

Decision for dispute CAC-UDRP-104590

Case number **CAC-UDRP-104590**

Time of filing **2022-05-17 09:29:53**

Domain names **boll0rre.com**

Case administrator

Organization **Denisa Bilík (CAC) (Case admin)**

Complainant

Organization **BOLLORE SE**

Complainant representative

Organization **NAMESHIELD S.A.S.**

Respondent

Name **shem gitahi**

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 invokes an international figurative mark including the term "BOLLORÉ" registered under n° 704697 on December 11, 1998 in classes 16, 17, 34, 35, 36, 38 and 39.

FACTUAL BACKGROUND

The Complainant, BOLLORÉ SE, is part of a group founded in 1822 and listed on the Paris Stock Exchange. The Complainant is active around three business lines: Transportation and Logistics, Communication and Media, Electricity Storage and solutions. In addition to its activities, the Complainant's group manages a number of financial assets including plantations and financial investments.

The Complainant is the owner of a figurative mark including the term "BOLLORÉ" registered in several classes in numerous countries worldwide. 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 <boll0rre.com> was registered on May 10, 2022. According to the evidence provided by the

Complainant, the disputed domain name resolved to a parking page including an image mentioning "COMING SOON". The Panel observes that the disputed domain name now resolves to a parking page, including sponsored links depending on the browser used.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

PARTIES' CONTENTIONS:

COMPLAINANT: The Complainant considers the disputed domain name confusingly similar to a trademark in which it has rights. The Complainant claims that the Respondent has no rights or legitimate interests in respect of the disputed domain name. According to the Complainant, the Respondent is not known by the disputed domain name and is not related to the Complainant. Also, according to the Complainant, the disputed domain name is a typosquatted version of the Complainant's mark which can be evidence that the Respondent lacks rights and legitimate interests in the disputed domain name. The Complainant also claims that the Respondent does not use the disputed domain name in connection with any legitimate use. Finally, the Complainant considers that the disputed domain name was registered and is being used in bad faith. The Complainant contends that the Respondent must have known of the existence of the Complainant's trademark given its distinctiveness and well-known character. The Complainant further claims that the misspelling of the Complainant's trademark is evidence of bad faith. According to the Complainant, 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 disputed domain name by the Respondent that would not be illegitimate.

RESPONDENT: The Respondent did not reply to the Complainants' contentions.

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 of the Rules provides that the Panel is to decide the complaint on the basis of the statements and documents submitted in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

The onus is on the complainant to make out its case, and it is apparent, both from the terms of the Policy and the decisions of past UDRP panels, that the complainant must show that all three elements set out in Paragraph 4 (a) of the Policy have been established before any order can be made to transfer a domain name. As the proceedings are administrative, the standard of proof is the balance of probabilities.

Thus, for the complainant to succeed, it must prove, within the meaning of Paragraph 4(a) of the Policy and on the balance of

probabilities, that:

1. The domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
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.

The Panel has therefore dealt with each of these requirements in turn.

1. Confusing similarity of the disputed domain name with existing rights

The Complainant must first establish that there is a trademark or service mark in which it has rights. Since the Complainant is the holder of the registered BOLLORÉ trademark, which is used in connection with the Complainant's business, it is established that there is a trademark in which the Complainant has rights.

The assessment of identity or confusing similarity involves comparing the disputed domain name and the textual components of the Complainant's mark. To the extent that design (or figurative/stylized) elements would be incapable of representation in domain names, these elements are largely disregarded for purposes of assessing identity or confusing similarity under the first element (see section 1.10 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0"). BOLLORÉ is the obvious textual and dominant component of the Complainant's figurative mark.

The disputed domain name <boll0rre.com> appears to be an obvious misspelling of the Complainant's trademark by substitution of the letter "o" with the number "0" and the addition of a letter "r". The Panel finds that that this can be considered as typosquatting. In the Panel's view, the substitution of one letter by a visually similar number and the addition of a second "r" does not prevent the disputed domain name from being confusingly similar to the Complainant's trademark (see section 1.9 of the WIPO Overview 3.0, CAC Case No. 103070, BOLLORE v. Ryan Stewart).

It is well established that the Top-Level Domains ("TLDs") such as ".com" may be disregarded when considering whether the disputed domain name is confusingly similar to the trademark in which the Complainant has rights (see section 1.11 WIPO Overview 3.0).

For these reasons, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark. Accordingly, the Complainant has made out the first of the three elements that it must establish.

2. No 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.

It is established case law that it is sufficient for the Complainant to make a prima facie showing that the Respondent has no right or legitimate interest in the disputed domain name in order to shift the burden of proof to the Respondent (see section 2.1 WIPO Overview 3.0 and *Champion Innovations, Ltd. V. Udo Dussling (45FHH)*, WIPO case No. D2005-1094; *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO case No. D2003-0455; *Belupo d.d. v. WACHEM d.o.o.*, WIPO case No. 2004-0110).

The Panel notes that the Respondent has not been commonly known by the disputed domain name and that the Respondent has not acquired trademark or service mark rights. According to the information provided by the Registrar, the Respondent is "shem gitahi". The Respondent's use and registration of the disputed domain name was not authorized by the Complainant. There are no indications that a connection between the Complainant and the Respondent existed.

Fundamentally, a respondent's use of a domain name will not be considered "fair" if it falsely suggests affiliation with the trademark owner. The correlation between a domain name and the complainant's mark is often central to this inquiry. In this case, the Panel finds that the disputed domain name can be considered as very similar to the Complainant's BOLLORÉ trademark as it simply substitutes 1 letter of the mark with a visually similar number and adds one letter, resulting in a risk of implied affiliation. The Panel observes that the disputed domain name is also very similar to the Complainant's domain name

<bollore.com> which resolves to the Complainant's official website.

Moreover, the Panel is of the opinion that the Respondent is not making a legitimate non-commercial or fair use of the disputed domain name. According to the Complainant's evidence, the disputed domain name resolved to a parking page including an image mentioning "COMING SOON". It now resolves to a parking page, including sponsored links depending on the browser used. In the Panel's view, neither of these uses amount to a legitimate non-commercial or fair use of the disputed domain name in the circumstances of this case.

The Respondent had the opportunity to demonstrate its rights or legitimate interests but did not do so. In the absence of a Response from the Respondent, the prima facie case established by the Complainant has not been rebutted.

Based on the available record, the Panel finds that the Complainant has established a prima facie case, which was not refuted, and that the Respondent lacks rights or legitimate interests in the disputed domain name. Therefore, the Complainant has satisfied the second requirement that the Respondent has no rights or legitimate interests in the disputed domain name, under paragraph 4(a)(ii) of the Policy.

3. Bad faith

Complainant must prove on the balance of probabilities that the disputed domain name was registered in bad faith and that it is being used in bad faith (See e.g. Telstra Corporation Limited v. Nuclear Marshmallow, WIPO Case No. D2000-0003; Control Techniques Limited v. Lektronix Ltd, WIPO Case No. D2006-1052).

According to the Panel, the awareness of a respondent of the complainant and/or the complainant's trademark rights at the time of registration can evidence bad faith (see Red Bull GmbH v. Credit du Léman SA, Jean-Denis Deletraz, WIPO Case No. D2011-2209; Nintendo of America Inc v. Marco Beijen, Beijen Consulting, Pokemon Fan Clubs Org., and Pokemon Fans Unite, WIPO Case No. D2001-1070). In the instant case, the Panel finds that the Respondent must have had knowledge of the Complainant's rights in the BOLLORÉ trademark at the moment it registered the disputed domain name, since the disputed domain name is almost identical to the Complainant's distinctive BOLLORÉ trademark except for the addition of one letter and the substitution of another letter with a visually similar number.

Moreover, the well-known character of the Complainant's BOLLORÉ trademark has been confirmed by at least one previous UDRP panel:

- CAC Case No. 101696, BOLLORE v. Hubert Dadoun ("As the Complainant is also one of the largest 500 companies in the world, the Panel accepts the Complainant's contention that their trademark has a strong reputation and is in fact to be considered well-known.").

UDRP panels have found the following types of evidence to support a finding that a respondent has registered a domain name to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the complainant's mark:

- seeking to cause confusion for the respondent's commercial benefit, even if unsuccessful;
- the lack of a respondent's own rights to or legitimate interests in a domain name;
- absence of any conceivable good faith use (see section 3.1.4 WIPO Overview 3.0).

In the present case, the Panel finds that the very nature of the disputed domain name suggests an intention to cause confusion. The disputed domain name is very similar to the Complainant's trademark due to typosquatting, which is an indicator of bad faith (see CAC Case No. 101990, JCDECAUX SA v. Gemma Purnell (<jcdeceux.com>): "Furthermore, the Panel agrees with the Complainant that the use of the disputed domain name is a typical case of typosquatting which in turn is a strong indicator of registration and use of a domain name in bad faith."). The uncontested lack of the Respondent's own rights to or legitimate interests in the disputed domain name has already been mentioned above. Finally, given the distinctive and well-known character of the Complainant's mark, the Panel finds it difficult to conceive any plausible good faith use of the disputed domain name by the Respondent in the future.

The Respondent did not formally take part in the administrative proceedings. According to the Panel, this serves as an

additional indication of the Respondent's bad faith.

Therefore, the Panel finds that, on the balance of probabilities, it is sufficiently shown that the disputed domain name was registered and is being 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. **BOLLORRE.COM**: Transferred

PANELLISTS

Name	Flip Petillion
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DATE OF PANEL DECISION 2022-06-24

Publish the Decision
