Decision for dispute CAC-UDRP-104821

Case number	**CAC-UDRP-104821**
Time of filing	**2022-08-30 10:54:54**
Domain names	**cebollorelehavre.com**

Case administrator

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

Complainant

Organization	**BOLLORE SE**

Complainant representative

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

Respondent

Organization	**Fundacion Comercio Electronico**

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 the term “BOLLORE”, such as the international trademark registration BOLLORE No. 704697.

The Complainant also owns and communicates on the Internet through various domain names, the main one being <bollore.com>, registered on July 25, 1997.

FACTUAL BACKGROUND

The Complainant was founded in 1822. It holds strong positions in all its activities around three business lines: Transportation and Logistics, Communication and Media, Electricity Storage and solutions.

It is one of the 500 largest companies in the world. Listed on the Paris Stock Exchange, the majority interest of the Complainant's stock is controlled by the Bolloré family. This stable majority control of its capital allows the Complainant to develop a long-term investment policy. In addition to its activities, the Complainant manages a number of financial assets including plantations and financial investments.

The Respondent registered the disputed domain name <cebollorelehavre.com> on August 23, 2022.

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).

The Complainant's trademark is included in its entirety in the disputed domain name with the addition of the term "CE" before the trademark and the geographical term "Le Havre" after the trademark.

When part of a domain name is identical to a well-known trademark, it increases the likelihood of confusion or association between the domain name holder and the trademark owner. It is, therefore, sufficient to establish identity or confusing similarity for the purposes of the Policy. See Oki Data Americas, Inc. v. ASD, Inc, WIPO Case No. D2001-0902; Dr. Ing. h.c. F. Porsche AG v Vasiliy Terkin, WIPO Case No D2003-003-0888.

The Complainant contends that the addition of the term "CE" and geographical term "Le Havre" is not sufficient to escape the finding that the disputed domain name is confusingly similar to the trademark "BOLLORE". It 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 the domain names associated.

In this context, the singular term "CE" can be used as a demonstrative adjective pointing out the trademark and then pointing to the geographical location of "Le Havre". The Panel considers that the overall impression of incorporating the Complainant's trademark "BOLLORE" with the addition of the term "CE" and the geographical term "Le Havre" in the manner set out in the disputed domain name increases the likelihood of confusion between the disputed domain name and the Complainant as the true owner of the trademark, and the domain name associated with the Complainant and its business.

The Complainant further 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. It does not prevent the likelihood of confusion between the disputed domain name and the Complainant, its trademark and its domain names associated.

It is now a well-established principle in the domain name space that generic top-level domains such as ".com", ".org" or ".net" do not affect the domain name for the purpose of determining whether it is identical or confusingly similar. See, for example, WIPO Case No. D2006-0451, F. Hoffmann-La Roche AG v. Macalve e-dominios S.A.

The Panel considers that the addition of the generic top-Level domain suffix ".com" does not change the overall impression of the designation of the disputed domain name as being connected to the Complainant's trademark "BOLLORE". Indeed, the Panel considers the addition of the suffix ".com" is irrelevant when assessing whether a domain name is identical or confusingly similar to a trademark. This is because gTLDs are only required for the functionality of a website.

Accordingly, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark and that paragraph 4(a)(i) of the Policy is satisfied.

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).

A complainant is required to make out a prima facie case that the respondent lacks rights or legitimate interests. Once such a 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. See WIPO Case No. D2003-0455, Croatia Airlines d.d. v. Modern Empire Internet Ltd.

In support of this ground, the Complainant makes the following contentions:

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

Where information in the WHOIS database is not similar to the disputed domain name, a respondent is not commonly known by the disputed domain name. See, for example, NAF Case No. FA 1781783, Skechers U.S.A., Inc. and Skechers U.S.A., Inc. II v. Chad Moston / Elite Media Group <bobsfromsketchers.com>; NAF Case No. FA 699652, The Braun Corporation v. Wayne Loney.

The Panel accepts this uncontradicted contention, which is supported by the evidence from the WHOIS database adduced by the Complainant.

Secondly, the Complainant contends that the Respondent is not related in any way with the Complainant because:

(a) the Complainant does not carry out any activity for nor has any business with the Respondent.

(b) the Complainant has not licensed nor authorized the Respondent to make use of its trademark “BOLLORE” or apply for registration of the disputed domain name.

The Panel accepts this uncontradicted contention.

Finally, the Complainant contends that there is no bona fide offering of goods or services or legitimate non-commercial or fair use by the Respondent. See Forum Case No. FA 970871, Vance Int’l, Inc. v. Abend, and WIPO Case No. D2007-1695, Mayflower Transit LLC v. Domains by Proxy Inc./Yariv Moshe.

The Complainant’s evidence shows that the disputed domain name resolves to a parking page with commercial links.

The Respondent has not filed any administratively compliant response to the Amended Complaint. As such, the Complainant’s evidence is uncontradicted.

The Panel is prepared to accept the inference that the Respondent has not used nor intends to use the disputed domain name.

Accordingly, the Panel finds the Respondent has no right or legitimate interests in the disputed domain name.

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).

There are two elements that must be satisfied – registration and use in bad faith.

Registration in bad faith

The Complainant's address and business are located in France, in particular in Ergué-Gabéric, North Western France. The Panel observes that the Respondent used privacy or proxy registration services to mask its true identity. A subsequent request of the Registrar shows the registrant of the disputed domain name to be the Respondent and located in Panama City, Panama.

The mere fact of identity concealment does not in itself amount to evidence of bad faith. There must be more to show a disregard of due process by deliberate delay or avoiding the application of the Policy.

Here, the Czech Arbitration Court provided written notice of the Amended Complaint to the Respondent with no administratively compliant responses made in respect to any good faith use of the disputed domain name. The communications also appear to have been returned back undelivered or undeliverable. This conduct, the bona fides of which are clearly left unexplained by the Respondent, is in the Panel's view evidence of bad faith. See WIPO Case No. D2018-0497, StudioCanal v. Registration Private, Domains By Proxy, LLC / Sudjam Admin, Sudjam LLC; Forum Case No. FA 1623939, Citigroup Inc. v. Kevin Goodman.

The evidence also shows that the Complainant's trademark "BOLLORE" is a well-known trademark. Past Panels have also accepted the notoriety of the trademark "BOLLORE". See, for example, CAC Case No. 102015, BOLLORE SA v. mich john; CAC Case No. 101696, BOLLORE v. Hubert Dadoun.

Given the distinctiveness of the Complainant's trademark and reputation, and the Respondent's failure to respond to the proceedings, the Panel accepts the uncontradicted evidence of the Complainant's well-known trademark. The Panel considers that it is reasonable to infer that the Respondent knew of or should have known about the Complainant's rights. The strong inference is that the Respondent registered the disputed domain name with full knowledge of the Complainant's trademark.

Accordingly, the Panel finds it is inconceivable that the Respondent would have registered the disputed domain name without being aware of the Complainant's legal rights.

Use in bad faith

The Panel has already referred to the uncontradicted facts set out in the Amended Complaint and accepts the evidence and contention that the disputed domain name resolves to a parking page with commercial links.

The Complainant contends the Respondent has attempted to attract Internet users for commercial gain to its own website for its own commercial gain, which is evidence of bad faith.

The Panel observes that the Respondent has not demonstrated any activity in respect of the disputed domain name. Accordingly, it is not possible to conceive of any plausible actual or contemplated active use of the disputed domain name by the Respondent that would be lawful and legitimate.

The Panel accepts and adopts the general approach by prior WIPO UDRP panels that have held that the incorporation of a famous mark into a domain name, coupled with an inactive webpage, may be evidence of bad faith registration and use. See WIPO Case No. D2000-0003, Telstra Corporation Limited v. Nuclear Marshmallows; WIPO Case No. D2000-0400, CBS Broadcasting, Inc. v. Dennis Toeppen.

The Panel finds in this case, from the uncontradicted evidence, that the Respondent's incorporation of the Complainant's well-known trademark "BOLLORE" into the disputed domain name coupled with a parking page with commercial links supports the Complainant's contention of registration and use in bad faith.

The Panel, therefore, concludes that the Respondent's holding of the disputed domain name in this case satisfies the requirement that the disputed domain name is being used in bad faith by the Respondent.

Accordingly, the Panel finds that the registration of the disputed domain name and its use was in bad faith.

PROCEDURAL FACTORS

Notification of proceedings to the Respondent

When forwarding a Complaint, including any annexes, electronically to the Respondent, paragraph 2 of the Rules states that CAC shall employ reasonably available means calculated to achieve actual notice to the Respondent.

Paragraphs 2(a)(i) to (iii) set out the sort of measures to be employed to discharge CAC's responsibility to achieve actual notice to the Respondent.

On August 31, 2022 the CAC by its non-standard communication stated as follows (omitting irrelevant parts):

As far as the e-mail notice is concerned, the CAC received a confirmation that to postmaster@cebollorelehavre.com was returned back undelivered as the e-mail address had permanent fatal errors;

The e-mail notice was also sent to domains@owld.net but the Provider (CAC) never received any proof of delivery or notification of undelivery.

No further e-mail address could be found on the disputed site. The Respondent never accessed the online platform.

Given the reasonable measures employed by CAC as set out in the above non-standard communication, 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 Complainant owns the registered trademark "BOLLORE" and the domain name <bollore.com> which is used in connection with its goods or services for a considerable time. It is a well-known trademark.

The Respondent registered the disputed domain name on August 23, 2022. The disputed domain name incorporates the Complainant's trademark in its entirety by the addition of the term "CE" before the trademark and the geographical term "Le Havre" after the trademark.

The Complainant challenges the Respondent's registration of the disputed domain name under paragraph 4(a)(i) of the Uniform Dispute Resolution Policy and seeks relief that the disputed domain name be transferred to the Complainant.

The Respondent has failed to file any administratively compliant response.

For the reasons articulated in the Panel's reasons above, the Complainant has satisfied the Panel of the following:

(a) The disputed domain name is confusingly similar to the Complainant's well-known trademark "BOLLORE".

(b) The Respondent has no rights or legitimate interests in respect of the disputed domain name.

(c) The disputed domain name has been 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. **cebollorelehavre.com**: Transferred

PANELLISTS

Name	**William Lye OAM KC**

DATE OF PANEL DECISION 2022-09-26

Publish the Decision