

Decision for dispute CAC-UDRP-105300

Case number	CAC-UDRP-105300
Time of filing	2023-03-27 09:54:23
Domain names	bolloreenergynantes.com

Case administrator

Name	Olga Dvořáková (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	Skylar Meza
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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

The Complainant is the owner of several trademarks including the term "BOLLORE", such as the international trademark registration BOLLORE n. 704697. Besides, the Complainant owns the international trademark registration BOLLORE ENERGY n. 1303490. The Complainant also owns and communicates on the Internet through various domain names, such as <bollore-energy.com>, registered on September 30, 2015.

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 Group's stock is always controlled by the Bolloré family. This stable majority control of its capital allows the Group to develop a long-term investment policy. In addition to its activities, the Group manages a number of financial assets including plantations and financial investments.

Its subsidiary BOLLORE ENERGY is a player in oil distribution and oil logistics in France, Switzerland and Germany.

The Complainant is the owner of several trademarks including the term "BOLLORE" and "BOLLORE ENERGY".

The disputed domain name was registered on March 17, 2023 and resolves to a parking page with commercial links.

The disputed domain name is in the view of the Complainant confusingly similar to the Complainant's trademark BOLLORE ENERGY. The addition of the geographic name NANTES is not sufficient to escape the finding that the disputed domain name is confusingly similar to the trademark BOLLORE ENERGY. It does not in the view of the Complainant change the overall impression of the designation as being connected to the Complainant's trademark BOLLORE ENERGY and therefore does not prevent the likelihood of confusion between the disputed domain name and the Complainant and its trademark.

Moreover, the Complainant contends that the addition of the generic Top-Level Domain suffix ".COM" does not change the overall impression of the designation as being connected to the trademark BOLLORE ENERGY. It does not prevent the likelihood of confusion between the disputed domain name and the Complainant, its trademark and its domain names associated.

Therefore, the Complainant contends that the disputed domain name is confusingly similar to Complainant's trademark BOLLORE ENERGY.

The Complainant asserts that the Respondent is not known as the disputed domain name. Past panels have held that a Respondent was not commonly known by a disputed domain name if the Whois information was not similar to the disputed domain name. Thus, the Respondent is not known as the disputed domain name.

The Complainant contends that the Respondent is not affiliated with nor authorized by the Complainant in any way. The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant does not carry out any activity for, nor has any business with the Respondent.

Moreover, neither licence nor authorization has been granted to the Respondent to make any use of the Complainant's trademark BOLLORE ENERGY or apply for registration of the disputed domain name by the Complainant.

Furthermore, the disputed domain name resolves to a parking page with commercial links.

Accordingly, the Respondent has no rights or legitimate interests to the disputed domain name.

The Complainant states that the disputed domain name is confusingly similar to its distinctive trademark and the domain name associated.

Besides, the disputed domain name also comprises the trademark BOLLORE. Past panels have confirmed the notoriety of the Complainant and its trademark BOLLORE.

Moreover, the Complainant has activities worldwide and is one of the 500 largest companies in the world.

Finally, all the Google results for the terms "BOLLORE ENERGY NANTES" refers to the Complainant's subsidiary BOLLORE ENERGY, especially its establishment based in Nantes, France.

On those facts, given the distinctiveness of the Complainant's trademarks and reputation, it is reasonable to infer in the view of Complainant that the Respondent has registered the domain name with full knowledge of the Complainant's trademarks.

Furthermore, the disputed domain name resolves to a parking page with commercial links. The Complainant contends the Respondent has attempt to attract Internet users for commercial gain to his own website thanks to the Complainant's trademarks for its own commercial gain, which is an evidence of bad faith.

Consequently, the Complainant concludes that the Respondent has registered and is using the disputed domain name in bad faith.

PARTIES CONTENTIONS

Complainant's contentions are summarised above.

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).

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

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 e.g. a copy of the international trademark registration BOLLORE Nr. 704697 and the international trademark registration BOLLORE ENERGY n° 1303490.

In the current case, the disputed domain name is composed of the trademark BOLLORE together with the generic term ENERGY and geographical term NANTES. 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 and the BOLLORE ENERGY trademarks plus the geographical term NANTES. 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."). Both trademarks BOLLORE and BOLLORE ENERGY of Complainant are clearly recognizable in the disputed domain name.

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 and BOLLORE ENERGY trademarks.

(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 circumstances that 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 Respondent about 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 has been commonly known by the disputed domain name.

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

In terms of the evidence provided by the Complainant, the website linked to the disputed domain name resolves to a website with sponsored links. 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.

For the current case, the evidence at hand confirms that Complainant's BOLLLORE and BOLLLORE ENERGY trademarks are distinctive and have 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 BOLLLORE 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 BOLLLORE before registering the disputed domain name.

Finally, all the Google results for the terms BOLLLORE ENERGY NANTES refers to the Complainant's subsidiary BOLLLORE ENERGY, especially its establishment based in Nantes, France.

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.

Panels have found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names 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. On those facts, given the distinctiveness of the Complainant's trademarks and reputation, it is reasonable to infer that the Respondent has registered the domain name with full knowledge of the Complainant's trademarks. Please see for instance WIPO Case No. D2004-0673, Ferrari S.p.A v. American Entertainment Group Inc.

Furthermore, the disputed domain name resolves to a parking page with commercial links. The Complainant contends the Respondent has attempt to attract Internet users for commercial gain to his own website thanks to the Complainant's trademarks for its own commercial gain, which is an evidence of bad faith.

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. **bolloreenergynantes.com**: Transferred

PANELLISTS

Name	Jan Schnedler
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DATE OF PANEL DECISION 2023-04-19

Publish the Decision
