# Decision for dispute CAC-UDRP-103414

| | |
|---|---|
| Case number | CAC-UDRP-103414 |
| Time of filing | 2020-11-19 09:52:54 |
| Domain names | bollore-ernegy.com |

## Case administrator

| | |
|---|---|
| Organization | Denisa Bilík (CAC) (Case admin) |

## Complainant

| | |
|---|---|
| Organization | BOLLORE SE |

## Complainant representative

| | |
|---|---|
| Organization | Nameshield (Enora Millocheau) |

## Respondent

| | |
|---|---|
| Name | Pierre David |

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 several trademarks, including an international trademark registration for BOLLORE ENERGY No. 1303490 (hereinafter referred to as " the BOLLORE ENERGY trademark") registered on January 22, 2016.

The Complainant is also the owner of numerous other trademarks that include the term BOLLORE such as:
- The International trademark for BOLLORE No. 704697 registered on December 11, 1998.

The Complainant has established its ownership of each of the foregoing trademarks by means of certificates of registration which the Panel accepts as evidence of the registrations and the Complainant's rights.

It has also registered several domain names, particularly <bollore-energy.com>, which resolve to websites used in the course of its business.

FACTUAL BACKGROUND

The following matters relating to the factual background to the dispute are asserted by the Complainant in the Complaint.

The Respondent has not filed a Response in the proceeding.

The Complainant is a prominent French company that is engaged predominantly in three industries, transportation and logistics, communications and media and electricity storage and solutions. It is a large company employing some 84,000 employees worldwide. It has a subsidiary, Bollore Energy, which is engaged in distribution and oil logistics in France, Switzerland and Germany.

The Respondent registered the <bollore-ernegy.com> domain name (“the disputed domain name”) on November 11, 2020, which is an obvious misspelling of the BOLLORE ENERGY trademark and caused it to resolve to a parking page carrying various commercial, electric and hybrid vehicular links which would naturally be interpreted by internet users as relating to goods and services in competition with those of the Complainant.

The Complainant has therefore filed this proceeding and requested that the disputed domain name be transferred to it.

---

PARTIES CONTENTIONS

CONTENTIONS OF THE PARTIES

COMPLAINANT

Complainant made the following contentions.

1. The Complainant is a French company engaged in transportation and logistics, communications and media and electricity storage and solutions. Its subsidiary Bollore Energy, is engaged in distribution and oil logistics in France, Switzerland and Germany.

2. The Complainant is the owner of several trademarks, including an international trademark registration for BOLLORE ENERGY No. 1303490 (hereinafter referred to as " the BOLLORE ENERGY trademark").

3. The Complainant is also the owner of numerous other trademarks that include the term BOLLORE such as:
- The International trademark BOLLORE No.704697 registered on December 11, 1998.

4. The Complainant has also registered several domain names, particularly <bollore-energy.com>, which resolve to websites used in the course of its business.

5. The Respondent registered the disputed domain name on November 11, 2020 and caused it to resolve to a parking page carrying various commercial, electric and hybrid vehicular links.

6. The disputed domain name is confusingly similar to the "the BOLLORE ENERGY trademark" as it incorporates the whole of the BOLLORE ENERGY trademark and makes only a minor spelling alteration to it, transposing two letters. That is an obvious case of typosquatting and it is obvious that the minor spelling alteration and the addition of generic top-level domain ”.com” do not negate the confusing similarity between the trademark and the domain name.

7. Accordingly, the disputed domain name is confusingly similar to the Complainant's BOLLORE ENERGY trademark.

8. The Respondent does not have any rights or legitimate interests in the disputed domain name.

9. The Complainant contends that it is required to make out only a prima facie case that the Respondent lacks rights or legitimate interests in the domain name and that the onus of proof then moves to the Respondent to demonstrate that it has rights or legitimate interests in the domain name.

10. The Respondent has no rights or legitimate interests in respect of the domain name as past panels have held that a respondent is not commonly known by a disputed domain name if the WHOIS information shows that the domain name holder is not similar to the disputed domain name. The Respondent is not the same as or similar to the disputed domain name as shown by the Whois database in the present case.

11. The Respondent also has no rights or legitimate interests in respect of the domain name as it is not affiliated with nor authorized by the Complaint in any way to use the Complainant's trademark in a domain name or in any other way and is not related in any way to the Complainant's business.

12. The disputed domain name is a typosquatted version of the Complainant's BOLLORE ENERGY trademark.

13. The disputed domain name resolves to a parking page with competing commercial, electric and hybrid vehicular links which is not a bona fide offering of goods or services or a legitimate non-commercial or fair use.

14. For all of these reasons, the Respondent has no rights or legitimate interests in respect of the disputed domain name.

15. The foregoing propositions are all supported by prior UDRP decisions cited by the Complainant.

16. The disputed domain name has been registered and is being used in bad faith. That is so for the following reasons.

17. Because of the notoriety of the Complainant's BOLLORE and BOLLORE ENERGY trademarks, it is inconceivable that the Respondent could have registered the disputed domain name without actual knowledge of the Complainant, its aforesaid trademarks and its rights in them.

18. Moreover, the disputed domain name is confusingly similar to the BOLLORE and BOLLORE ENERGY trademarks and it is clear that the Respondent has no rights or legitimate interests in the domain name. All of those factors make it plain that the domain name has been registered and used in bad faith.

19. The foregoing propositions are all supported by prior UDRP decisions cited by the Complainant.

20. Accordingly, the Respondent has registered and is using the disputed domain name in bad faith.

20. As the Complainant has made out all of the grounds specified in the Policy It follows that the Complainant is entitled to relief and the Panel should therefore order that the disputed domain name be transferred to the Complainant.

RESPONDENT:
The Respondent did not file a Response.

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 the UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

DISCUSSION AND FINDINGS

This is a mandatory administrative proceeding pursuant to Paragraph 4 of the Uniform Domain Name Dispute Resolution Policy (the "Policy" or "UDRP") of the Internet Corporation for Assigned Names and Numbers ("ICANN"), the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules"), and the CAC Supplemental Rules.

A.
Administrative deficiency.

By notification dated November 19, 2020 and in accordance with paragraph 4 (b) of the Rules, the CAC notified the Complainant that the Complaint was administratively deficient in that the Complaint had not sufficiently identified the Respondent. The notification invited the Complainant to have regard to the Registrar's verification available in the online case file in the form of a non-standard communication regarding the appropriate identification of the domain name holder. On November 19, 2020, the Complainant filed an Amended Complaint and the CAC determined that the Complaint should be admitted to proceed further in the Administrative Proceeding.

The Panel has reviewed all of the above matters and makes a finding that within the meaning of paragraph 4(b) of the Rules, the administrative deficiencies have been corrected and that this matter has proceeded properly to the Panel in accordance with the Policy and the Rules.

B.
Substantive matters

Paragraph 15 of the Rules provides that the Panel is to decide the complaint on the basis of the statements and documents submitted and in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable. In that regard, the Panel also notes that the onus is on the complainant to make out its case and past UDRP panels have consistently said that a complainant must show that all three elements of the Policy have been made out before any order can be made to transfer a domain name.

The Panel therefore turns to discuss the various issues that arise for decision on the facts as they are known.

For the Complainant to succeed it must prove, within the meaning of paragraph 4(a) of the Policy, that:
(i) The domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and
(ii) The respondent has no rights or legitimate interests in respect of the domain name; and
(iii) The domain name has been registered and is being used in bad faith.

The Panel will therefore deal with each of these requirements in turn.

A. Identical or Confusingly Similar

The Complainant has adduced evidence that the Panel accepts that it is the registered owner of the BOLLORE ENERGY trademark and as such has rights in that trademark. The Panel next finds that the disputed domain name is confusingly similar to the BOLLORE ENERGY trademark for the following reasons.

First, the domain name includes the entirety of the BOLLORE ENERGY trademark and the only changes from the trademark are that:

(a) there is now a hyphen between the words “bollore” and “energy”; and
(b) the spelling of “energy” has been changed so that it is now “ernegy”.

Accordingly, the internet user would naturally read the domain name to be and to mean “bollore energy”. That is so because it is universally understood that the addition of a hyphen and minor spelling changes of the sort just identified cannot negate confusing similarity which is otherwise present, as it is in the present case. The domain name would thus inculcate in the mind of the user the notion that the domain name is an official domain name of the Complainant as it includes the Complainant’s name and trademark.

Secondly, it should also be noted here that the domain name would undoubtedly convey to the objective bystander that it related to the Complainant and its activities and that it would therefore generate inevitable confusion which is at the essence of this element in the Policy.

Thirdly, it is also now well established that the addition of a generic top-level domain, such as “.com” in the present case, cannot negate the confusing similarity that is otherwise present, as it is in the present case.

Finally, the Complainant has cited several prior UDRP decisions which it correctly submits support all of the foregoing contentions.

Accordingly, the domain name is confusingly similar to the Complainant’s trademark and the Complainant has thus shown the first of the three elements that it must establish.

B. 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.

But by virtue of paragraph 4(c) of the Policy, it is open to a respondent to establish its rights or legitimate interests in a domain name, among other circumstances, by showing any of the following elements:
(i) before any notice to you [respondent] of the dispute, your use 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) you [respondent] (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or
(iii) you [respondent] are making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

Thus, if a respondent proves any of these elements or indeed anything else that shows that it has a right or legitimate interest in the domain name, the Complainant will have failed to discharge its onus and the complaint will fail.

It is also well-established that a complainant is required to make out a prima facie case that the Respondent lacks rights or legitimate interests and that when such a prima facie case is made, the Respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the Respondent cannot do so, a complainant is deemed to have satisfied paragraph 4(a)(ii) of the UDRP.

The Panel, after considering all of the evidence in the Complaint, finds that the Complainant has made out a prima facie case that the Respondent has no rights or legitimate interests in the domain name.

That prima facie case is made out from the following considerations.

This is a clear case of typosquatting and where that is so obvious, no registrant of a domain name can show that it has a right or legitimate interest in a domain name. That is simply because altering the spelling of a trademark in an attempt to

mislead internet users that the domain is genuine cannot give rise to a right or legitimate interest.

Moreover, the evidence of the Complainant is to the effect that the Respondent is not related in any way to the Complainant's business, is not affiliated with the Complainant or authorized by it in any way to use the BOLLORE ENERGY trademark in a domain name or in any other means and does not carry out any activity for, nor has any business with, the Complainant.

It is also clear from the evidence that the Respondent is not commonly known by the domain name under Policy paragraph 4(c)(ii). Many prior UDRP decisions have held that a respondent is not commonly known by a disputed domain name if the WHOIS information shows that the domain name holder is not similar to the disputed domain name. The Respondent is not the same as or similar to the disputed domain name as shown by the Whois database in the present case.

The disputed domain name points to a parking page with commercial links which do not constitute a bona fide offering of goods or services or legitimate non-commercial or fair use. The Panel has examined the links as they appear on the Complainant's exhibit to that effect and it is plain that the links relates to various fields of activities of the Complainant such as various commercial, electric and hybrid vehicular links which would naturally be interpreted by internet users as relating to goods and services in competition with those of the Complainant. Thus, the Respondent, which is presumably being paid for carrying the links on its website, is dishonestly using the Complainant's trademark for its own commercial benefit. It is now well established that such conduct cannot give rise to a right or legitimate interest in the domain name and the Panel so holds.

Finally, the Complainant has cited several prior UDRP decisions which it correctly submits support all of the foregoing contentions.

These facts give rise to the prima facie case made out by the Complainant.

The Respondent has not filed a Response or made any other answer to the claims of the Complainant and is in default.

Accordingly, the prima facie case has not been rebutted and the Complainant has made out the second of the three elements that it must establish.

Registered and Used in Bad Faith

The Complainant must prove on the balance of probabilities both that the disputed domain name was registered in bad faith and that it is being used in bad faith: Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003.

Paragraph 4(b) of the Policy sets out four circumstances, any one of which is evidence of the registration and use of a domain name in bad faith, although other circumstances may also be relied on, as the four circumstances are not exclusive. The four specified circumstances are:

(i) circumstances indicating that the respondent has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of the respondent's documented out-of-pocket costs directly related to the domain name; or
(ii) the respondent has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct; or
(iii) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
(iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to the respondent's website or other on-line location, 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 site or location.

The Panel finds that the Complainant has shown that the Respondent registered and used the disputed domain name in bad faith both in general and in particular because the Respondent's conduct puts the case squarely within paragraph 4(b) (iv) of the Policy and probably within the other provisions of paragraph 4 (b).

That is so because the Complainant is right in submitting that the combination of several factors makes it clear beyond any doubt.

First, the BOLLORE ENERGY trademark, like the other BOLLORE trademarks is, on the evidence, well-known and the Respondent must therefore be taken to have registered the domain name with full knowledge of the Complainant's trademark. That is well established to be evidence of bad faith registration in itself. That must be so, because if a party registers a domain name, using another party's trademark without permission, it must have done so for an untoward purpose. That is undoubtedly so in the present case as it has become apparent that the Respondent has registered and used the domain name to trade under and make money from using the Complainant's trademark. As the Complainant correctly submitted, it is inconceivable that the Respondent could have registered the disputed domain name without actual knowledge of the Complainant, its aforesaid trademarks and its rights in them.

Likewise, it is bad faith use when the Respondent proceeded to use the domain name to achieve its illegitimate objective. Moreover, the disputed domain name directs to a parking page with commercial links to the Complainant's potential competitors and to other businesses in the same fields as the Complainant. By trading on this potential confusion, the Respondent has thus attempted to attract Internet users for commercial gain to its own website, which is evidence of bad faith. Such conduct clearly brings the case within the provisions of paragraph 4(b) (iv) of the Policy.

The Respondent has also clearly registered the domain name primarily for the purpose of disrupting the business of a competitor, namely the Complainant, within the meaning of paragraph 4(b) (iii) of the Policy.

Finally, knowing what the Respondent has been prepared to do, the Panel finds that the Respondent would have been more than willing to sell the domain name to the Complainant if it could induce that result, within the meaning of paragraph 4(b) (i) of the Policy and within the general notion of bad faith.

The aspects of bad faith enumerated in the Policy have therefore been made out and in addition to those aspects the Respondent has acted in bad faith in registering and using the domain name within the general notion of bad faith.

Finally, the Complainant has cited several prior UDRP decisions which it correctly submits support all of the foregoing contentions.

Accordingly, the Respondent has registered and is using the disputed domain name in bad faith.

As the Complainant has succeeded in establishing all three elements under the Policy, it is entitled to the relief it seeks.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

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

## PANELLISTS

| | |
|---|---|
| Name | **The Hon. Neil Brown, QC** |

DATE OF PANEL DECISION 2020-12-22