complainant has provided evidence of the reputation and distinctiveness of its BOLLORÉ LOGISTICS trademark, which has also been confirmed by previous UDRP Panels:
- 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.”);
- CAC Case No. 101500, BOLLORE SA v. JESSICA SAXTON ("the Complainant’s trademark [BOLLORE LOGISTICS] has a strong reputation and is widely known").

This is all the more so since the Respondent seems to be active in the same sector as the Complainant. As mentioned before, the disputed domain name refers to a website which seems to offer transport and logistics services similar to the Complainant’s services.

In view of the Respondent’s use of the disputed domain name, the Panel finds that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to his web site, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of his web site (par. 4(b)(iv) of the Policy).

UDRP panels have found the following types of evidence to support a finding that a respondent has registered a domain name to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant’s mark:
- seeking to cause confusion for the respondent’s commercial benefit, even if unsuccessful;
- the lack of a respondent’s own rights to or legitimate interests in a domain name;
- absence of any conceivable good faith use (see section 3.1.4 WIPO Overview 3.0).

In the present case, the Panel finds that the website linked to the disputed domain name is likely to cause confusion with the Complainant’s BOLLORÉ LOGISTICS mark. The uncontested lack of the Respondent’s own rights to or legitimate interests in

the disputed domain name has already been mentioned above. Finally, given the distinctive character and wide use of the Complainant's mark, the Panel finds it difficult to conceive any plausible good faith use of the disputed domain name by the Respondent in the future.

By failing to respond to the Complaint, the Respondent did not take any initiative to contest the foregoing. Pursuant to paragraph 14 of the Rules, the Panel may draw the conclusions it considers appropriate.

Therefore, the Panel finds that, on the balance of probabilities, it is sufficiently shown 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-EXPRESSMAILLOGISTICS.COM**: Transferred

PANELLISTS

Name	**Flip Petillion**

DATE OF PANEL DECISION 2020-11-13

Publish the Decision