

Decision for dispute CAC-UDRP-106422

Case number CAC-UDRP-106422

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Domain names bollor.net

Case administrator

Name Olga Dvořáková (Case admin)

Complainant

Organization BOLLORE SE

Complainant representative

Organization NAMESHIELD S.A.S.

Respondent

Organization BESTNAK LTD

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 international WIPO trademark registration BOLLORE number 704697.

FACTUAL BACKGROUND

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

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, Communications, Industry. The Complainant is one of the 500 largest companies in the world. Listed on the Paris Stock Exchange, the majority interest of its stock is always controlled by the Bolloré family. The Complainant 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 domain name <bollor.com> was registered by the Complainant in 1997 and is used to operate its main website.

The disputed domain name <bollor.net> was registered on April 4 , 2024 and is inactive on the web but MX servers are configured for email.

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).

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

1. Trademark Rights and Identity or Confusing Similarity

The Complainant asserts rights in its BOLLORE trademark based upon an international registration thereof with the WIPO. Under paragraph 4(a)(i) of the Policy, registration with a national or pan-national trademark office is sufficient to establish rights in a trademark. As the Complainant has submitted screenshots from the WIPO website evidencing the international registration of its asserted trademark, the Panel finds that the Complainant has rights in the trademark under paragraph 4(a)(i) of the Policy.

Next, the Complainant argues that the Respondent's disputed domain name is confusingly similar to the trademark as it incorporates a misspelling thereof, merely omitting the final letter "e" in the trademark and adding the ".net" TLD. Misspelling a trademark and adding a TLD rarely distinguishes the disputed domain name from the trademark incorporated therein under paragraph 4(a)(i) of the Policy and is often referred to as "typosquatting". See *Intesa Sanpaolo S.p.A. v. Termo Electrica*, UDRP-106371 (CAC April 19, 2024) (finding confusing similarity where the disputed domain name "includes the INTESA mark in its entirety and, in a clear example of typosquatting, merely misspells the word SANPAOLO as SOPAOLOS, which is insufficient to distinguish the disputed domain name from the marks."). Further, the addition of a TLD to a trademark is most often irrelevant to the confusing similarity issue. *Stefan Männich (E.ON SE) v. Erna Da Silva*, UDRP-106381 (CAC April 30, 2024) ("the generic Top Level Domain ".com", as established in a number of prior UDRP cases, it is viewed as a standard registration requirement and as such can be disregarded for the purpose of assessing identity or confusing similarity under paragraph 4(a)(i) of the Policy."). As the <bollor.net> domain name merely omits the letter "e" from the end of the Complainant's trademark and adds the ".net" gTLD, the Panel finds that it is confusingly similar to such trademark under paragraph 4(a)(i) of the Policy.

2. Rights or Legitimate Interests

The Complainant must first make a prima facie case that the Respondent lacks rights and legitimate interests in the disputed domain name under Policy paragraph 4(a)(ii). Should it succeed in that effort, the burden then shifts to the Respondent to show that

it does have rights or legitimate interests. See *PepsiCo, Inc. v Smith power production*, UDRP-102378, (CAC March 8, 2019) ("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.").

The Complainant contends that the Respondent has not made use of the disputed domain name in connection with a bona fide offering of goods or services as noted in paragraph 4(c)(i) of the Policy. Rather, it states that the domain name is inactive. Past decisions under the Policy have held that non-use of a disputed domain name is not a bona fide offering of goods or services. See, e.g., *DIGITAL CLASSIFIEDS FRANCE v. Cralos [sic] Ramirez Fuentes*, UDRP-105639 (CAC August 17, 2023) (no bona fide use found where "the Complainant has demonstrated that the disputed domain name did not in the past, and still does not, connect to any relevant content on the Internet, but is passively held by the Respondent instead."). From the screenshot submitted by the Complainant, it is shown that the disputed domain name resolves to a blank page that contains only the message "Hmm. We're having trouble finding that site.". The Complainant also submits evidence that there is a mail exchange (MX) record associated with the disputed domain name indicating that it may be used to send emails. No direct evidence of such emails has been submitted but the Respondent also has not participated in these proceedings to explain any use it may be making of the domain name. Therefore, by a preponderance of the evidence, this Panel concludes that the disputed domain name incorporates the Complainant's well-known trademark and that the Respondent is seeking to divert Internet users who are trying to reach the Complainant but, due to the confusing similarity of the disputed domain name with the Complainant's trademark, end up at the Respondent's website instead.

Further, the Complainant states that the Respondent is not affiliated with it and has not been authorized to use the BOLLORÉ trademark, either as domain name or in any other way. It is also noted that the verified Whois record for the disputed domain name, provided by the concerned Registrar, identifies the Registrant only as "egypt Aquavet" and "BESTNAK LTD" and the Respondent has submitted no Response nor made any other submission in this case. Thus, there is no evidence before this Panel to suggest that the Respondent is commonly known by the disputed domain name or that it has any trademark rights associated with the name "Bollor" under paragraph 4(c)(ii) of the Policy.

Finally, it cannot be said that the Respondent has made a legitimate non-commercial or fair use of the disputed domain name without intent for commercial gain as noted in paragraph 4(c)(iii) of the Policy. While not addressed by the Complainant, and due the Respondent's default, the Panel has conducted a search for the term "bollor" and found very few results that do not reference the Complainant's trademark (Footnote 1). Nor does it appear that the disputed domain name and its resulting blank website are referring to the Complainant's trademark in any nominative or other classic fair use manner such as for the purpose of commentary, news reporting, grievance, education, or the like.

Therefore, the Panel finds that the Complainant has satisfied paragraph 4(a)(ii) and of the Policy and demonstrated that the Respondent has no rights or legitimate interests in the disputed domain name.

3. Bad Faith Registration and Use

In order to prevail in a dispute, paragraph 4(a)(iii) of the Policy requires that a Complainant prove that the domain name has both been registered and is being used in bad faith.

The Complainant states that it was founded in 1822 and is "one of the 500 largest companies in the world", is "[l]isted on the Paris Stock Exchange", "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". It submits a document titled "Group profile" which recites these statistics. While the Panel prefers to see more robust evidence concerning the reputation of a trademark with the public (e.g., independent news articles, awards, advertising, sponsorships, trade involvement and recognition, etc.) the evidence presented, combined with prior UDRP decisions noting the reputation of the BOLLORÉ trademark (see footnote 1 supra) leads this Panel to the conclusion that the Respondent very likely registered the disputed domain name with knowledge of the Complainant's trademark. It has been held in prior decisions that such activity supports a finding of bad faith domain name registration. *7-Eleven, Inc. v. charles rasputin*, FA 1829082 (FORUM March 9, 2019) (in relation to the domain name *7eleven delivered.com* and others, "Respondent had actual knowledge of Complainant's rights in the 7 ELEVEN mark at the time of registering the infringing domain names. Actual knowledge of a complainant's rights in a mark prior to registering a confusingly similar domain name can evince bad faith under Policy 4(a)(iii).").

As for use, the Complainant has submitted evidence that the disputed domain name resolves to a blank page. Such lack of activity has routinely been held to demonstrate bad faith use of a domain name that is confusingly similar to a complainant's trademark. *BOURSORAMA v. Sahad Mohammed Riviera (Sahari Muti Inc)*, UDRP-105427 (CAC June 15, 2023) ("a passive holding of a disputed domain name may, in appropriate circumstances, be consistent with the finding of bad faith, in particular in circumstances in which, for example, (1) the Complainant's trademark is reputed and (2) there is no conceivable use that could be made of the disputed domain name and would not amount to an infringement of the complainant's trademark's rights."). Engaging in typosquatting is also a signal of bad faith use that has been recognized in prior decisions. See *Chocoladefabriken Lindt & Sprüngli AG v. Louth Ecom*, UDRP-106391 (CAC April 22, 2024) (the domain name *liindt.com* is used in bad faith where "the disputed domain name appears to be a clear case of typosquatting."). The Panel in this case finds that, in accordance with paragraph 4(b)(iv) of the Policy, the disputed domain name has been used in bad faith as it creates a likelihood of confusion with the BOLLORÉ trademark and resolves to a blank website.

Finally, the Complainant notes that the disputed domain name has been configured for MX servers. Prior decisions have inferred an intent to use a disputed domain name for sending email based upon the creation of associated MX records. In *The Standard Bank of South Africa Limited v. N/A / mark gersper*, FA 1467014 (FORUM December 5, 2012), the Panel noted that the “Complainant contends this phishing could be carried out via email and not just through a website. Complainant has examined the domain name’s MX records and they apparently allow the transmission of email, which would not be necessary if the domain name was merely parked. The Panel finds Complainant’s allegations about the possibility of Respondent using the disputed domain name for phishing sufficient...”). This inference has been adopted in other decisions. See, e.g., *BOURSORAMA v. jaqh ehri*, UDRP-106241 (CAC March 20, 2024) (“The activation of MX records to designate an email server and enable email is an action that goes beyond the mere registration of the disputed domain name and indicates that the Respondent has associated the disputed domain name with email servers, which creates a risk that the Respondent may use the disputed domain name for misrepresentation and/or phishing and spamming activities.”). 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 e-mails. 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 distinctive trademark, and particularly also similar to its own legitimate domain name, has been created by the Respondent, this MX record does require some further explanation which the Respondent has not provided. As such, the Panel finds that the existence of an MX record for the disputed domain name further supports the conclusion that it has been registered and used in bad faith under paragraph 4(a)(iii) of the Policy.

In light of the above, the Panel finds that the Complainant has satisfied paragraph 4(a)(iii) and that the disputed domain name has been registered and used in bad faith.

Footnote 1. Although information on this issue is not provided by the Complainant, the Panel is empowered to conduct its own independent investigation under paragraph 10(a) of the Rules. The Panel’s brief search found a few companies using the term “Bollor” in their name and also that it is a very rare surname. In contrast, the Complainant’s trademark is quite well known around the world as supported by its extensive sales, revenue, number of employees, and international footprint. The trademark has also been described as well-known in a number of prior decisions under the Policy. See *BOLLORE SA v. Im Love (Bollore Logistics)* UDRP-106213 (CAC February 26, 2024) (“the Respondent purposely selected a worldwide well-known trademark as BOLLORÉ LOGISTICS...”); *BOLLORE SA v. meng zhen duan*, UDRP-104846 (CAC November 23, 2022) (“The Panel has counted more than eighty CAC-UDRP disputes involving the famous BOLLORE trademark owned by Complainant...”).

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **bollor.net**: Transferred

PANELLISTS

Name	Steven Levy
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DATE OF PANEL DECISION 2024-05-03

Publish the Decision
