

Decision for dispute CAC-UDRP-104552

Case number	CAC-UDRP-104552
Time of filing	2022-05-09 09:13:21
Domain names	bollore-transport-logistics.com

Case administrator

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

Organization	BOLLORE SE
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Complainant representative

Organization	NAMESHIELD S.A.S.
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Respondent

Name	Isidoros Garifalakis
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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.

IDENTIFICATION OF RIGHTS

Complainant owns rights in the “BOLLORÉ TRANSPORT & LOGISTICS” sign and shows valid trademark right as follows:

- The International figurative trademark “BOLLORÉ TRANSPORT & LOGISTICS” No. 1302822 dated January 27, 2016 for goods and services in classes 4, 9, 35, 36, 39, 40 and 42, and that designates among others the United States.

Complainant also operates domain name including the same distinctive wording “BOLLORÉ TRANSPORT & LOGISTICS”, namely the domain name <bollore-transport-logistics.com>, registered since September 30, 2015.

FACTUAL BACKGROUND

Complainant is a major international transport and logistics operator.

The beginning of Complainant's activity dates back to 1822.

Complainant presents itself as one of the five hundred largest companies in the world and has a presence in 109 countries with

35,000 employees.

Respondent is Isidoros Garifalakis, located in United States.

On April 28, 2022, Respondent registered the disputed domain name <bollore-transport-logistics.com>, which resolves to an inactive page. In addition, MX servers are configured on this disputed domain name.

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

As stated in the WIPO overview 3.0, “[a] domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element.”

The Complainant quotes several previous UDRP cases:

- CAC Case No. 102985, BOLLORE SE v. Fundacion Comercio Electronico <BOLLORE-TRANSPORT-LGISTICS.COM>.
- 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> (“Here, the WHOIS information of record identifies Respondent as “Chad Moston / Elite Media Group.” The Panel therefore finds under Policy 4(c)(ii) that Respondent is not commonly known by the disputed domain name under Policy 4(c)(ii).”).
- Forum Case No. FA 1807147, Bittrex Inc. v. Kathryn Bates (“The Panel agrees that misspellings, such as the substitution of a letter, do not distinguish the Domain Name from Complainant’s BITTREX trade mark pursuant to the Policy.”).
- CAC Case No. 102985, BOLLORE SE (“The disputed domain name was registered with an intention to attract customers of another well-known domain name/registered trademark holder. Therefore, there cannot be found any legitimate interest of the Respondent.”).
- WIPO Case No. D2000-0003, Telstra Corporation Limited v. Nuclear Marshmallows;
- WIPO Case No. D2000-0400, CBS Broadcasting, Inc. v. Dennis Toeppen.
- CAC Case No. 102827, JCDECAUX SA v. Handi Hariyono (“There is no present use of the disputed domain name but there are several active MX records connected to the disputed domain name. It is concluded that it is inconceivable that the Respondent will be able to make any good faith use of the disputed domain name as part of an e-mail address.”).

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

PARTIES' CONTENTIONS:

COMPLAINANT:

- Complainant argues that the disputed domain name is confusingly similar to its trademark and its domain names associated.

Complainant considers that the disputed domain name is confusingly similar to its BOLLORE TRANSPORT & LOGISTICS registered trademark.

The disputed domain name wholly incorporate the registered trademark. The only difference resides in the deletion of the character “&” and the substitution of the letter “G” by the letter “Q” in the disputed domain name which are not sufficient to escape the finding that the domain name is confusingly similar to its trademark.

In this respect, Complainant considers this to be a clear case of typosquatting, with an obvious misspelling of its trademark.

Complainant states that the addition of the gTLD “.COM” does not change the overall impression of the designation as being connected to Complainant’s trademark, see WIPO Case No. D2006-0451, F. Hoffmann-La Roche AG v. Macalve e-dominios S.A.

Finally, in support of its claims, Complainant states that past panels have established the Complainant’s rights over the expression “BOLLORE TRANSPORT LOGISTICS”, see CAC Case No. 102985, BOLLORE SE v. Fundacion Comercio Electronico <BOLLORE-TRANSPORT-LGISTICS.COM>.

- Complainant further asserts that Respondent does not have any rights or legitimate interest in the disputed domain name.

First, Complainant asserts that Respondent is not commonly known by the disputed domain name.

Secondly, Complainant highlights that Respondent is not affiliated with nor authorized by Complainant, and was neither granted a licence nor an authorization to make use of Complainant’s trademark, or to register the disputed domain name.

In addition, Complainant asserts that the disputed domain name is a typosquatted version of the trademark BOLLORE TRANSPORT & LOGISTICS.

Finally, in support of its claims, Complainant submits a screenshot demonstrating that the disputed domain name resolves to an inactive page, showing the lack of legitimate use or plan to use the disputed domain name.

- Complainant finally comes down to the conclusion that Respondent’s registration and use of the disputed domain name amounts to bad faith.

Complainant asserts that the disputed domain name is confusingly similar to Complainant’s well-known trademark BOLLORE TRANSPORT & LOGISTICS. Complainant therefore infers that Respondent registered the disputed domain name with full knowledge of Complainant’s well-known trademark.

Besides, Complainant contends that the fact that Respondent has incorporated a famous trademark into a domain name but has not demonstrated any activity in respect of the disputed domain name is further evidence of bad faith. Moreover, Complainant states that it would be impossible 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, or an infringement of Complainant’s rights under trademark law.

Finally, in support of its claims, Complainant highlights that MX servers are configured on the disputed domain name which suggests that it may be actively used for email purposes.

RESPONDENT:

Respondent did not provide any response to the complaint, and is therefore in default.

RIGHTS

Complainant demonstrates it has valid trademark rights in the BOLLORE TRANSPORT & LOGISTICS sign.

The Panel recognizes that Complainant’s trademark rights in the BOLLORE TRANSPORT & LOGISTICS sign are established.

The Panel also agrees that the disputed domain name is confusingly similar to Complainant's BOLLORE TRANSPORT & LOGISTICS trademark, the suffix ".COM" do not permit to dismiss the likelihood of confusion with said trademark, (see ARCELOMITTAL (SA) v. acero, Case n° 102399 (CAC March 20, 2019) "As stated in WIPO Overview 3.0 "In cases where a domain name incorporates the entirety of a trademark, 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 purposes of UDRP standing" (see par. 1.7).

In addition, as Complainant has shown, the substitution of the letter "G" for the letter "Q" does not avoid a risk of confusion with BOLLORE TRANSPORT & LOGISTICS trademark, but is rather a case of typosquatting, see WIPO, No. D2021-4402, <planatfitness.com> Planet Fitness Franchising LLC c/ Domain Administrator, See PrivacyGuardian.org / Bo Yu, and Forum Case No. FA 1807147, Bittrex Inc. v. Kathryn Bates "The Panel agrees that misspellings, such as the substitution of a letter, do not distinguish the Domain Name from Complainant's BITTREX trade mark pursuant to the Policy."

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name is 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

Complainant shall provide a prima facie case that Respondent lacks rights and legitimate interests in the disputed domain name, under Policy 4(a)(ii). The burden of proof thereto shifts to Respondent.

This standard has been recognized throughout continuous case law, see LESAFFRE ET COMPAGNIE v. Tims Dozman, Case No. 102430 (CAC, April 2, 2019) "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 disputed domain name. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(a)(ii) of the UDRP (please see, for example, WIPO case no. D2003-0455, Croatia Airlines d.d. v. Modern Empire Internet Ltd.)."

Complainant asserts that Respondent is not commonly known under the disputed domain name, and that Complainant never granted any authorization to Respondent to use Complainant's trademark nor to register the disputed domain name.

Furthermore, Respondent did not provide a reply to the Complaint. Previous panels have held that such mutism from the Respondent's part was proof that Complainant and Respondent had no relation and that Respondent is not commonly known under the disputed domain name (see FILEHIPPO S.R.O. v. whois agent, Case No. 102279 (CAC January 31, 2019), "In the absence of a response, the Panel accepts the Complainant's allegations as true that the Respondent has no authorization to use the Complainant's trademarks in the disputed domain name. Hence, as the Complainant has made out its prima facie case, and as the Respondent has not demonstrated any rights or legitimate interests as illustrated under paragraph 4(c) of the Policy, nor has the Panel found any other basis for finding any rights or legitimate interests of the Respondent in the disputed domain name, the Panel concludes that the Complainant has satisfied the requirements of paragraph 4(a)(ii) of the Policy.").

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

Complainant argues that given the distinctiveness and the widely known of its trademark and domain name containing its trademarks "BOLLORE TRANSPORT & LOGISTICS", Respondent could not ignore Complainant's prior rights when registering the disputed domain name.

Indeed, panels have confirmed the Complainant's trademark to be well-known in previous cases, see CAC Case No. 102985, BOLLORE SE ("The disputed domain name was registered with an intention to attract customers of another well-known domain name/registered trademark holder. Therefore, there cannot be found any legitimate interest of the Respondent.").

Therefore, Respondent could not ignore Complainant's rights at the time of registration. Previous Panels concluded that such domain name registration when the Complainant is well-known is a typical case of bad faith registration (see JCDECAUX SA v. Charles Russam, Case No. 102392 (CAC March 13, 2019). According to most panels, the complainant is required to make out a prima facie case that the domain name has been registered and is being used in bad faith. Once such prima facie case is made, the respondent carries the burden of demonstrating that this is not the case.

To the Panel view, elements and information provided for by the Complainant at that stage, are sufficient to establish such prima facie case, notably because of the following:

- Given the reputation of the Complainant, the Respondent could hardly ignore the Complainant's existence and activities when registering the disputed domain name.”).

Complainant further asserts that the disputed domain name is the subject of a passive holding, which demonstrates the use in bad faith of Respondent.

Previous panels have found that such behaviour was evidence that Respondent was showing disputed domain name registration and use, in bad faith (see *Crédit Foncier de France v. WhoisGuard Protected, WhoisGuard, Inc. / Uyi Edionwe*, WIPO Case No. D2019-3037 (January 22, 2020), “Respondent is using the disputed domain name, which it registered long after Complainant's trademark CRÉDIT FONCIER had become famous in France, to resolve to an inactive web site. Moreover, it is impossible to conceive of any legitimate use to which the disputed domain name could be put that would not constitute a bad faith use of Complainant's well-known trademark. See, e.g., *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. D2000-0003. Accordingly, the Panel finds that Respondent has registered and is using the disputed domain name in bad faith.”).

Following the above, the Panel considers that Respondent has registered the disputed domain name with prior knowledge of Complainant's trademark.

The lack of use of the domain name by Respondent cannot be considered as good faith use either. Passive holding can amount to bad faith use as there is no circumstances under which the use of the disputed domain name could be legitimate, given Complainant's reputation.

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

Complainant holds trademark rights in the BOLLORE TRANSPORT & LOGISTICS sign. The disputed domain name reproduces Complainant's trademark and is therefore confusingly similar to Complainant's trademark. The only substitution of the letter “G” by the letter “Q” strengthens the fact that the disputed domain name is a typosquatted version of the trademark BOLLORE TRANSPORT & LOGISTICS.

Respondent failed to establish legitimate rights or legitimate interest in the disputed domain name. Complainant has established that Respondent registered and uses the disputed domain name 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-TRANSPORT-LOGISTICS.COM**: Transferred

PANELLISTS

Name	Nathalie Dreyfus
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DATE OF PANEL DECISION	2022-06-13
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Publish the Decision