

Decision for dispute CAC-UDRP-105179

Case number CAC-UDRP-105179

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Domain names bollores-logistics.com

Case administrator

Name Olga Dvořáková (Case admin)

Complainant

Organization BOLLORE SE

Complainant representative

Organization NAMESHIELD S.A.S.

Respondent

Name Kenny L

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 owns a large portfolio of trademarks including the wording "BOLLORE LOGISTICS" in several countries, such as the international trademark BOLLORE LOGISTICS® n°1025892 registered since July 31, 2009, and the international trademark BOLLORE LOGISTICS® n°1302823 registered since January 27, 2016

FACTUAL BACKGROUND

BOLLORE SE (the "Complainant") was founded in 1822. It states that the founder and his successors commenced 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 (please see their website at: www.bollore.com).

The Complainant states further that it 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 73,000 employees worldwide with the revenue that equals to 19,771 million euros, operating income in the amount of 1,339 million euros and the shareholders' equity in the amount of 34,418 million euros based on the results in 2021.

The Complainant's subsidiary BOLLORE LOGISTICS is one of the 10 leading worldwide transport and logistics companies. With a

presence on the five continents (603 offices in 111 countries and more than 20,682 employees), BOLLORE LOGISTICS aims to consolidate the strength and reach of its international network through organic growth and targeted acquisitions.

PARTIES CONTENTIONS

COMPLAINANT:

The Complainant states that the Respondent registered <bollores-logistics.com> (the "Disputed Domain Name") on February 1, 2023 and it resolves to a website "without any substantial content. The Panel attempted to review the Respondent's website but its malware program cautioned against opening it as it "may contain malware." The Complainant contends that its word mark BOLLORE LOGISTICS predates the registration of the Disputed Domain Name by many years. The Respondent's registration of the Disputed Domain Name varies from the mark by adding a hyphen and the letter "s" and is, therefore, virtually identical to the Complainant's mark. The Complainant contends that it has no business relationship with Respondent, did not authorize it to register the Disputed Domain Name, and states that the Respondent is using the Disputed Domain Name to attract Internet visitors to its website. Judging from the cautionary response the Panel received from its malware program, it is more likely than not for visitors without any such cautionary program to be vulnerable to receiving malware.

RESPONDENT:

The Respondent has not appeared formally or informally to controvert the evidence submitted by the Complainant.

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(a) of the Rules for the UDRP ('the Policy') instructs this Panel to "decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable."

Pursuant 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 cancelled or transferred:

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

In view of the Respondent's failure to submit a response, the Panel shall decide this administrative proceeding on the basis of the

Complainant's undisputed representations and adduced proof pursuant to paragraphs 5(f), 14(a) and 15(a) of the Rules and draw such inferences it considers appropriate pursuant to paragraph 14(b) of the Rules. The Panel is entitled to accept all reasonable allegations and inferences set forth in the Complaint and annexes as true unless the evidence is clearly contradictory. See *Vertical Solutions Mgmt., Inc. v. webnet-marketing, inc.*, FA 95095 (FORUM July 31, 2000) (holding that the respondent's failure to respond allows all reasonable inferences of fact in the allegations of the complaint to be deemed true); see also *Talk City, Inc. v. Robertson*, D2000-0009 (WIPO February 29, 2000) ("In the absence of a response, it is appropriate to accept as true all allegations of the Complaint.").

Identical or Confusingly Similar to a Mark in which Complainant has a Right

To succeed under the first element, a complainant must pass a two-part test, first establish that it has rights, and thereafter that the disputed domain name is either identical or confusingly similar to the mark. The first element of a UDRP complaint "serves essentially as a standing requirement." Here, the Complainant has established that it has rights in the word mark BOLLLORE LOGISTICS by providing the Panel with the evidence that it has an International registration for its mark and claims without contradiction that it has registered trademarks in other jurisdictions. The consensus view which the Panel adopts is that a national or an international trademark registration is sufficient to establish rights in that mark. As such, the Panel finds that the Complainant has established that it has a right in the word mark BOLLLORE LOGISTICS.

The second part of the test calls for comparing the Complainant's mark with the Disputed Domain Name entails "a straightforward visual or aural comparison of the trademark with the alphanumeric string in the domain name. 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." [WIPO Overview 3.0 at section 1.7.](#) The Panel observes that the single difference is the addition of a hyphen and the letter "s" Typographical changes are immaterial. Where the relevant trademark is recognizable within the disputed domain name it is sufficient to establish confusing similarity. The addition of the gTLD ".com" does not have any impact on the overall impression of the dominant portion of the disputed domain name and is therefore irrelevant in determining the confusing similarity between BOLLLORE LOGISTICS and <bollores-logistics.com>.

Accordingly, Complainant has satisfied Paragraph 4(a)(i) of the Policy..

Determining Whether Respondent Lacks rights or legitimate interests in the Disputed Domain Name

To establish the second of the three elements, the Complainant must first demonstrate that Respondent lacks rights and legitimate interests in the disputed domain name. Recognizing that the proof for establishing this element is under the Respondent's control, the Complainant's may satisfy this burden by offering a prima facie case based on such evidence as there is thus shifting the burden to the Respondent to produce evidence to overcome the presumption that it lacks rights or legitimate interests in the Disputed Domain Name.

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name. It states that it did not authorize the Respondent to register the Disputed Domain Name, the Respondent is not using the domain name for any bona fide use, nor can it claim to be known by the name "Bolllore Logistics" as it has been identified in the Whois directory as Kenny L. The Complainant has adduced evidence based on the use of the Disputed Domain Name that Respondent is not using it for any noncommercial or fair use. See *Croatia Airlines d. d. v. Modern Empire Internet Ltd.*, WIPO Case No. D2003-0455 (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). See also *Advanced International Marketing Corporation v. AA-1 Corp*, FA 780200 (Forum November 2, 2011) (finding that a complainant must offer some evidence to make its prima facie case and satisfy Policy paragraph 4(a)(ii).

Here, the Complainant's contentions satisfy the presumptive burden that Respondent lacks rights or legitimate interests in the Disputed Domain Name. A respondent has the opportunity to controvert the prima facie case by adducing evidence demonstrating that it has rights or legitimate interests. The Policy sets forth the following nonexclusive list of factors:

- (i) "[B]efore any notice to you of the dispute, your use of, or 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."
- (ii) "[Y]ou (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights."
- (iii) "[Y]ou are 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."

Evidence of any one of these defences will satisfy the rebuttal burden, but the absence of any evidence supports a complainant's contention that the respondent lacks rights or legitimate interests in the disputed domain name. The failure of a party to submit evidence on facts in its possession and under its control may permit the Panel to draw an adverse inference regarding those facts. See *Mary-Lynn Mondich and American Vintage Wine Biscuits, Inc. v. Shane Brown, doing business as Big Daddy's Antiques*, WIPO Case No. D2000-0004. Here, the Disputed Domain Name is virtually identical to the Complainant's mark. The sole difference is the addition of a hyphen and the letter "e". This strategy does not support a right or legitimate interest in a disputed domain name and the Panel so finds in this matter. See *Emerson Electric Co. v. golden humble /golden globals*, FA 1787128 (Forum June 11, 2018) ("lack of evidence in the record to indicate a respondent is authorized to use [the] complainant's mark may support a finding that [the] respondent does not have rights or legitimate interests in the disputed domain name per Policy ¶ 4(c)(ii)").

As the Respondent has not controverted the evidence that it lacks right or legitimate interests in the Disputed Domain Name, the

Panel finds that the Complainant has satisfied Paragraph 4(a)(ii) of the Policy.

Registration and Use in Bad faith

It is the Complainant's burden under Paragraph 4(a)(iii) of the Policy to prove that the Respondent both registered and is using the Disputed Domain Name in bad faith. It is not sufficient for a complainant to rest its case on the finding under Paragraph 4(a)(ii) of the Policy, although the fact that the Respondent lacks rights or legitimate interests in the Disputed Domain Name will be a factor in assessing its motivation for registering a domain name that is virtually identical to the Complainant's mark.

In this case, the Respondent employs a strategy of use known as typosquatting, which is defined as the "intentional misspelling of words with intent to intercept and siphon off traffic from its intended destination, by preying on Internauts who make common typing errors," Nat'l Ass'n of Prof'l Baseball League, Inc. v. Zuccarini, WIPO Case No. D2002-1011. The addition of a hyphen and another letter is a purposeful attempt to disguise the Disputed Domain Name as sponsored by the Complainant' and is likely to confuse Internet viewers Cost Plus Management Services, Inc. v. xushuaiwei, FA 1800036 (Forum Sep. 7, 2018) ("Typosquatting itself is evidence of relevant bad faith registration and use.").

The Policy provides a non-exclusive list of circumstances that evidence registration and use of a domain name in bad faith. Any one of the following is sufficient to support a finding of bad faith:

- (i) 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 the complainant, for valuable consideration in excess of the respondent's documented out-of-pocket costs directly related to the domain name; or
- (ii) 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 the respondent has engaged in a pattern of such conduct; or
- (iii) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other online 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 or service on the respondent's website or location.

The Complainant's proof in this case focuses the Panel's attention on the fourth factor. As there is no proof that would support the other factors, the Panel will not address them. Here, the Complainant contends that the Respondent has targeted the Complainant's mark for the purpose of taking advantage of its goodwill and reputation to attract Internet users to its website. This conduct "creat[es] a likelihood of confusion [...] as to the source, sponsorship, affiliation, or endorsement of [its] website". Such a strategy will initially mislead Internet users into believing that that the website is associated with the Complainant, but it has performed the task for which it was designed, namely to attract Internet users to the hyperlinks on the website. See Justice for Children v. R neetso / Robert W. O'Steen, WIPO Case No. D2004-0175 (holding that "harm results from the confusion caused by the initial attraction to the site by means of borrowing complainant's mark. And that is exactly the harm the Policy was adopted to address."). The additional factor here is that the resolving website appears to be carrying malware, the only purpose of which would be to target consumers. This further supports the conclusion that the Respondent registered and is using the Disputed Domain Name in bad faith.

The preamble to Paragraph 4(b) states: "For the purposes of Paragraph 4(a)(iii) [the finding of any of the circumstances] shall be evidence of the registration [...] of a domain name in bad faith." In the absence of a respondent to explain and justify its registration and use of a domain name corresponding to a famous or well-known mark, a Panel is compelled to examine the limited record for any exonerative evidence of good faith. Here, the Panel finds none. The Respondent has appropriated a well-known mark to serve an infringing purpose. See Royal Bank of Canada - Banque Royale Du Canada v. Registration Private, Domains By Proxy, LLC / Randy Cass, D2019-2803 (WI PO February 23, 2020) (<investease.com>), the Panel noted: "It is clear that where the facts of the case establish that the respondent's intent in registering or acquiring a domain name was to unfairly capitalize on the complainant's [...] trademark, panels have been prepared to find the respondent acted in bad faith."

The evidence here is such that the only inference that can be drawn from the use of a virtually identical domain name that the Respondent is using as a vehicle for links that undoubtedly accrue to its benefit is that the purpose for the registration was to cash-in on Complainant's goodwill and reputation. See Singapore Airlines Ltd. v. European Travel Network, D2000-0641 (WIPO August 29, 2000) (holding that "[t]he registration of domain names obviously relating to the Complainant is a major pointer to the Respondent's bad faith and desire to 'cash in' on the Complainant's reputation." For these reasons, the Panel finds that the Respondent is using the Disputed Domain Name in bad faith.

As the Complainant has demonstrated that the Respondent registered and is using the Disputed Domain Name in bad faith, it has satisfied Paragraph 4(a)(iii) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. bollores-logistics.com: Transferred

PANELLISTS

Name **Gerald Levine Ph.D, Esq.**

DATE OF PANEL DECISION **2023-03-06**

Publish the Decision
