

Decision for dispute CAC-UDRP-104858

Case number CAC-UDRP-104858

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Domain names bolloreonline.com

Case administrator

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

Complainant

Organization BOLLORE SE

Complainant representative

Organization NAMESHIELD S.A.S.

Respondent

Name Dominique ROSIN

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 consisting of the term "BOLLORE®", such as the international trademark registration BOLLORE® n° 704697 registered since December 11, 1998.

In addition, the Complainant owns domain names with the term "BOLLORE" such as the domain name <bollore.com> registered since July 25, 1997.

FACTUAL BACKGROUND

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

The Complainant is one of the 500 largest companies in the world. The Complainant was founded in 1822 and it has three main business lines: Transportation and Logistics, Communication and Media, Electricity Storage and solutions.

Listed on the Paris Stock Exchange, the majority interest of the Group's stock is always controlled by the Bolloré family. In addition to its activities, the Group manages a number of financial assets including plantations and financial investments.

The Respondent registered the disputed domain name <bolloreonline.com> on September 14, 2022 hereinafter, the ("Disputed

Domain Name”).

The Complainant argues that the Disputed Domain Name was registered by Dominique ROSIN based in Sweden and it resolves to an error website.

According to Complainant’s non-contested allegations, the Respondent has no rights or legitimate interest in respect of the Disputed Domain Name and the Complainant is not related in any way to the Complainant’s business.

For the purpose of this case, the Registrar confirmed that the Respondent is the current registrant of the Disputed Domain Name and that the language of the registration agreement is English.

The facts asserted by the Complainant are not contested by the Respondent.

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

PARTIES CONTENTIONS

COMPLAINANT:

First element: Similarity

The Complainant states that the Disputed Domain Name is confusingly similar to its trademark and branded services “BOLLORE®”.

The Complainant asserts that the trademark BOLLORE® is included in its entirety within the Disputed Domain Name. The addition of the generic term “ONLINE” is not sufficient to escape the findings that the Disputed Domain Name is confusingly similar to the Complainant’s trademark BOLLORE®.

Second element: Rights or legitimate interest

The Complainant contends that the Respondent is not known as the Disputed Domain Name at the Whois database, and has not acquired trademark rights on the terms.

Additionally, the Complainant contends that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name and that the Respondent is not related in any way to the Complainant’s business.

The Complainant asserts that the Respondent is not affiliated with the Complainant nor authorized by the Complainant in any way to use the trademarks “BOLLORE®”. The Complainant does not carry out any activity for, nor has any business with the Respondent.

No authorization or license 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.

The Complainant also claims that the Disputed Domain Names redirect to an error page. The Complainant contends that Respondent did not make any use of Disputed Domain Name since its registration, and it confirms that the Respondent has no demonstrable plan to use the Disputed Domain Name. This demonstrates a lack of legitimate interests in respect of the Disputed Domain Name.

Third element: Bad faith

The Complainant states that the Disputed Domain Name is confusingly similar to its trademark BOLLORE®.

The Complainant indicates that given the distinctiveness of the Complainant’s trademarks and reputation, it is inconceivable that the Respondent could have registered the Disputed Domain Name without actual knowledge of Complainant’s rights in the trademark, which evidences bad faith.

The Complainant indicates that the Disputed Domain Name resolves to an error page. In this regard, the Complainant states 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.

RESPONDENT

Respondent did not reply to the Complaint.

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

According to Paragraph 4(a) of the Policy, the complainant is required to prove each of the following three elements to obtain an order that a domain name should be transferred or cancelled:

- (i) the domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and
- (ii) the respondent has no rights or legitimate interests in respect of the domain name; and
- (iii) the domain name has been registered and are being used in bad faith.

The Panel has reviewed in detail the evidence available to it and has come to the following conclusions concerning the satisfaction of the three elements of paragraph 4(a) of the Policy in the proceeding:

(A) THE COMPLAINANT'S RIGHTS AND CONFUSING SIMILARITY OF THE DISPUTED DOMAIN NAME TO THE COMPLAINANT'S RIGHTS.

Paragraph 4(a)(i) of the Policy establishes the obligation of the Complainant to demonstrate that the Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

The Complainant submitted a copy of the international trademark registration BOLLORE® Nr. 704697 dated December 11, 1998.

As provided at the evidence, the Complainant's trademark was registered prior to 2022, the year of the creation date of the Disputed Domain Name.

In the current case, the Disputed Domain Name is composed of the trademark BOLLORE® together with the generic term ONLINE. In assessing confusing similarity, the Panel finds the Disputed Domain Name is indeed confusingly similar to the Complainant's trademark, as it incorporates the entirety of the BOLLORE® trademark plus the generic term ONLINE. In this vein, UDRP panels agree that where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element. See paragraph 1.8. of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition 3.0 ("WIPO Jurisprudential Overview 3.0.).

UDRP panels agree that the TLD may usually be ignored for the purpose of determination of identity or confusing similarity between a domain name and the Complainant's trademark as it is technical requirement of registration. See paragraph 1.11.1 of WIPO Jurisprudential Overview 3.0.

Therefore, the Panel concludes that the Complainant has satisfied the requirement under paragraph 4(a)(i) of the Policy and the Disputed Domain Name is confusingly similar to Complainant's "BOLLORE®» trademark.

(B) RESPONDENT'S LACK OF RIGHTS OR LEGITIMATE INTERESTS IN THE DISPUTED DOMAIN NAME.

The second element of the Policy requires that the Complainant establishes that the Respondent has no rights or legitimate interests in the Disputed Domain Name. The generally adopted approach, when considering the second element, is that if a complainant makes out a prima facie case, the burden of proof shifts to the respondent to rebut it with relevant evidence

demonstrating rights or legitimate interests in the domain name; see, for example, CAC Case No. 102333, Amedei S.r.l. v sun xin. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy (see e.g. WIPO case no. D2003-0455, Croatia Airlines d.d. v. Modern Empire Internet Ltd.).

In this regard, Paragraph 4 (c) provides with circumstances which could prove rights or legitimate interest in the Disputed Domain Name on behalf of the Respondent such as:

- (i) Before any notice to Respondent of the dispute, Respondent is using or provides with demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or
- (ii) The Respondent (as an individual, business, or other organization) has been commonly known by the domain name, even if the Respondent has acquired no trademark or service mark rights; or
- (iii) The Respondent is making a legitimate noncommercial 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.

The Respondent did not reply to the Complaint despite the efforts made by the CAC to notify the Complaint. In this regard, the Complainant has confirmed in the Complaint that the Disputed Domain Name is not connected with or authorized by the Complainant in any way.

From the information provided by the Complainant, there is no evidence or reason to believe that the Respondent (as individual, business or other organization) has been commonly known by the Disputed Domain Name.

The Respondent's name "Dominique ROSIN" is all what it links the Disputed Domain Name with the Respondent. Absent of any other evidence such as a personal name, nickname or corporate identifier, the Panel is of the opinion that the Respondent is not commonly known by the Disputed Domain Name.

The Complainant indicates that they have not granted authorization to the Respondent to use their "BOLLORE®" trademarks. Furthermore, the Complainant asserts that the Respondent is not affiliated with him nor authorized in any way to use the trademark "BOLLORE®".

In terms of the evidence provided by the Complainant, the website linked to the Disputed Domain Name resolves to an error website. The Complainant contends that Respondent did not make any use of Disputed Domain Name since its registration, and it confirms that the Respondent has no demonstrable plan to use the Disputed Domain Name. This has not been contested by the Respondent. Instead, the Respondent has not responded in any form and thus has failed to rebut the Complainant's claims by providing any information and/or evidence whatsoever that could have shown that he has relevant rights or legitimate interests in respect of the Disputed Domain Name (within the meaning of paragraph 4(a) (ii) of the Policy).

For the reasons above mentioned and in absence of Respondent's reply, the Panel concludes that Respondent does not have rights or legitimate interest in the Disputed Domain Name and that the Complainant has satisfied the second element of the Policy.

(C) BAD FAITH REGISTRATION AND USE OF THE DISPUTED DOMAIN NAME.

Paragraph 4(a)(iii) of the Policy indicates that the Complainant must assert that the Respondent registered and is using the Disputed Domain Name in bad faith. In this sense, Paragraph 4(b) of the Policy sets out four circumstances which if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

- circumstances indicating that the Respondent has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of the Respondent's documented out-of-pocket costs directly related to the domain name; or
- The Respondent has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that Respondent has engaged in a pattern of such conduct; or
- The Respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- by using the domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to the Respondent's website or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or location or of a product.

For the current case, the evidence at hand confirms that Complainant's BOLLORE® trademark is distinctive and it has a strong reputation in the different industries that the Complainant operates; i.e. Transportation and Logistics, Communication and Media, Electricity Storage and solutions. Furthermore, the Complainant claims that its mark is famous and it cites "prior decisions under the UDRP [that] have recognized the reputation of the BOLLORE® mark such as CAC Case No. 102015 and CAC Case No. 101696".

The Complainant has provided evidence that the Respondent should have found information over the internet about Complainant's trademarks rights over BOLLORE® before registering the Disputed Domain Name.

Panels have found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely known trademark by an unaffiliated entity can by itself create a presumption of bad faith. See paragraph 3.1.4 of WIPO Jurisprudential Overview 3.0.

From this evidence, the Panel concludes that the Respondent had actual knowledge of the Complainant's trademark at the time it

registered the Disputed Domain Name.

In accordance with the evidence, the Disputed Domain Name is currently not in use. It is well established at different UDRP panel resolutions that the lack of use of a domain name does not prevent from finding bad faith (e.g. Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. 2000-0003). WIPO Jurisprudential Overview, version 3.0. at paragraph 3.3. provides some factors that have been considered relevant in applying the passive holding doctrine such as: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put.

In this present case, the factors which lead the Panel to conclude that Respondent's passive holding amounts to bad faith are: (i) the Complainant's trademark has a strong reputation and is widely known in different parts of the world, (ii) the Respondent has provided no evidence whatsoever of any actual or contemplated good faith use by it of the Disputed Domain Name, (iii) the Disputed Domain Name is composed of the Complainant's trademark BOLLORE® together with the descriptive term „ONLINE“ (iv) taking into account the above, it is unlikely any actual or contemplated active use of the Disputed Domain Names by the Respondent would not be illegitimate.

For this purpose, the Complainant has successfully put forward prima facie evidence that the Respondent has not made use, or demonstrable preparations to use, of either the Disputed Domain Name in connection with a bona fide offering of goods or services, or of making a legitimate non-commercial or fair use of the Disputed Domain Name. The Complainant submits that the Respondent is not commonly known under the Disputed Domain Name and that Respondent has never been authorized or licensed by Complainant to use the Complainant's trademark(s) or register the Disputed Domain Name. This prima facie evidence has not been challenged by the Respondent. Last but not least, the Complainant's trademark rights over the term BOLLORE® predates the date of registration of the Disputed Domain Name.

These factors make the Panel believe that the Disputed Domain Name was registered with the intention to attract, for commercial gain, Internet users to the Respondent's website or other on-line location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or location or of a product.

Therefore, the Panel concludes that Respondent registered and is using 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. **bolloreonline.com**: Transferred

PANELLISTS

Name	Victor Garcia Padilla
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DATE OF PANEL DECISION **2022-10-23**

Publish the Decision
