Decision for dispute CAC-UDRP-106884

Case number	CAC-UDRP-106884
Time of filing	2024-09-20 10:16:51
Domain names	logistics-bollore.com

Case administrator

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

Complainant

Organization	BOLLORE SE

Complainant representative

Organization	NAMESHIELD S.A.S.

Respondent

Organization	gsmachahbar

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 following trademark registrations for the sign “BOLLORÉ LOGISTICS” (the “BOLLORÉ LOGISTICS trademark”):

− the International trademark BOLLORÉ LOGISTICS with registration No. 1025892, registered on 31 July 2009 for services in International Classes 35, 36 and 39; and

− the International trademark BOLLORÉ LOGISTICS with registration No. 1302823, registered on 27 January 2016 for goods and services in International Classes 4, 9, 35, 36, 39, 40 and 42.

FACTUAL BACKGROUND

The Complainant was founded in 1822. It has more than 76,000 employees worldwide, and its revenue for 2023 amounted to EUR 13,679 million. The Complainant is the owner of the domain name <bollore-logistics.com>, registered since January 20, 2009.

The disputed domain name was registered on September 16, 2024. It resolves to an index page and has mail exchange (“MX”) servers configured.

PARTIES CONTENTIONS

Complainant

The Complainant states that the disputed domain name is confusingly similar to its BOLLORÉ LOGISTICS trademark, because it wholly incorporates the trademark with an inversion of the terms “bollore” and “logistics”, which does not change the overall impression of being connected to the Complainant’s trademark.

According to the Complainant, the Respondent has no rights or legitimate interests in respect of the disputed domain name, because it is not known under the disputed domain name, is not affiliated with the Complainant or authorized by the same to use its trademark, and has no business with the Complainant. The Complainant notes that the disputed domain name resolves to an index page and has MX servers configured.

The Complainant contends that the disputed domain name was registered and is being used in bad faith. It claims that the Respondent registered the disputed domain name with knowledge of the Complainant, and notes that the disputed domain name resolves to an index page. According to the Complainant, it is not possible to conceive of any plausible 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. The Complainant adds that the MX servers are configured, which suggests that the disputed domain name may be actively used for e-mail purposes.

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

Pursuant to the Policy, paragraph 4(a), a complainant must prove each of the following to justify the transfer of a domain name:

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

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

(iii) the domain name was registered and is being used in bad faith.

In this case, the Provider has employed the required measures to achieve actual notice of the Complaint to the Respondent, and the Respondent was given a fair opportunity to present its case.

By the Rules, paragraph 5(c)(i), it is expected of a respondent to: "[r]espond specifically to the statements and allegations contained in the complaint and include any and all bases for the Respondent (domain name holder) to retain registration and use of the disputed domain name …"

In this proceeding, the Respondent has not used the opportunity provided to it under the Rules and has not submitted a substantive Response addressing the contentions of the Complainant and the evidence submitted by it.

Identical or confusingly similar

The Complainant has provided evidence and has thus established its rights in the BOLLORÉ LOGISTICS trademark.

The Panel notes that a common practice has emerged under the Policy to disregard in appropriate circumstances the general Top-Level Domain ("gTLD") section of domain names for the purposes of the comparison under the Policy, paragraph 4(a)(i). The Panel sees no reason not to follow the same approach here, so it will disregard the ".com" gTLD section of the disputed domain name.

The relevant part of the disputed domain name is therefore the sequence "logistics-bollore", which is identical to the word elements of the BOLLORÉ LOGISTICS trademark in reverse order, and the trademark is easily recognizable. As discussed in section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (the "WIPO Overview 3.0"), where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing.

Taking the above into account, the Panel finds that the disputed domain name is confusingly similar to the BOLLORÉ LOGISTICS trademark in which the Complainant has rights.

Rights and legitimate interests

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.

The Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name, because it is not known under the disputed domain name, is not affiliated with the Complainant or authorized by the same to use its trademark, and has no business with the Complainant. The Complainant adds that the MX servers are configured for the disputed domain name, so it may be actively used for e-mail purposes. Thus, the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not submitted a Response and has not provided an explanation of the reasons why it has registered the disputed domain name and how it intends to use it.

In the Panel's view, the circumstances of this case do not support a finding that the Respondent has rights and legitimate interests in the disputed domain name. It appears as a confusingly similar inversion of the word elements of the distinctive BOLLORÉ LOGISTICS trademark, and this may well create an impression in Internet users that it is related to the Complainant. In the lack of any arguments or evidence to the contrary, the above leads the Panel to the conclusion that it is more likely than not that the Respondent, being aware of the goodwill of the Complainant's BOLLORÉ LOGISTICS trademark, has registered the disputed domain name targeting this trademark in an attempt to exploit its goodwill by confusing Internet users that the disputed domain name is affiliated to the Complainant or that correspondence from an email account at the disputed domain name originates from the Complainant. The Panel does not regard such conduct as giving rise to rights or legitimate interests in the disputed domain name.

Therefore, the Panel finds that the Respondent does not have rights or legitimate interests in the disputed domain name.

Bad faith

Paragraph 4(b) of the Policy lists four illustrative alternative circumstances that shall be evidence of the registration and use of a domain name in bad faith by a respondent, namely:

"(i) circumstances indicating that you have registered or you have 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 your documented out-of-pocket costs directly related to the domain name; or

(ii) you have 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 you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product or service on your website or location."

The registration of the distinctive BOLLORÉ LOGISTICS trademark predates by 15 years the registration of the disputed domain

name. It is a confusingly similar inversed version of the BOLLORÉ LOGISTICS trademark, and this may well confuse Internet users that it is affiliated to the Complainant, and the Respondent has not provided any plausible explanation of its choice of a domain name and of its plans how to use it. The Panel is therefore of the view that the Respondent is more likely to have registered the disputed domain name with knowledge of the Complainant's trademark rights, with the intention of taking advantage of its goodwill.

As noted by the Complainant, the Respondent is not using the disputed domain name for a website, but has configured MX records for it, so it may be used for e-mail communications. Recipients of such communications may well wrongly believe them to be originating from the Complainant. Therefore, given the circumstances of this case, the Panel is not aware of any good faith use, including for e-mail communications, to which the disputed domain name may be put without the consent of the Complainant.

This satisfies the Panel that the disputed domain name has been registered and used in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **logistics-bollore.com**: Transferred

PANELLISTS

Name	**Assen Alexiev**

DATE OF PANEL DECISION 2024-10-16

Publish the Decision