

Decision for dispute CAC-UDRP-105777

Case number	CAC-UDRP-105777
Time of filing	2023-09-14 10:38:02
Domain names	bollorelogisticsltd.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

Organization	Micheal Kerry (CNN)
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OTHER LEGAL PROCEEDINGS

The Panel is unaware of any other pending or decided legal proceedings relating 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” no. 1025892 registered since July 31, 2009, and the international trademark “BOLLORE LOGISTICS” no. 1302823 registered since January 27, 2016.

FACTUAL BACKGROUND

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

The BOLLORE group (the Complainant) was founded in 1822. Thanks to 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 Industry (please see their website at: www.bollore.com).

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 LOGISTICS is a global leader in international transport and logistics. With a presence in 146 countries and

more than 15,000 employees, BOLLORE LOGISTICS is committed to delivering reliable, flexible innovative and value-creating solutions (please see for more information at www.bollere-logistics.com).

The Complainant also owns and communicates on Internet through various domain names, such as <bollore-logistics.com> registered since January 20, 2009.

The disputed domain name <bollorelogisticsltd.com> was registered on September 7, 2023.

PARTIES CONTENTIONS

COMPLAINANT:

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

The Complainant contends that the disputed domain name is confusingly similar to the trademark "BOLLORE LOGISTICS". The Complainant asserts that the addition of the acronym "LTD" is not sufficient to escape the finding that the disputed domain name is confusingly similar to the trademark and branded goods "BOLLORE LOGISTICS". It does not change the overall impression of the designation as being connected to the Complainant's trademark "BOLLORE LOGISTICS". It does not prevent the likelihood of confusion between the disputed domain name and the Complainant, its trademark and the domain name associated. It is well established that "a domain name that wholly incorporates a Complainant's registered trademark may be sufficient to establish confusing similarity for purposes of the UDRP".

Furthermore, the Complainant contends the addition of the gTLD ".COM" does not change the overall impression of the designation as being connected to the trademarks of the Complainant. It does not prevent the likelihood of confusion between the disputed domain name and the Complainant, its trademarks and its domain names associated.

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

2. The Respondent has no rights or legitimate interests in respect of the domain name

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 has no rights or legitimate interests in respect of the disputed domain name and he is not related in any way with the Complainant. The Complainant does not carry out any activity for, nor has any business with the Respondent.

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

Finally, the disputed domain name resolves to an error page. Thus, the Respondent did not make any use of disputed domain name since its registration, and confirms that the Respondent has no demonstrable plan to use the disputed domain name since its registration. Past panels have held that the lack of use of a domain name is considered as an important indicator of the absence of legitimate interests by the Respondent.

3. The domain name was registered and is being used in bad faith

The Complainant contends that the disputed domain name is confusingly similar to its distinctive trademark "BOLLORE LOGISTICS". Past panels have confirmed the notoriety of the trademark "BOLLORE LOGISTICS". Thus, given the distinctiveness of the Complainant's trademark and reputation, it is reasonable to infer that the Respondent has registered the domain name with full knowledge of the Complainant's trademark.

The disputed domain name resolves to an error page. The Complainant contends 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, such as by being a passing off, an infringement of consumer protection legislation, or an infringement of the Complainant's rights under trademark law. As prior WIPO UDRP panels have held, the incorporation of a famous mark into a domain name, coupled with an inactive website, may be evidence of bad faith registration and use.

MX servers are configured which suggests that the disputed domain name may be actively used for email purposes.

Thus, Complainant contends that Respondent has registered the disputed domain name and is using it in bad faith.

RESPONDENT:

No administratively compliant Response was filed.

RIGHTS

To the satisfaction of the Panel, the Complainant has shown that the disputed domain name is identical or confusingly similar to the trademark in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

To the satisfaction of the Panel, the Complainant has 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

To the satisfaction of the Panel, the Complainant has 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 have been met, and there is no other reason why it would be unsuitable for providing the Decision.

PRINCIPAL REASONS FOR THE DECISION

A. Identical or Confusingly Similar

First, the Panel is satisfied that the Complainant has shown it owns rights in the "BOLLORE LOGISTICS" trademarks, with registration and evidence provided dating the trademark registration back to at least 2009.

Turning to analyze if there is a confusing similarity between the disputed domain name and the trademark, the Panel notes, based on the record at hand, that the disputed domain name reproduces the trademark in its totality, namely "BOLLORE LOGISTICS", with an addition of three letters, namely "LTD" and a hyphen. The addition of these three letters heightens the appearance of confusing similarity with the trademark "BOLLORE LOGISTICS", because "LTD" is a standard abbreviation for "limited," a form of corporate structure available in several countries.

A more complete analysis of this will be conducted in the elements below, but suffice to say that in what relates to the first element, the verbatim reproduction of the trademark is enough to find confusing similarity between the disputed domain name and the Complainant's trademarks, and the slight difference is immaterial and therefore not enough to dispel the confusing similarity between the trademark and the disputed domain name. As mentioned earlier, it may even enhance it, as it will be discussed below.

Consequently, the Panel determines that the Complaint has satisfied the Policy's first element set under paragraph 4(a)(i).

B. Rights or Legitimate Interests

Based on the evidence on record and acknowledging that the Respondent failed to produce any allegations or evidence necessary to demonstrate its rights or legitimate interests in the disputed domain name, the Panel must turn to the uncontested facts.

The uncontested facts indicate that a) the Respondent is not commonly known by the disputed domain name; b) the Respondent is not related to the Complainant; c) the Respondent is not authorized to carry out any business activity for the Complainant; d) the Respondent has no license or authorization to use the trademarks and e) the Respondent has configured MX servers for email capabilities.

Based on the above, the record at hand, and on the balance of probability, and considering that the Respondent has failed to respond to the Complainant's contentions, the Respondent has consequently not rebutted the *prima facie* case, as described in paragraph 2.1 of WIPO 3.0 Overview.

The above fact pattern on the balance of probabilities, and in conjunction with the use of the term "LTD" in the disputed domain name indicates, if nothing else, a likely intention of confusing Internet users with a likely implied association with the Complainant through appearing to be a formal channel of the Complainant. However, this will be subject of further analysis under the element below.

The evidence on record leads the Panel to conclude that the Respondent did not have rights or legitimate interests in the disputed domain name.

Consequently, the Panel determines that the Respondent has no rights or legitimate interests in the disputed domain name. Subsequently, the Complainant has fulfilled the second requirement set under paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Per the record and evidence at hand, the Panel finds that the Respondent was likely aware of the Complainant and had the Complainant's trademark in mind when registering the disputed domain name. This is further reinforced by the fact that "BOLLORE LOGISTICS" trademark predates the registration of the disputed domain name as well as the global reputation of the "BOLLORE LOGISTICS" mark indicates that the Respondent knew or should have known about the Complainant's rights when registering the disputed domain name.

Additionally, this conclusion is supported by the fact that the Respondent seems to evoke a connection to the Complainant's trademark by including the term "TLD" in the disputed domain name, which appears to be an active effort by the Respondent to appear to be a formal channel of the Complainant. This, without any explanation from the Respondent, appears to misrepresent a link between the disputed domain name and the Complainant. In this case, as supported by the record at hand, the Respondent appears to have targeted the Complainant on the balance of probabilities.

All the preceding analysis leaves the Panel no other option than to conclude that the most likely intention of the Respondent was to intentionally attempt to attract, for commercial gain, Internet users to its website/disputed domain name by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website and/or disputed domain name, as per illustrated under paragraph 3.1 of WIPO 3.0 Overview.

Also, the Complainant notes that the disputed domain name has been configured for mail exchange (MX) servers and claims that this indicates a risk that Respondent using the disputed domain name for email phishing activities. In light of the case's circumstances, based on the available records, the Panel finds that the Complainant has proven that the disputed domain name was registered and is used in bad faith according to paragraph 4(a)(iii) of the Policy. In the present case, the Complainant submits a screenshot showing that an MX record has been created for the disputed domain name thus indicating that it may be used for the sending and receiving of phishing emails. While, in the abstract, the creation of such record does not indicate any ill intent, in the circumstances of the present case where a domain name that is confusingly similar to the Complainant's trademark has been created by the Respondent and used for a website likely to impersonate the Complainant, this MX record does require some further explanation which the Respondent has not provided.

In light of the case's circumstances, based on the available records, the Panel finds that the Complainant has proven that the disputed domain name was registered and is used in bad faith according to paragraph 4(a)(iii) of the Policy.

D. Decision

For the preceding reasons and in concurrence with the provisions specified under Paragraph 4(i) of the Policy and Paragraph 15 of the Rules, the Panel orders the transfer of the disputed domain name to the Complainant.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

- 1. **bollorelogisticsltd.com**: Transferred

PANELLISTS

Name	Rodolfo Rivas Rea
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DATE OF PANEL DECISION	2023-10-06
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Publish the Decision