Decision for dispute CAC-UDRP-106406

Case number	**CAC-UDRP-106406**
Time of filing	**2024-04-03 10:25:14**
Domain names	**bollorelogistics.company**

Case administrator

Name	**Olga Slanařová (Case admin)**

Complainant

Organization	**BOLLORE SE**

Complainant representative

Organization	**NAMESHIELD S.A.S.**

Respondent

Name	**Tony Stone**

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 relies on its registered trademarks:

Mark	Territory	Registration No.	Registration Date	Classes
BOLLORÉ LOGISTICS	WIPO Designations: JP, KR, NO, SG, TR, CH, CU, EG, RU, VN	1025892	31/07/2009	35, 36, 39
	WIPO Designations: AU, CO, EM, GH, GM, IN, JP, KH, KR, LA, MG, MX,			

BOLLORÉ LOGISTICS	NO, NZ, OM, PH, RW, SG, TN, TR, US, UZ, ZM, ZW, AZ, CH, CN, CU, DZ, EG, IR, KE, KZ, LI, LR, MA, MZ, NA, SD, SL, VN	1302823	27.01.2016	04, 09, 35, 36, 39, 40, 42

Further, the Complainant operates its business using its domain name <bollore-logistics.com>, registered since January 20, 2009.

FACTUAL BACKGROUND

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

Key aspects of the Complainant's contentions are summarized below.

Complainant's Background

The Complainant, founded in 1822, is a globally recognized company operating across three main business lines: Transportation and Logistics, Communication and Media, and Electricity Storage and Solutions. With a strong focus on innovation and international development, the company has established itself as one of the 500 largest companies in the world. The Complainant's group has 56,000 employees and annual turnover of 20,266 million Euros in 2022. The Complainant's subsidiary, BOLLORÉ LOGISTICS, is a leader in international transport and logistics, operating in 146 countries with over 15,000 employees.

Registration of the disputed domain name

According to the Complainant, the disputed domain name <bollorelogistics.company> was registered on March 30, 2024. However, according to the registrar verification, the disputed domain name was registered on January 21, 2024. For the purpose of this proceeding, the January 21, 2024 date as shown in the registrar verification shall be considered as the date of registration. In any case, this discrepancy in the registration date does not have a material impact in the instant proceedings.

First UDRP Element - disputed domain name is Confusingly Similar to the Complainant's Trademark

The Complainant asserts that the disputed domain name is identical to its trademark BOLLORÉ LOGISTICS.

The Complainant contends that the addition of the new gTLD ".COMPANY" does not change the overall impression of the designation as being connected to the Complainant's trademark. The Complainant also mentions that past Panels have established the Complainant's rights over the expression "BOLLORE LOGISTICS", such as: CAC Case No. 102031, BOLLORE v. Donald Shillam ; CAC Case No. 101849, BOLLORE v. jorge villalva ; CAC Case No. 101714, BOLLORE v. Leny Gaspard.

Second UDRP Element – The Respondent has no Rights or Legitimate Interests in the disputed domain name

The Complainant asserts that the Respondent is not known as the disputed domain name.

Further, the Respondent is not a licensee, authorized agent, or related in any way to the Complainant, nor is authorized in any way to use the Complainant's trademarks or to register or use the disputed domain name.

The Complainant claims there is no evidence of demonstrable preparations to use nor actual use of the disputed domain name in connection with a bona fide offering of goods or services. Rather, the disputed domain name is inactive.

Third UDRP Element – The disputed domain name was Registered and is Being Used in Bad Faith

The Complainant asserts that the disputed domain name is identical to its well-known and distinctive BOLLORÉ LOGISTICS trademark and the Complainant's associated domain name, and that past panels have confirmed the notoriety thereof. Additionally, the Complainant claims that the Respondent has registered the disputed domain name in knowledge of the Complainant and that it has not demonstrated any activity in respect of the disputed domain name which is an inactive website.

Lastly, the disputed domain name has active MX records, meaning that it can be used for email purposes. The Complainant suggests it may be actively used for email purposes. Thus, the Complainant contends that the disputed domain name was registered and is being used in bad faith.

The above summarized facts and arguments asserted by the Complainant are not contested by the Respondent because no Response was filed.

PARTIES CONTENTIONS

Complainant´s contentions are summarised above. The Complainant contends that the requirements of the Policy have been met

and that the disputed domain name should be transferred to it.

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

LANGUAGE OF PROCEEDING

According to Rule 11 in the Rules for Uniform Domain Name Dispute Resolution Policy, (the “Rules”) “...the language of the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding.”

According to the information on the case file, the Registrar confirmed that the Respondent is the current registrant of the disputed domain name, and that the language of the registration agreement is English.

As neither party has asked to deviate from the English language as per the registration agreements, the Panel finds that this proceeding may be properly conducted in English.

PRINCIPAL REASONS FOR THE DECISION

THREE ELEMENTS THE COMPLAINANT MUST ESTABLISH UNDER THE POLICY

According 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 disputed domain name should be transferred or cancelled:

(i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and

(ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and

(iii) the disputed domain name has been registered and is being used in bad faith.

The Panel has examined 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 these proceedings:

(A) THE COMPLAINANT’S RIGHTS AND CONFUSING SIMILARITY OF THE DISPUTED DOMAIN NAME TO THE COMPLAINANT’S RIGHTS

Sufficient evidence has been submitted by the Complainant of its trademark rights in the term BOLLORÉ LOGISTICS in numerous classes and territories around the world. Such trademark rights were created and registered long prior to January 21, 2024, the

creation date of the disputed domain name. A nationally or regionally registered trademark confers on its owner sufficient rights to satisfy the requirement of having trademark rights for the purposes of standing to file a UDRP case. Accordingly, the Panel finds that the Complainant possesses rights in its BOLLORÉ LOGISTICS trademark such that it has standing under the Policy.

The disputed domain name includes the BOLLORÉ LOGISTICS trademark reproduced in its entirety and almost identically, save for the accent on the É. It is common practice to substitute accented characters for non-accented in domain names, as is the case in the Complainant's own <bollore-logistics.com> domain name. The Complainant's trademark is the dominant feature of the disputed domain name and is clearly recognizable therein.

The gTLD 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 WIPO Overview 3.0).

Accordingly, 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 the Complainant's mark.

(B) THE 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; see, for example, WIPO Overview 3.0, section 2.1 ("While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of 'proving a negative', requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element."). However, the burden of proof still remains with the complainant to make out its prima facie case on a balance of probabilities. Moreover, the wording of paragraph 4(a)(ii) of the Policy requires a complainant to establish that the respondent has no rights or legitimate interests in the domain name in issue. Simply establishing that the complainant also has rights in the domain name in issue is insufficient.

Paragraph 4(a)(ii) of the Policy contemplates an examination of the available facts to determine whether a respondent has rights or legitimate interest in the domain name. Paragraph 4(c) sets out a list of circumstances through which a respondent may demonstrate that it does have such rights or interests.

The first circumstance, under Paragraph 4(c)(i), is where "before 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". Here, according to screenshot evidence submitted by the Complainant, the disputed domain name currently is an inactive website. Accordingly, the Panel finds no evidence of a bona fide offering or goods or services or demonstrable preparations to use per Policy 4(c)(i) and Respondent does not have rights or legitimate interests with respect to the disputed domain name thereunder.

The second circumstance, under Paragraph 4(c)(ii), concerns cases where the respondent is commonly known by the domain name. Here, according to the registrar verification, the Respondent name is "Tony Stone", and has no similarity or connection to the disputed domain name. There is no evidence that the Respondent is commonly known by the disputed domain name. As such, this second circumstance of legitimate rights or interests under the Policy is not applicable to the Respondent.

Regarding the third circumstance, under Paragraph 4(c)(iii) of the Policy, there is no evidence that the Respondent is making a legitimate non-commercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the Complainant's BOLLORÉ LOGISTICS trademark. According to the evidence in the record showing the disputed domain name is currently an inactive website, none of the accepted categories of fair use - such as news reporting, commentary, political speech, education etc – are found to apply and the Panel concludes there is no legitimate non-commercial or fair use on the part of the Respondent.

Lastly, the Complaint confirms that the Respondent is not licensed, nor has any relationship with or authority to represent the Complainant in any way.

Accordingly, the Complainant has sufficiently made out its prima-facie case on the second element of the Policy. Thus, the burden of proof is shifted to the Respondent to rebut the Complainant's case. Here, because the Respondent has not participated in these proceedings, there is no such rebuttal to consider, and the Complainant prevails.

The Panel therefore concludes that neither the Respondent nor the evidence establishes that the Respondent has any right or legitimate interest to the disputed domain name. The Complainant has therefore also satisfied the requirement under paragraph 4(a)(ii) of the Policy.

(C) BAD FAITH REGISTRATION AND USE OF THE DISPUTED DOMAIN NAME

The third element requires the Complainant to show that the disputed domain name has been registered and used in bad faith under paragraph 4(a)(iii) of the Policy. See, e.g. Hallmark Licensing, LLC v. EWebMall, Inc., WIPO Case No. D2015-2202 ("The standard of proof under the Policy is often expressed as the "balance of the probabilities" or "preponderance of the evidence" standard. Under this standard, an asserting party needs to establish that it is more likely than not that the claimed fact is true.").

Further, Paragraph 4(b) of the Policy sets out a non-exhaustive list of four circumstances, any one of which may be evidence of the registration and use of a domain name in bad faith. The four specified circumstances are:

(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 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 the respondent's website or other on-line 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 site or location.

The Panel finds that the Complainant has shown that the Respondent registered and used the disputed domain name in bad faith under paragraph 4(a)(iii) of the Policy for the reasons as set out below.

There is no evidence that the Respondent is commonly known by the disputed domain names and the Complainant confirms that the Respondent has never been affiliated with nor authorized by the Complainant to use the Complainant's trademark(s) and/or register the disputed domain names. Nor is there any business or other association between the Complainant and the Respondent.

The Panel concludes that the Complainant is a large and long-established company and that the BOLLORÉ LOGISTICS trademark has a significant reputation. Such reputation is also indicated by the substantial size and reach of the Complainant's business, where the Complainant's Group has 56,000 employees and an annual turnover of over 20 billion Euros. Besides, the Complainant's subsidiary, BOLLORÉ LOGISTICS, is a leader in international transport and logistics, operating in 146 countries with over 15,000 employees.

As mentioned above, previous UDRP panels have confirmed the notoriety of the Complainant, see CAC Case No. 102031, BOLLORE v. Donald Shillam ("(...) the Complainant's BOLLORE LOGISTICS trademark has a significant reputation and is of distinctive character.") and CAC Case No. 101500, BOLLORE SA v. JESSICA SAXTON ("the Complainant's trademark [BOLLORE LOGISTICS] has a strong reputation and is widely known").

The same logic applies in the instant case, and this Panel finds that because of the well-established status of the Complainant, it is more probable than not that the Respondent either knew, or should have known, that the disputed domain name would be confusingly similar to the Complainant's trademarks and thus they registered the disputed domain name with the Complainant in mind.

The non-active use of the disputed domain name in this case satisfies the doctrine of passive holding as described in WIPO Case No. D2000-0003 Telstra Corporation Limited v. Nuclear Marshmallows considering all of the circumstances of the case because (i) the Complainant's trademark is distinctive and has a strong reputation in its sector, (ii) the Respondent failed to respond to these proceedings and thus has provided no evidence of actual or contemplated good-faith use, (iii) it is impossible to conceive of any plausible actual or contemplated good faith use of the disputed domain name by the Respondent in this case.

Additionally, the record indicates that that MX records are configured for the disputed domain name. Past panels have found that the activation of mail exchanger records (MX records) suggests that the Respondent is using or is preparing to use the disputed domain name to send and receive email communications with the purpose to mislead the recipients as to their source and an additional circumstance of Respondent's bad faith. In this instant case, it is difficult to conceive of a good faith purpose for which emails originating from the disputed domain name could be used. Such emails would be likely to be mistaken by a casual observer for official communications originating from the Complainant.

As a final point, the Panel may draw a negative inference from the Respondent's silence throughout these proceedings.

In light of the above analysis, the Panel concludes that the Complainant has made out its case that the disputed domain name was registered and are being used in bad faith, and thus has satisfied the requirements under 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. **bollorelogistics.company**: Transferred

PANELLISTS

Name	Claire Kowarsky

DATE OF PANEL DECISION 2024-05-05

Publish the Decision