Decision for dispute CAC-UDRP-103359

Case number	CAC-UDRP-103359
Time of filing	2020-10-23 09:23:45
Domain names	bollores-energys.com

Case administrator

Organization	Denisa Bilík (CAC) (Case admin)

Complainant

Organization	BOLLORE SE

Complainant representative

Organization	Nameshield (Enora Millocheau)

Respondent

Name	traore

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings that relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of a trade marks for BOLLORE and BOLLORE ENERGY including International Trademark, registration number 704697, for BOLLORE in classes 16, 17, 34, 35 and 36, registered on December 11, 1998, and International Trademark, registration number 1303490, for BOLLORE ENERGY, in classes 1, 4, 7, 9 11, 35, 36, 37,39, 40 and 42, registered on January 22, 2016.

FACTUAL BACKGROUND

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

The Complainant is the owner of a trade marks for BOLLORE and BOLLORE ENERGY including International Trademark, registration number 704697, for BOLLORE in classes 16, 17, 34, 35 and 36, registered on December 11, 1998, and International Trademark, registration number 1303490, for BOLLORE ENERGY, in classes 1, 4, 7, 9 11, 35, 36, 37,39, 40 and 42, registered on January 22, 2016.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

PARTIES' CONTENTIONS:

COMPLAINANT:

The disputed domain name is confusingly similar to the Complainant's BOLLORE ENERGY trade mark. The addition of the letter "s" on two occasions and a hyphen is not enough to prevent the disputed domain name from being found confusingly similar to the Complainant's BOLLORE ENERGY trade mark.

The Respondent has no rights or legitimate interests in respect of the disputed domain name. There is no information which suggests that the Respondent is commonly known by the disputed domain name, the Respondent is not affiliated with, nor authorised by, the Complainant in any way. No licence or authorisation has been granted to the Respondent to make use of the Complainant's BOLLORE ENERGY trade mark. Moreover, the website related to the disputed domain name is inactive. Therefore, the Respondent has not made any use of the disputed domain name since registration and has no demonstrable plan to use it.

The disputed domain name has been registered and is being used in bad faith. In view of the fame of the Complainant, it is inconceivable that the Respondent could have registered the disputed domain name without actual knowledge of the Complainant's rights in the trade mark. Moreover, the misspelling of the Complainant's BOLLORE ENERGY trade mark is intentional, namely to ensure that the disputed domain name is confusingly similar to the Respondent's trade mark and this is recognised as bad faith. Furthermore, the disputed domain name resolves to an inactive web page. The Respondent has not demonstrated any activity in respect of the disputed domain name and it is not possible to conceive of any plausible actual or contemplated use of the disputed domain name that would not be illegitimate. Any email use of the disputed domain name could not conceivably be in good faith – see; JCDECAUX SA v Handi Hariyono, CAC Case No. 102827. The Respondent has registered and used the disputed domain name in bad faith in order to create a likelihood of confusion with the Complainant's trade mark as to the source, sponsorship affiliation or endorsement within the meaning of paragraph 4(b)(iv) of the Policy and thus acted in bad faith.

The Respondent's activities comprise typosquatting, which has been established to constitute bad faith. The fact that the disputed domain name is not being used does not prevent a bad faith finding, not least if active MX records are associated with it; see JCDECAUX SA, (supra).

RESPONDENT: No Response has been filed by the Respondent

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 4(a) of the Policy requires that the Complainant prove each of the following three elements in order to succeed in its Complaint:
(i) the disputed domain name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights; and
(ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
(iii) the disputed domain name has been registered and is being used in bad faith.

Identical or confusingly similar

So far as the first element is concerned, the Complainant's trade mark registration for BOLLORE ENERGY establishes its rights in this mark.

For the purpose of comparing the disputed domain name with the Complainant's mark, it is established practice to disregard the generic Top-Level Domain, that is ".com" in the case of the disputed domain name, as this is a technical requirement of registration. The remaining element of the disputed domain name comprises the Complainant's BOLLORE ENERGY trade mark, in full and without alteration, save only that an "s" has been added at the end of each word and a hyphen has been inserted between BOLLORES and ENERGYS.

Where a domain name wholly incorporates a complainant's registered trade mark or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for the purposes of the first element of the Policy; see, for example, CAC Case No. 102382, MAJE v enchong lin, and section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition. The Complainant's BOLLORE ENERGY mark is clearly recognisable in the disputed domain name, minor differences do not serve to differentiate the disputed domain name from the Complainant's trade mark and the Panel accordingly finds that it is confusingly similar to a trade mark in which the Complainant has rights.

Rights and legitimate interests

Paragraph 4(c) of the Policy sets out circumstances, without limitation, by which a respondent might demonstrate that it has rights or a legitimate interest in a domain name. These are, summarised briefly: (i) if the respondent has been using the domain name in connection with a bona fide offering of goods and services; (ii) if the respondent has been commonly known by the domain name; or (iii) if the respondent has been making a legitimate non-commercial or fair use of the domain name.
The fact that the disputed domain name does not resolve to an active website means that it is not being used in connection with a bona fide offering of goods and services. Nor is there any evidence that the Respondent has been commonly known by the disputed domain name, nor does the Respondent's passive holding of the domain name amount to making a legitimate non-commercial or fair use of it.

The Complainant having made out a prima facie case in relation to the second element, the burden of proof shifts to the Respondent to rebut it; see, for example, CAC Case No. 102333, Amedei S.r.l. v sun xin. In the absence of any response by it to the Complaint, the Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

Bad faith

The distinctive nature of the Complaint's BOLLORE ENERGY trade mark means that it is improbable that the Respondent registered the disputed domain name without an awareness of the Complainant and its trade mark rights, which it had acquired over 4 years prior to the registration of the disputed domain name. The fact that the disputed domain name does not resolve to an active website comprises passive holding which panels in many earlier decisions under the Policy have found capable of amounting to bad faith registration and use. The material factors in this respect were first set out in Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003 and are fulfilled in the circumstances of these proceedings. In particular, the Panel takes into account that (i) the Complainant's rights in its BOLLORE ENERGY mark are

well-established (ii) the Respondent has not provided any evidence of actual or contemplated good faith use by it of the disputed domain name, (iii) the Respondent has taken active steps to conceal its true identity, by use of a privacy service and (iv) it is not possible to conceive of any plausible actual or contemplated active use of the disputed domain name by the Respondent that would not be illegitimate or infringe the Complainant's trade mark rights. The fact that the disputed domain name, whilst not resolving to an active website, is associated with active MX records is a further indication of bad faith. For these reasons the Panel finds that the disputed domain name was both registered and 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. **BOLLORES-ENERGYS.COM**: Transferred

PANELLISTS

Name	**Antony Gold**

DATE OF PANEL DECISION 2020-11-24

Publish the Decision