Decision for dispute CAC-UDRP-106100

Case number	CAC-UDRP-106100
Time of filing	2023-12-27 09:41:07
Domain names	b0llore.com

Case administrator

Name	Olga Slanařová (Case admin)

Complainant

Organization	BOLLORE SE

Complainant representative

Organization	NAMESHIELD S.A.S.

Respondent

Organization	Turf Source

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 the BOLLORE trademark since at least 1998, including but not limited to the following:

- International Trademark No.704697, registered on November 11, 1998 in Classes 16, 17, 34, 35 36. 38, 39.

The Complainant also owns and communicates on the Internet through various domain names including the primary domain name <bollore.com>, registered on July 25, 1997.

FACTUAL BACKGROUND

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

The Complainant was founded in 1822 and it holds strong positions in all its activities around three business lines: Transportation and Logistics, Communications and Industry.

The Complainant 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 more than 56,000 employees world-wide with the revenue that equals to 20,677 million euros, adjusted operating income in the amount of 1,502 million euros and the shareholders'

equity in the amount of 36,568 million euros based on the results in 2022.

The disputed domain name was registered on December 18, 2023 and resolves to a parking page commercial links and MX servers configured.

PARTIES CONTENTIONS

The Complainant´s contentions are summarised below.

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).

First, the Complainant claims rights in the BOLLORE mark through its trademark registration. By virtue of its trademark registrations, Complainant has proved that it has rights in the mark under paragraph 4(a) of the Policy. See Avast Software s. r. o. v Milen Radumilo, 102384, (CAC 2019-03-12).

Second, the Complainant claims that the substitution of the letter “O” by the visually similar number “0” (zero) in the trademark BOLLORE is not sufficient to exclude the likelihood of confusion existing. This is a clear case of "typosquatting“, i.e. the disputed domain name contains an obvious misspelling of the Complainant’s trademark:

- Complainant's primary domain name <bollore.com>
- The disputed domain name: <b0llore.com>

By doing side-by-side comparisons, the Panel accepts that the change of the characters do not alter the overall impression of the designation as being connected to the Complainant and its trademark, and the “.com” generic top-level domain (“gTLD”) is irrelevant when establishing whether or not a mark is identical or confusingly similar for the purposes of paragraph 4(a)(i) of the Policy. See BOLLORE SE vs. shem gitahi, 104590 (CAC 2022-06-24) ("The Panel finds that that this can be considered as typosquatting. In the Panel’s view, the substitution of one letter by a visually similar number and the addition of a second “r” does not prevent the disputed domain name from being confusingly similar to the Complainant’s trademark."). See also Intesa Sanpaolo S.p.A. vs. Milen Radumilo, 103410 (CAC 2020-12-17).

For the foregoing reasons, the Panel finds the Complainant has satisfied 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). More specifically, the Complainant must first make a prima facie case that the Respondent lacks rights and legitimate interests in the disputed domain name, and the burden of prove then shifts to the Respondent to show it does have rights or legitimate interests. See PepsiCo, Inc. v Smith power production, 102378, (CAC 2019-03-08) ("The Panel finds that the Complainant has made out a prima facie case that arises from the considerations above. All of these matters go to make out the prima facie case against the Respondent. As the Respondent has not filed a Response or attempted by any other means to rebut the prima facie case against it, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.").

First, the Respondent is not commonly known as the disputed domain name. The Complainant claims that the Respondent is not affiliated with nor authorized by the Complainant in any way. Neither license nor authorization has been granted to the Respondent to make any use of Complainant’s BOLLORE trademark, or apply for registration of the disputed domain name.

Second, the Complainant contends that the disputed domain name resolves to a parking page with commercial links. The Respondent did not make any use of disputed domain name since its registration, and it further confirms that Respondent has no demonstrable plan to use the disputed domain name. It demonstrates a lack of legitimate interests in respect of the disputed domain name.

Third, the Complainant also claims that the disputed domain name is a typosquatted version of the trademark BOLLORE. Typosquatting is the practice of registering a domain name in an attempt to take advantage of Internet users’ typographical errors and can be evidence that a respondent lacks rights and legitimate interests in the domain name.

The Panel finds that the Complainant has established a prima facie case that the Respondent has no rights or legitimate interests in the disputed domain name. The burden of proof has been shifted to the Respondent to prove that it has right or legitimate interests to the disputed domain name. However, the Respondent has not submitted any response to rebut the assertion.

For the foregoing reasons, the Panel finds the Complainant has satisfied 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).

First, the Complainant reiterates that its BOLLORE trademark is well-known and distinctive, and the Complainant is one of the 500 largest companies in the world. Given the distinctiveness and reputation of Complainant's BOLLORE trademark, the Complainant contends that it is inconceivable that the Respondent could have registered the disputed domain name without actual knowledge of Complainant's rights in the trademark.

Considering the disputed domain name was registered more than 20 years later than Complainant's BOLLORE trademark and the similarity between the disputed domain name and Complainant's BOLLORE trademark, the Panel accepts that the Respondent knew or should have known of Complainant's trademark and the registration of the disputed domain name was in bad faith, see SANDRO ANDY v. ji zhou chen, 102369 (CAC 2019-03-25).

Second, the Complainant states that the misspelling of the trademark BOLLORE was intentionally designed to be confusingly similar with the Complainant’s trademark.

Third, the Complainant also contends 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 his own website thanks to the Complainant’s trademarks for its own commercial gain, which is an evidence of bad faith.

The Panel agrees that that the Respondent cannot disclaim responsibility for content appearing on the website associated with its domain name and it constitutes bad faith, see Avast Software s. r. o. v Milen Radumilo, 102384, (CAC 2019-04-19). In this circumstance, the Panel finds that Respondent's use of the disputed domain name is in bad faith.

For the foregoing reasons, the Panel finds the Complainant has satisfied 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

Having established all three elements required under the UDRP Policy, the Panel concludes that the disputed domain should be transferred to the Complainant.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **b0llore.com**: Transferred

PANELLISTS

Name	**Mr Paddy TAM**

DATE OF PANEL DECISION 2024-01-25

Publish the Decision