

Decision for dispute CAC-UDRP-106458

Case number **CAC-UDRP-106458**

Time of filing **2024-04-18 17:29:46**

Domain names **bolloer.com**

Case administrator

Name **Olga Dvořáková (Case admin)**

Complainant

Organization **BOLLORE SE**

Complainant representative

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

Respondent

Name **Juan Maria**

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 has rights in International trademark BOLLORE, Reg. No. 704697, registered on December 11, 1998.

FACTUAL BACKGROUND

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 Complainant is the owner of several trademarks including the term "BOLLORE", such as the international trademark registration BOLLORE n° 704697.

The Complainant also owns and communicates on the Internet through various domain names, the main one being <bollore.com>, registered on July 25, 1997.

The disputed domain name <bolloer.com> was registered on April 11, 2024 and is inactive. MX servers are configured.

PARTIES CONTENTIONS

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

Paragraph 15(a) of the Rules instructs this Panel to "decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable."

Paragraph 4(a) of the Policy requires that the Complainant must prove each of the following three elements to obtain an order that a domain name should be cancelled or transferred:

- (1) the disputed domain name registered by the Respondent is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (2) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (3) the disputed domain name has been registered and is being used in bad faith.

In view of the Respondent's failure to submit a response, the Panel shall decide this administrative proceeding on the basis of the Complainant's undisputed representations pursuant to paragraphs 5(f), 14(a) and 15(a) of the Rules and draw such inferences as it considers appropriate pursuant to paragraph 14(b) of the Rules. The Panel is entitled to accept all reasonable allegations set forth in a complaint; however, the Panel may deny relief where a complaint contains mere conclusory or unsubstantiated arguments. See WIPO Jurisprudential Overview 3.0 at paragraph 4.3; see also *eGalaxy Multimedia Inc. v. ON HOLD By Owner Ready To Expire*, FA 157287 (Forum June 26, 2003) ("Because Complainant did not produce clear evidence to support its subjective allegations [. . .] the Panel finds it appropriate to dismiss the Complaint").

As to the first element, the Complainant has shown that it has rights in the international trademark registration BOLLORE, n° 704697 and that the mark is very well-known. The Panel finds the disputed domain name <bolloer.com> to be confusingly similar to the Complainant's trademark BOLLORE because it comprises a misspelling of the mark by reversing the order of the last two letters "RE" to become "ER". This does nothing to distinguish the disputed domain name from the mark. The inconsequential top-level domain ".com" may be ignored. The Complainant has established this element.

As to the second element, paragraph 4(c) of the Policy sets out three illustrative circumstances as examples which, if established by the Respondent, shall demonstrate rights to or legitimate interests in a disputed domain name for the purposes of paragraph 4(a)(ii) of the Policy, i.e.

(i) before any notice to the Respondent of the dispute, the use by the Respondent of, or demonstrable preparations to use, the domain name or a name corresponding to the disputed 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 disputed 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 disputed domain name, without intent for commercial gain to misleadingly divert customers or to tarnish the trademark or service mark at issue.

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name; is not related in any way to its business; and that the disputed domain name is a typosquatted version of the trademark BOLLORE. The Complainant contends that the Respondent does not use the disputed domain name, and this confirms that the Respondent has no demonstrable plan to use the disputed domain name except in order to create a likelihood of confusion with the Complainant and its trademark.

The Panel notes that the disputed domain name <bolloer.com> was registered by the Respondent on April 11, 2024, long after the Complainant has shown that its BOLLORE mark had become very well-known. It does not resolve to an active website. However, MX servers are configured, which means that the disputed domain name may be used to send emails which, because of the typosquatted character of the disputed domain name, may appear to come from the Complainant. These circumstances, together with the Complainant's assertions, are sufficient to constitute a prima facie showing of absence of rights or legitimate interests in respect of the disputed domain name on the part of the Respondent. The evidentiary burden therefore shifts to the Respondent to show that it does have rights or legitimate interests in the disputed domain name. See *JUUL Labs, Inc. v. Dryx Emerson / KMF Events LTD*, FA1906001849706 (Forum July 17, 2019). The Respondent has made no attempt to do so.

The Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant has established this element.

As to the third element, Paragraph 4(b) of the Policy sets out some circumstances which shall be evidence of the registration and use of a domain name in bad faith for purposes of paragraph 4(a)(iii) of the Policy. As noted in the WIPO Jurisprudential Overview 3.0, Section 3.1, those circumstances are not exclusive and a complainant may demonstrate bad faith under paragraph 4(a)(iii) by showing that a respondent seeks to take unfair advantage of, abuse, or otherwise engage in behaviour detrimental to the complainant's trademark.

The Panel finds that, given the fame and distinctiveness of the Complainant's trademark and reputation and the typosquatted character of the disputed domain name, it is inconceivable that the Respondent could have registered the disputed domain name <bolloer.com> without actual knowledge of the Complainant's rights in the BOLLORE trademark. This establishes registration in bad faith.

Although the disputed domain name does not resolve to an active website and the Respondent has not demonstrated any activity in respect of the disputed domain name, as in *WIPO Case No. D2000-0003, Telstra Corporation Limited v. Nuclear Marshmallows*, it is not possible to conceive of any plausible actual or contemplated active use of the disputed 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. Further, the fact that MX servers are configured suggests that it may be actively used for fraudulent email purposes.

Accordingly, the Panel finds that the Respondent's passive use of the disputed domain name demonstrates registration and use in bad faith. The Complainant has established this element.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **bolloer.com**: Transferred

PANELLISTS

Name	Alan Limbury (Presiding Panelist)
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DATE OF PANEL DECISION 2024-05-10

Publish the Decision
