

Decision for dispute CAC-UDRP-106841

Case number CAC-UDRP-106841

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Domain names bollre.com

Case administrator

Organization Iveta Špiclová (Czech Arbitration Court) (Case admin)

Complainant

Organization BOLLORE SE

Complainant representative

Organization NAMESHIELD S.A.S.

Respondent

Organization bollre

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 submitted evidence, which the Panel accepts, showing that it is the registered owner of the IR trademark "BOLLORE" (registration n° 704697) dated December 11, 1998.

The Complainant is also the owner of the domain name <bollore.com>, which bears the sign "BOLLORE" and has been registered since July 25, 1997.

FACTUAL BACKGROUND

The Bolloré Group, the Complainant, was founded in 1822 and operates in transportation and logistics, communications and electricity storage and systems. Ranked among the 500 largest companies globally, the Group is listed on the Paris Stock Exchange, with the Bolloré family holding the majority of its shares. With a workforce of over 56,000 employees worldwide, the Bolloré Group reported revenues of 20.677 billion euros in 2022, with an adjusted operating income of 1.502 billion euros and shareholders' equity amounting to 36.568 billion euros.

The Complainant is the owner of the international trademark n° 704697 "BOLLORE" and domain name <bollore.com>.

The disputed domain name <bollre.com> was registered on August 30, 2024 and redirects to a page in construction. MX servers are

configured.

PARTIES CONTENTIONS

COMPLAINANT:

THE DISPUTED DOMAIN NAME IS CONFUSINGLY SIMILAR

The Complainant asserts that the disputed domain name <bollre.com> is confusingly similar to its registered trademark "BOLLORE" and contains an obvious misspelling of the trademark. The Complainant argues that the deletion of letter "O" to the trademark "BOLLORE" is insufficient to prevent the likelihood of confusion. According to the Complainant, this represents a clear case of "typosquatting," where the domain name is deliberately misspelled to mimic the Complainant's trademark.

The Complainant further claims that previous UDRP panels have consistently found that minor spelling variations do not eliminate the confusing similarity between a disputed domain name and the trademark in question. For instance, in CAC Case No. 103070, BOLLORE v. Ryan Stewart, the panel found that substituting the letter "o" with the letter "c" in the domain name was insufficient to avoid confusion with the Complainant's trademark, which it described as a deliberate misspelling and a clear case of typosquatting.

Moreover, the Complainant contends that the inclusion of the generic Top-Level Domain (gTLD) suffix ".COM" does not alter the overall impression of the domain name as being associated with the trademark "BOLLORE". The Complainant cites WIPO Case No. D2006-0451, F. Hoffmann-La Roche AG v. Macalve e-dominios S.A., where it was established that the gTLD, such as ".com," ".org," or ".net," does not affect the determination of whether a domain name is identical or confusingly similar to a trademark.

Finally, the Complainant asserts that prior UDRP decisions have upheld its rights, referencing:

- CAC Case No. 105501, BOLLORE SE v. Laurence FERLICOT <bollorie.com>;
- CAC Case No. 105274, BOLLORE SE v. felipe ugalde (united states hispanic chamber of commerce) <bollorre.com>;
- CAC Case No. 104590, BOLLORE SE v. shem gitahi <boll0rre.com>.

NO RIGHTS OR LEGITIMATE INTERESTS IN RESPECT OF THE DISPUTED DOMAIN NAME

The Complainant asserts that the Respondent lacks rights or legitimate interests in the disputed domain name. According to the Complainant, the Respondent is not commonly known by the disputed domain name, and there is no evidence to suggest that the Respondent has been authorized or affiliated with BOLLORE SE in any capacity. The Complainant further contends that it has not granted the Respondent any license or authorization to use the BOLLORE trademark or to apply for the registration of the disputed domain name <bollre.com>.

Additionally, the Complainant claims that the disputed domain name is a typographical variation of its BOLLORE trademark, designed to take advantage of potential typographical errors by internet users. This practice, according to the Complainant, is indicative of the Respondent's lack of rights or legitimate interests in the domain name. The Complainant also asserts that the disputed domain name is not in active use, and that the Respondent has not demonstrated any plans to make legitimate use of it, further supporting the claim that the Respondent's only intent is to create a likelihood of confusion with the Complainant and its trademark. Therefore, the Complainant argues that the Respondent has no rights or legitimate interests in the disputed domain name <bollre.com>.

THE DISPUTED DOMAIN NAME WAS REGISTERED AND IS USED IN BAD FAITH

The Complainant, founded in 1822, asserts that it is one of the 500 largest companies in the world. Listed on the Paris Stock Exchange, the Bolloré family has consistently maintained control of the majority interest in the Group's stock. The BOLLORE Group, employing over 56,000 people worldwide, reported revenues of 20.677 billion euros, adjusted operating income of 1.502 billion euros, and shareholders' equity amounting to 36.568 billion euros in 2022.

The Complainant further claims that its BOLLORE trademark is well-known and highly distinctive. The Complainant points out that previous UDRP panels have recognized the notoriety of the BOLLORE trademark, reinforcing its argument that the trademark enjoys substantial reputation and distinctiveness.

Additionally, the Complainant contends that the Respondent's misspelling of the BOLLORE trademark in the disputed domain name <bollre.com> was a deliberate attempt to create confusion with the Complainant's trademark. This, according to the Complainant, is further evidence of bad faith registration, as has been confirmed by prior UDRP decisions.

The Complainant argues that, given the distinctiveness and reputation of its trademark, it is inconceivable that the Respondent could have registered the disputed domain name without actual knowledge of the Complainant's rights. Furthermore, the Complainant contends that the disputed domain name is inactive, with no demonstrable legitimate use by the Respondent. The Complainant claims that there is no plausible, legitimate use that the Respondent could make of the domain name, as any such use would likely involve passing off, consumer protection infringement, or violation of trademark rights.

Moreover, the Complainant highlights that although the domain name appears to be unused, it has been set up with MX records, suggesting possible use for e-mail purposes. The Complainant argues that this could indicate bad faith use, as the domain name could be used for misleading or illegitimate e-mail communication.

In conclusion, the Complainant asserts that the Respondent has registered and is using the disputed domain name <bollre.com> in bad faith.

RESPONDENT:

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 of the Rules provides that the Panel is to decide the Complaint on the basis of the statements and documents submitted and in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

In this context, the Panel also notes that the burden of proof is on the Complainant to make out its case and past UDRP panels have consistently said that a Complainant must show that all three elements of the Policy have been made out before any order can be made to transfer a domain name.

For the Complainant to succeed it must prove, within the meaning of paragraph 4(a) of the Policy, that:

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

The Panel will therefore deal with each of these requirements in turn.

1. IDENTICAL OR CONFUSINGLY SIMILAR

The Policy simply requires the Complainant to demonstrate that the disputed domain name is identical or confusingly similar to a trademark in which the Complainant has rights. The Panel is satisfied that the Complainant is the owner of registration of "BOLLORE" trademark.

The Panel finds that the disputed domain name is confusingly similar to the Complainant's "BOLLORE" trademark and the lack of one letter in the middle of a long word is not sufficient to vanish the similarity, since it gives the impression that this deficiency is a

result of a typo (see e.g., SIEMENS AG v. Omur Topkan, WIPO Case No. D2013-1318, <siemens.com> [xn--semens-p9a.com]).

In particular, this case represents a clear example of typo-squatting, where the disputed domain name only differs with one letter with the Complainant's trademark where all of the other letters are identical.

Moreover, the addition of the gTLD ".com" is not enough to abolish the identity.

The Panel is of the opinion that the Internet users will easily fall into false impression that the disputed domain name belongs to the Complainant, as they cannot recognize the absence of "-O" in the 5. place of the letter sequence in a 7-letter-word right away. The Panel recognizes the Complainant's rights and concludes that the disputed domain name is confusingly similar to the Complainant's trademark. Therefore, the Panel concludes that the requirements of paragraph 4(a)(i) of the Policy is provided.

2. NO RIGHTS OR LEGITIMATE INTERESTS

Under paragraph 4(a)(ii) of the Policy, the complainant has the burden of establishing that the respondent has no rights or legitimate interests in respect of the domain name.

It is open to a respondent to establish its rights or legitimate interests in a domain name, among other circumstances, by showing any of the following elements:

(i) before any notice to the respondent of the dispute, the use or making 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; or

(ii) the respondent of the dispute (as an individual, business, or other organization) has been commonly known by the domain name, even if it has acquired no trademark or service mark rights; or

(iii) the respondent of the dispute is making a legitimate non-commercial or fair use of the domain name, without an intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

Thus, if the respondent proves any of these elements or indeed anything else that shows that it has a right or legitimate interest in the disputed domain name, the complainant will have failed to discharge its burden of proof and the complaint will fail. The burden is on the complainant to demonstrate a prima facie case that the respondent does not have rights or legitimate interests in the disputed domain name. Once the complainant has made out a prima facie case, then the respondent may, inter alia, by showing one of the above circumstances, demonstrate rights or legitimate interests in the disputed domain name.

It is understood from the explanations of the Complainant that the Respondent and the Complainant have no relationship or agreement on the use of the disputed domain name. In the absence of a response, the Panel considers that the Respondent has no authorization to use the Complainant's trademarks in the disputed domain name.

Hence, as the Complainant has made out its prima facie case, and as the Respondent has not demonstrated any rights or legitimate interests as illustrated under paragraph 4(c) of the Policy, nor has the Panel found any other basis for finding any rights or legitimate interests of the Respondent in the disputed domain name, the Panel concludes that the Complainant has satisfied the requirements of paragraph 4(a)(ii) of the Policy.

3. BAD FAITH

The Panel concludes that the Complainant's "BOLLORE" trademark is of distinctive character and has a certain reputation (see e.g. CAC Case No. 102015, BOLLORE SA v. mich john).

Therefore, the Panel is of the opinion that due to the earlier rights of the Complainant in the "BOLLORE" trademark, the Respondent, was aware of the Complainant and its trademarks at the time of registration of the disputed domain name (see e.g., Ebay Inc. v. Wangming, WIPO Case No. D2006-1107). The Panel believes that the awareness of the Complainant's trademark at the time of the registration of the disputed domain name is to be considered an inference of bad faith registration.

Moreover, the link <bollre.com> is currently inactive. Regarding inactive domain names, section 3.3 of the WIPO Overview 3.0 provides the following: "From the inception of the UDRP, panelists have found that the non-use of a domain name (including a blank or 'coming soon' page) would not prevent a finding of bad faith under the doctrine of passive holding."

Therefore, in light of the above-mentioned circumstances in the present case, the Panel finds that the disputed domain name has been registered and is being used in bad faith and that the Complainant has established the third element 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. bollre.com: Transferred

PANELLISTS

| | |
|------|----------------|
| Name | Mrs Selma Ünlü |
|------|----------------|

DATE OF PANEL DECISION 2024-10-10

Publish the Decision
