

## Decision for dispute CAC-UDRP-103642

Case number CAC-UDRP-103642

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Domain names bollore-usa.com

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### Case administrator

Organization Denisa Bilík (CAC) (Case admin)

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### Complainant

Organization BOLLORE SE

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### Complainant representative

Organization Nameshield (Enora Millocheau)

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### Respondent

Name Kevin H Yu

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#### 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.

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#### IDENTIFICATION OF RIGHTS

The Complainant (BOLLORE SE) is the owner of several trademarks including the term "BOLLORE", such as the international trademark registration BOLLORE n° 704697 registered on December 11, 1998. The Complainant also owns and communicates on the Internet through various domain names, the main one being <bollore.com>, registered on July 24, 1997. The disputed domain name <bollore-usa.com> was registered on March 1, 2021.

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#### FACTUAL BACKGROUND

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

The Complainant was founded in 1822. Thanks to a diversification strategy based on innovation and international development, it now holds strong positions in all its activities around three business lines, Transportation and Logistics, Communication and Media, Electricity Storage and solutions.

The Complainant is one of the 500 largest companies in the world. Listed on the Paris Stock Exchange, the majority interest of the Group's stock is always controlled by the Bolloré family. The BOLLORE Group has 84,000 employees world-wide with

the turnover that equals to 24,843 million euros, operating income in the amount of 1,259 million euros and the shareholders' equity in the amount of 25,942 million euros based on the results in 2019.

#### DOMAIN NAME IS CONFUSINGLY SIMILAR TO THE PROTECTED MARK

The disputed domain name <bollore-usa.com> is confusingly similar to the Complainant's trademark BOLLORE. Indeed, the disputed domain name contains the Complainant's trademark in its entirety.

The addition of the letters "USA" (which refers to the United States) is not sufficient to escape the finding that the disputed domain name is confusingly similar to the trademark BOLLORE. It is well-established that a domain name that wholly incorporates a Complainant's registered trademark may be sufficient to establish confusing similarity for purposes of the UDRP. (WIPO Case No. D2003-0888, Dr. Ing. h.c. F. Porsche AG v. Vasilij Terkin).

Moreover, the Complainant contends that the addition of the gTLD ".COM" does not change the overall impression of the designation as being connected to the Complainant's trademark BOLLORE. It does not prevent the likelihood of confusion between the disputed domain name and the Complainant, its trademark and its domain names associated (WIPO Case No. D2006-0451, F. Hoffmann-La Roche AG v. Macalve e-dominios S.A.).

Finally, past Panels confirmed the Complainant's rights over the term "BOLLORE" (WIPO Case No. D2017-0442, Bollore v. Wuxi Yilian LLC <bollore-us.com>).

Thus, the disputed domain name <bollore-usa.com> is confusingly similar to a trademark in which the Complainant has rights.

#### THE RESPONDENT DOES NOT HAVE ANY RIGHTS OR LEGITIMATE INTEREST IN THE DOMAIN NAME

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 Respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(a) (ii) of the UDRP. (WIPO Case No. D2003-0455, Croatia Airlines d. d. v. Modern Empire Internet Ltd.)

The Complainant asserts that the Respondent is not identified in the Whois database as the disputed domain name. Past panels have held that a Respondent was not commonly known by a disputed domain name if the Whois information was not similar to the disputed domain name. Thus, the Respondent is not known as the disputed domain name (Forum Case No. FA 1781783, Skechers U.S.A., Inc. and Skechers U.S.A., Inc. II v. Chad Moston / Elite Media Group <bobsfromsketchers.com>).

The Respondent is not known by the Complainant. The Complainant contends that Respondent is not affiliated with nor authorized by the Complainant in any way. The Complainant contends that Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant does not carry out any activity for, nor has any business with the Respondent.

Neither license nor authorization has been granted to the Respondent to make any use of the Complainant's trademark BOLLORE or apply for registration of the disputed domain name.

Furthermore, the disputed domain name resolves to an inactive page. Therefore, the Complainant contends that Respondent did not make any use of disputed domain name since its registration, and it confirms that Respondent has no demonstrable plan to use the disputed domain name. It demonstrates a lack of legitimate interests in respect of the disputed domain name.

Accordingly, Respondent has no rights or legitimate interests on the disputed domain name <bollore-usa.com>.

#### THE DOMAIN NAME HAS BEEN REGISTERED AND IS BEING USED IN BAD FAITH

The Complainant's trademark BOLLLORE is well-known and distinctive, and the Complainant is one of the 500 largest companies in the world. Past panels have confirmed the notoriety of the trademarks BOLLLORE (CAC Case No. 102015, BOLLLORE SA v. mich john; CAC Case No. 101696, BOLLLORE v. Hubert Dadoun).

Thus, given the distinctiveness of the Complainant's trademark and reputation, the Complainant contends that it is inconceivable that the Respondent could have registered the disputed domain name without actual knowledge of Complainant's rights in the trademark.

Furthermore, the domain name resolves to an inactive page. Besides, the disputed domain name has been set up with MX records. The Complainant contends that 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 active use of the domain name by the Respondent that would not be illegitimate, such as by being a passing off, an infringement of consumer protection legislation, an infringement of the Complainant's rights under trademark law, or an attempt to attract, for commercial gain, Internet users to his own website, by creating a likelihood of confusion with Complainant's trademark as to the source, sponsorship, affiliation or endorsement of Respondent's website.

As prior WIPO UDRP panels have held, the incorporation of a famous mark into a domain name, coupled with an inactive website, may be evidence of bad faith registration and use (WIPO Case No. D2000-0003, Telstra Corporation Limited v. Nuclear Marshmallows; WIPO Case No. D2000-0400, CBS Broadcasting, Inc. v. Dennis Toeppen).

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

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#### PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

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#### RIGHTS

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.

The Complainant has established the fact that it has valid rights for the international trademark No 704697 BOLLLORE registered since December 11, 1998, and that it owns domain name <bollore.com> including the trademark BOLLLORE. The disputed domain name has been registered on March 1st, 2021, i.e. almost 20 years after the trademarks registration. The disputed domain name wholly incorporates the Complainant's trademark and is therefore confusingly similar to it.

The term "USA" and the hyphen used between words "BOLLLORE" and "USA" is without doubts an abbreviation for the United States of America. This term is, therefore, a geographical term that does not distinguish the disputed domain name from the Complainant's trademark. The term "BOLLLORE" used in the disputed domain name is placed in the beginning of the domain name and is the dominant element of the domain name. The addition of the geographical term "USA" does not change the overall impression of the designation as being connected to the Complainant or its trademark and more likely could lead to the connection of the Complainant or its business to the territory of the United States of America.

Furthermore, the addition of the generic top-level domain ".COM" does not change the overall impression of the designation as being connected to Complainant's trademark.

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name is confusingly similar to the Complainant's trademark "BOLLLORE" in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy).

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#### NO RIGHTS OR LEGITIMATE INTERESTS

For the Complainant to succeed it must prove, within the meaning of paragraph 4(a) of the Policy, that (ii) the respondent has no rights or legitimate interests in respect of the domain name.

The Complainant has established a prima facie case (not challenged by the Respondent who did not file any response to the complaint) that the Respondent has no rights or legitimate interests in the disputed domain name, since the Respondent is not related in any way with the Complainant and there is no indication that the Respondent is commonly known by the term "BOLLORE" or that the Respondent is using the disputed domain name in connection with a bona fide offering of goods or services. There is also no evidence, that the Respondent is 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.

Moreover, there is no evidence, that the disputed domain name resolves to an active website. The configuration of the MX servers (used for the e-mail purposes) for the disputed domain name is although a legitimate use of the domain name, but such use must be realized within the meaning of paragraph 4(a)(ii) of the Policy and it has not been proved by the Respondent, that it has such rights nor the legitimate interest for such use.

The Panel therefore considers that 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

For the Complainant to succeed it must prove, within the meaning of paragraph 4(a) of the Policy, that (iii) the domain name has been registered and is being used in bad faith.

The Respondent has registered the disputed domain name which consists the full content of the Complainant's trademark "BOLLORE". There are no doubts that the Complainant's trademark is distinctive and widely known and this could be easily verified by the Respondent before the registration of the disputed domain name. It has been concluded in the past that the Complainant's trademark is well-known (CAC case No. 102015, BOLLORE SA v. mich john or No. 101696, BOLLORE v. Hubert Dadoun). It could be therefore concluded that the Respondent had or should have the Complainant and its trademark in mind when registering the disputed domain name and therefore could not be in good faith when registering it.

The disputed domain name resolves to a website that is inactive. It has been concluded in the past that the incorporation of a famous mark into a domain name, coupled with an inactive website, may be evidence of bad faith registration and use (WIPO Case No. D2000-0003, Telstra Corporation Limited v. Nuclear Marshmallows; WIPO Case No. D2000-0400, CBS Broadcasting, Inc. v. Dennis Toeppen).

Considering the (i) confusing similarity between the Complainant's trademark and the disputed domain name, (ii) long time between the registration of the Complainant's trademark and the disputed domain name, (iii) inactive website, (iv) distinctiveness of the Complainant's trademark, and (v) the failure of the Respondent to submit a response or to provide any evidence of good faith use, the Panel finds that the disputed domain name has been registered and is being used in bad faith.

Thus, 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

The Panel considers that the Complainant has shown that the disputed domain name <BOLLORE-USA.COM> is confusingly similar to a trademark in which the Complainant has rights, the Respondent has no rights or legitimate interests in respect of

the disputed domain name and the disputed domain name has been registered and is being used in bad faith. The Complainant has thus established all three elements of paragraph 4(a) of the Policy.

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FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **BOLLORE-USA.COM**: Transferred
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## PANELLISTS

Name	JUDr. Petr Hostaš
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DATE OF PANEL DECISION 2021-04-05

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Publish the Decision

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