

Decision for dispute CAC-UDRP-104380

Case number	CAC-UDRP-104380
Time of filing	2022-03-01 08:56:55
Domain names	bollore-logistics.com

Case administrator

Organization	Denisa Bilík (CAC) (Case admin)
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Complainant

Organization	BOLLORE SE
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Complainant representative

Organization	NAMESHIELD S.A.S.
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Respondent

Name	Oumar Samake
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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

- International Trade Mark Registration No. 1025892 BOLLORE LOGISTICS and Device registered since 31 July 2009; and
- International Trade Mark Registration No. 1302823 BOLLORE LOGISTICS and Device registered since 27 January 2016.

FACTUAL BACKGROUND

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

The Complainant is one of the 500 largest companies in the world. It is part of the BOLLORE Group. The BOLLORE Group has 79,000 employees world-wide with the turnover that equals to 24,109 million euros, operating income in the amount of 1,650 million euros and the shareholders' equity in the amount of 25,984 million euros based on the results in 2020.

The Complainant's subsidiary BOLLORE LOGISTICS is one of the 10 leading worldwide transport and logistics companies. It has a presence on the five continents (600 offices in 109 countries and more than 19,519 employees).

The Complainant owns trademarks including the wording "BOLLORE LOGISTICS" in a number of countries, including through

international trademarks listed above.

The Complainant also owns the domain name <bollore-logistics.com> registered since 20 January 2009.

The disputed domain name <bollore-logistics.com> was registered on 23 February 2022. The disputed domain name redirects to an inactive page. However MX servers are configured, which indicates the domain name may be used for email services.

The disputed domain name is registered in the name "Oumar Samake" who provides an address in Germany.

PARTIES CONTENTIONS

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 (4)(a) of the Policy lists three elements that the Complainant must prove to merit a finding that the disputed domain name registered by the Respondent be transferred to the Complainant:

- 1) the disputed domain name is identical or confusingly similar to a trademark or service mark ("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.

The Panel is satisfied that the Complainant has satisfied all three elements for the principal reasons set out below.

RIGHTS IN AN IDENTICAL OR CONFUSINGLY SIMILAR TRADEMARK

As mentioned above the Complainant asserts it has trademark registrations consisting of the words "BOLLORE LOGISTICS" together with simple graphic devices. At least one of these registrations predates the registration date of the disputed domain name by over a decade.

To satisfy paragraph 4(a)(i) of the Policy it is enough that the Panel is satisfied that the Complainant has registered rights in a trademark that predates the registration of the disputed domain name in a single jurisdiction (even if that single jurisdiction is not one in which the Respondent resides or operates) (Koninklijke KPN N.V. v. Telepathy, Inc D2001-0217 (WIPO 7 May 2001); see also WIPO Case Nos. D2012-0141 and D2011-1436). The Complainant has clearly satisfied such in relation to the trademark "BOLLORE LOGISTICS" together with a simple graphic device.

The next question is whether the disputed domain name is confusingly similar to the “BOLLORE LOGISTICS” and device trademark.

The Panel disregards the gTLD suffix “.com” for the purpose of this comparison. It is of no brand significance and it is likely to be totally ignored by web users. Such web users are likely to focus entirely on the only distinctive element in the disputed domain name, being the BOLLORRE-LOGISTICS element.

This BOLLORRE-LOGISTICS element is strikingly similar to the “BOLLORE LOGISTICS” and device trademark. The graphic device element in the latter mark is simple in appearance and, without doubt, the dominant element of the mark is the words “BOLLORE LOGISTICS”. The disputed domain name differs from these only in the addition of an “r” and a hyphen in lieu of a space. Such changes are insignificant and do nothing to relieve the confusion caused by the remaining striking similarities.

The disputed domain name is therefore confusingly similar to the “BOLLORE LOGISTICS” and device trademark.

NO RIGHTS OR LEGITIMATE INTERESTS

The Respondent's name is “Oumar Samake”. This name bears no resemblance to “BOLLORRE-LOGISTICS”. Further, the website to which the disputed domain name resolves has no content which would indicate any right or legitimate interest in the disputed domain name.

The Respondent has no rights or interests in the disputed domain name.

BAD FAITH

The disputed domain name does not resolve to an active website.

Failing to redirect a domain name to an active website or merely directing the domain name to a basic parking page that contains links to other websites can be legitimate conduct. It is commonly referred to as ‘passive holding’. Whilst it is true that the passive holding of a domain name may, in appropriate circumstances, be indicative of bad faith. It will only be so indicative when all the circumstances of the Respondent's behaviour indicates he or she is acting in bad faith (Telstra Corporation Ltd v. Nuclear Marshmallows D2000-0003 (WIPO 18 February 2000)). There is no law or rule that a domain name cannot be parked or that it must be used to redirect to an active website within a specific period of time.

In the present proceeding the fact that the disputed domain name does not redirect to an active website adds nothing to an allegation of bad faith. If anything, it simply shows the Complainant has not yet decided to direct the disputed domain name to any active website. This passive action is of no concern to the Panel whatsoever. The disputed domain name was only registered approximately one month before the ADR proceeding was commenced by the Complainant.

In the Panel's view one ought not be harshly judging a registrant's mere passive holding of a domain name over such a short period of time. It is prudent to consider what a reasonably minded bona fide registrant may intend by the same behaviour. And it is entirely possible that such a hypothetical person may first register a domain name they wish to use and then take weeks or even months to develop a web page for which they wish to use it. It is equally possible that such a hypothetical person may use the domain name for an e-mail service only. These legitimate foreseeable possibilities must be considered when determining if an allegation of passive holding amounts to, or contributes to, a finding of bad faith.

However, what is of great concern to the Panel in this present proceeding is that BOLLARE LOGISITICS is a well-known trade mark.

It is entirely unforeseeable that a reasonable person residing in Germany could register the strikingly similar disputed domain name without knowledge of the Complainant's rights.

The Panel finds that the Respondent had such prior knowledge at the time of registering the disputed domain name and therefore its only purpose in registering the disputed domain name was to opportunistically profit from confusing similarity. The Respondent clearly targeted the Complainant's well-known domain name for this purpose.

Therefore, in consideration of all the circumstances the disputed domain name has been registered and is being 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. **BOLLORRE-LOGISTICS.COM**: Transferred

PANELLISTS

Name	Mr Andrew Norman Sykes
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DATE OF PANEL DECISION	2022-03-28
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Publish the Decision