

Decision for dispute CAC-UDRP-103531

Case number CAC-UDRP-103531

Time of filing 2021-01-27 09:58:02

Domain names bollorelogistics.online

Case administrator

Organization Iveta Špiclová (Czech Arbitration Court) (Case admin)

Complainant

Organization BOLLORE SE

Complainant representative

Organization Nameshield (Enora Millocheau)

Respondent

Name Nirmal Singh

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 at least two international (figurative) trademarks which incorporate the terms "Bolloré logistics", hereafter the "BOLLORE trademark(s)". Said trademarks are registered in several countries around the world:

– registered WO figurative mark "Bolloré LOGISTICS" no. 1025892 for services in classes 35, 36 and 39, with registration date 31 July 2009.

– registered WO figurative mark "Bolloré LOGISTICS" no. 1302823 for goods and services in classes 4, 9, 35, 36, 39, 40 and 42, with registration date 27 January 2016.

The Complainant also claims to be the owner of several other trademarks including the terms "BOLLORE LOGISTICS", but has not submitted evidence supporting this claim.

FACTUAL BACKGROUND

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

The Complainant is a company based in France which is active in three different lines of business, i.e. Transportation and Logistics, Communication and Media, and Electricity Storage and Solutions. In addition to these activities, the Complainant also operates a subsidiary named 'Bolloré Logistics', which is a transport and logistics company. Under the name 'Bolloré Logistics', the Complainant offers services extending across seven core categories, i.e. Multimodal Transport, Trade Compliance, Contract Logistics, Global Supply Chain, Industrial Projects, E-commerce, and Customer Value. The Complainant claims to be among the 500 largest companies in the world, and claims its subsidiary 'Bolloré Logistics' to be among the top 10 leading transport and logistics companies in the world.

The Panel can derive from the Complainant's evidence that 'Bolloré Logistics' is a subsidiary of the Complainant.

The Complainant is the owner of the domain name <bollore-logistics.com>, which was registered on 19 January 2009. The Complainant is also the owner of the aforementioned international BOLLORÉ trademarks.

The Complainant has submitted evidence that, at the time of filing the Complaint, the url "bollorelogistics.online" refers to an inactive webpage.

The disputed domain name was registered on 22 January 2021.

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

Paragraph 15(a) of the Rules instructs this Panel to "decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable." Paragraph 4(a) of the Policy requires that a complainant must prove each of the following three elements to obtain an order that a domain name should be cancelled or transferred:

- (1) the domain name registered by the respondent is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and
- (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.

1. Confusing similarity

The disputed domain name consists entirely of the word components of the Complainant's figurative BOLLLORE trademarks, adding the ".online" suffix.

The word components of the Complainant's figurative BOLLLORE trademarks are fully incorporated and recognizable in the disputed domain name.

There is also the addition of the ".online" suffix, which can be disregarded when it comes to considering whether the disputed domain name is confusingly similar to a trademark in which the Complainant has rights.

The Respondent did not file an administratively compliant (or any) response.

The Panel concludes that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights within the meaning of paragraph 4(a)(i) of the Policy.

2. Rights or legitimate interests

As regards paragraph 4(a)(ii) of the Policy, while the overall burden of proof rests with the Complainant, it is commonly accepted that this should not result in an often-impossible task of proving a negative. Therefore, numerous previous panels have found that the complainant is required to make out a prima facie case that the respondent lacks rights or legitimate interests. Once such prima facie case is made, the burden of production shifts to a respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such appropriate allegations or evidence, the complainant is generally deemed to have satisfied paragraph 4(a)(ii) of the Policy. If the respondent does come forward with some allegations or evidence of relevant rights or legitimate interests, the panel then has to weigh all the evidence, with the burden of proof always remaining on the complainant.

The Respondent did not file an administratively compliant (or any) response.

The Complainant contends that:

(1) The Respondent is not known under the disputed domain name.

(2) The Respondent is not affiliated with the Complainant in any way, nor has he been granted any licence or authorisation to make any use of the Complainant's BOLLLORE trademark(s), or to register the disputed domain name. The Complainant does not carry out any activity for the Respondent, nor does he have any business with him.

(3) The disputed domain name redirects to an inactive website. The Respondent has not made any use of the disputed domain name since its registration, which confirms that the Respondent has no demonstrable plan to use the disputed domain name.

The contentions of the Complainant are not contested by the Respondent.

The Panel finds that the Complainant has at least made a prima facie case that the Respondent does not have rights or legitimate interests in the disputed domain name.

This finding is based on a combination of the following facts and arguments:

(1) the Respondent does not seem to be related to the Complainant, and seems not to have received any license or authorization to use the BOLLLORE trademark(s) or any variation of it;

(2) the Respondent does not seem to be commonly known by the disputed domain name; and

(3) there is no evidence that the Respondent is making a legitimate non-commercial or fair use of the disputed domain name (or has any future plans to do so), without intent for commercial gain to misleadingly divert consumers or to tarnish the trademarks at issue.

The Panel notes that the contentions of the Complainant are not contested by the Respondent. The Respondent did not provide evidence that it has rights or legitimate interests in the disputed domain name (the Respondent could, inter alia, have provided evidence of the factors mentioned in paragraph 4(c) of the Policy, but did not do so).

On the balance of probabilities, and in the absence of any evidence to the contrary or any administratively compliant response being put forward by the Respondent, the Panel finds that the Respondent does not have any rights or legitimate interests in the disputed domain name within the meaning of paragraph 4(a)(ii) of the Policy.

3. Bad faith

The Panel finds that, on the balance of probabilities, it may be expected that the Respondent had knowledge of the existence of the Complainant and its activities, and of the existence of the Complainant's BOLLORE trademark and the scope of this trademark.

The Panel points to the fact that the Complainant has trademark rights to the name "BOLLORE LOGISTICS" for several goods and services in various countries around the globe, including the Respondent's home country, India. The registration of the Complainant's "BOLLORE" trademarks predates the registration of the disputed domain name. The term "BOLLORE", selected by the Respondent, seems to have no meaning in any language. This term seems selected only for its similarity to the Complainant's registered BOLLORE trademarks. This is confirmed by the Respondent's selection of the second word element of the disputed domain name, i.e. "LOGISTICS". This second word element also figures prominently in the Complainant's registered BOLLORE trademarks. The selection of both word elements of the Complainant's registered BOLLORE trademarks in the disputed domain name cannot reasonably be considered as a mere coincidence. Indeed, the disputed domain name is identical to the word elements of the Complainant's BOLLORE trademarks (with the addition of the suffix ".online").

Therefore, Panel is of the opinion that the disputed domain name might lead customers of the Complainant to believe that the disputed domain is owned by the Complainant, and is being used to provide information regarding its worldwide transportation activities. In other words, the Panel finds that there is sufficient evidence to conclude that the disputed domain name was registered and is being used in bad faith. In the absence of any evidence to the contrary (or any administratively compliant response) being put forward by the Respondent, the Panel believes from the facts in this case that the Respondent had the BOLLORE trademark(s) of the Complainant in mind when registering and using the disputed domain name.

The Panel did not base its decision of bad faith on the Complainant's claim that its BOLLORE trademarks are particularly distinctive, because the Complainant has not provided evidence or further arguments to support this claim.

The Panel also did not base its decision of bad faith on the Complainant's claim that the disputed domain name refers to a parked page. The Complainant asserts that the disputed domain name redirects to an inactive webpage, that the Respondent has not demonstrated any activity in respect of the disputed domain name, and that the disputed domain name may be actively used for e-mail purposes because it has been set up with MX records. The Complainant believes these assertions to be an indication of bad faith. The Panel, however, finds that, in this case, the Respondent's inactivity of the disputed domain name cannot be seen as an indication of bad faith on itself, given the fact that the complaint was filed relatively shortly after the registration of the disputed domain name. In general, the Panel is of the opinion that a respondent should be given a reasonable amount of time to start making active use of a domain name, without the inactive status of the domain name being used against him/her as evidence of bad faith (this always depends on the specific circumstances of

the case). As far as the purported use by the Respondent of the disputed domain name for e-mail purposes goes, the Complainant has not submitted sufficient evidence to support this claim.

Nonetheless, from the evidence set out in the complaint, and as described above, the Panel finds that it seems highly unlikely that the Respondent would not have been aware of the unlawful character of the disputed domain name at the time of its registration and use. For all of the reasons set out above, the Panel determines that the disputed domain name was registered and is being used in bad faith within the meaning of paragraph 4(a)(iii) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **BOLLORELOGISTICS.ONLINE**: Transferred
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PANELLISTS

Name	Bart Van Besien
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DATE OF PANEL DECISION **2021-03-06**

Publish the Decision
