

Decision for dispute CAC-UDRP-105717

Case number	CAC-UDRP-105717
Time of filing	2023-08-22 09:48:27
Domain names	onmicrosoft-bollore.com

Case administrator

Name	Olga Dvořáková (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

Organization	ENP Multimedia & Art Production Ltd
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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

The Complainant submitted evidence that it is the registered owner of the international registration no. 704697 for „Bolloré“ (logo) registered on 11 December 1998 in classes 16, 17, 34, 35, 36, 38 and 39 designating numerous countries around the world and having its basic registration in France.

FACTUAL BACKGROUND

The Complainant was founded in 1822 and now holds strong positions in all its activities around three business lines: Transportation and Logistics, Communication and Media, Industry. It 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. This stable majority control of its capital allows the Group to develop a long-term investment policy. In addition to its activities, the Group manages a number of financial assets including plantations and financial investments.

The Complainant owns and communicates on the Internet through various domain names, such as <bollore.com>, registered on 25 July 1997.

The disputed domain name was registered on 11 August 2023 and resolves to a parking page with commercial links.

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.

The Respondent has not filed a Response.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

The Complainant made the following contentions:

The Complainant contends that the disputed domain name is confusingly similar to the trademark “BOLLORE” and that the disputed domain name includes it in its entirety. The Complainant asserts that the addition of the term “on microsoft” is not sufficient to escape the finding that the disputed domain name is confusingly similar to the trademark and branded goods “BOLLORE”. It does not change the overall impression of the designation as being connected to the Complainant’s trademark. It does not prevent the likelihood of confusion between the disputed domain name and the Complainant, its trademark and the domain name associated. Finally, the Complainant points out that prior panels confirmed its rights (e.g. CAC Case No. 104218 and CAC Case No. 103749).

The Complainant then points to the established case law on a prima facie case and the reversal of burden of proof to the Respondent. The Complainant asserts that the Respondent is not identified in the Whois database as the disputed domain name and that it is consequently not known as the disputed domain name. The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant does not carry out any activity for, nor has any business with the Respondent. Neither license nor authorization has been granted to the Respondent to make any use of the Complainant’s trademark or apply for registration of the disputed domain name by the Complainant.

Furthermore, the Complainant notes that the disputed domain name resolves to a registrar parking page with commercial links and that past panels have found it is not a bona fide offering of goods or services or legitimate non-commercial or fair use. Thus, the Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

Turning to the bad faith argument, the Complainant states that the disputed domain name is confusingly similar to its distinctive trademark and the domain name associated. The disputed domain name comprises the trademark “BOLLORE” in respect of which past panels confirmed notoriety (CAC Case No. 102015 and CAC Case No. 101696). Given the distinctiveness of the Complainant’s trademarks and reputation, it is reasonable to infer that the Respondent has registered the disputed domain name with full knowledge of the Complainant’s trademarks.

Furthermore, the disputed domain name resolves to a registrar parking page with commercial links. The Complainant contends the Respondent has attempted to attract Internet users for commercial gain to his own website thanks to the Complainant’s trademarks for its own commercial gain, which is evidence of bad faith (as confirmed by previous panels). The Complainant contends that the Respondent has registered the disputed domain name and is using it in bad faith.

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

This is a proceeding under Paragraph 4 of the Uniform Domain Name Dispute Resolution Policy (the "Policy" or "UDRP"), the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules") and the CAC Supplemental Rules.

Paragraph 15 of the Rules provides that the Panel shall decide the complaint based on the statements and documents submitted and in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

According to Paragraph 4(a) of the Policy, a complainant must prove each of the following: (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; (iii) the domain name has been registered and is being used in bad faith.

1. Identical or confusingly similar domain name

The Complainant demonstrated that it owns the asserted trademark registration for the mark "Bolloré" which was obtained long before the registration of the disputed domain name. It is well established that a nationally or regionally registered trademark confers on its owner sufficient rights to satisfy the requirement of having trademark rights for standing to file a UDRP case. Therefore, the Panel finds that the Complainant has established such rights.

The disputed domain name incorporates the Complainant's trademark "Bolloré" in its entirety. The addition of "onmicrosoft" must be indeed considered insufficient to prevent or diminish confusing similarity, as suggested by the Complainant. While the Complainant has not addressed this point in detail, the Panel is aware that the "onmicrosoft" domain is a so-called fallback domain used in connection with the Microsoft 365 product. As such, it has no special distinctive quality and may be disregarded for the purposes of assessment of confusing similarity.

It is well established that the generic top-level suffix .COM may be disregarded when considering whether a disputed domain name is confusingly similar to a trademark in which the Complainant has rights because it is a necessary technical requirement of registration.

Therefore, the Panel finds that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights.

2. Lack of rights or legitimate interests

The Respondent has not filed a Response and has neither provided any other information that would oppose the Complainant's allegations. Therefore, the Panel holds the Complainant successfully presented its prima facie case that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

In particular, the Respondent is not known as the disputed domain name according to Paragraph 4(c)(ii) of the Policy, nor is it authorised by the Complainant to use its trademark for commercial activities. In addition, the Respondent is not commonly known by the disputed domain name pursuant to Paragraph 4(c)(ii) of the Policy. Furthermore, it was demonstrated by evidence submitted by the Complainant that the disputed domain name has not been used for a bona fide offering of goods or services or a legitimate non-commercial or fair use because it resolves to a parking page with commercial links.

The Panel has therefore determined that the Respondent has no rights or legitimate interest in the disputed domain name.

3. Registration and use of the disputed domain name in bad faith

Concerning the bad faith argument, the Complainant essentially states that: (a) the disputed domain name includes its well-known trademark; (b) the Respondent must have had actual knowledge of the Complainant's trademark; and (c) the Respondent has attempted to attract Internet users for commercial gain to his own website by use of the Complainant's trademark.

The Panel has already found that the disputed domain name is confusingly similar to the Complainant's trademark "Bolloré". It is well established that the mere registration of a domain name that is confusingly similar to a trademark by an unaffiliated entity can lead to the presumption of bad faith.

In addition, the Panel believes that the Complainant submitted evidence that sufficiently demonstrates the Respondent must have been aware of the existence of the Complainant, its well-known trademark as well as its domain name. In fact, it is extremely difficult to find any good-faith reason for the registration of the disputed domain name by the Respondent.

Given that the disputed domain name resolves to a parking page with commercial links, it is fair to conclude that the Respondent indeed registered and has been using the disputed domain name to attract Internet users for commercial gain.

With that in mind, the Panel concludes that several signs of bad faith in registering and use of the disputed domain name by the Respondent can be found in this case. Therefore, the Panel finds that the disputed domain name has been registered and has been used by the Respondent in bad faith.

In conclusion, the Panel finds that all three elements required by Paragraph 4(a) of the Policy were met and makes the following decision.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

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

PANELLISTS

Name	Vojtěch Chloupek
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DATE OF PANEL DECISION 2023-09-14

Publish the Decision
