Decision for dispute CAC-UDRP-100854

Case number	CAC-UDRP-100854
Time of filing	2014-09-10 15:05:08
Domain names	aspace-boursorama.com

Case administrator

Name	Lada Válková (Case admin)

Complainant

Organization	BOURSORAMA S.A.

Complainant representative

Organization	Nameshield (Anne Morin)

Respondent

Name	Williams HALUS

OTHER LEGAL PROCEEDINGS

None

IDENTIFICATION OF RIGHTS

The Complainant is the owner of Community trademark No. 001758614 (BOURSORAMA) registered on October 19, 2001, in classes 9,16,35,36,38,41,42.

FACTUAL BACKGROUND

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

Founded in 1995, the Complainant was a pioneer in its three core businesses of online brokerage, financial information on the Internet, and online banking. In France, it had over 505,000 customers in late 2013 and its portal at www.boursorama.com is the leading national financial and economic information site. The Complainant is the owner of the Community trademark n° 001758614 for BOURSORAMA and has a website at www.boursorama.com.

The domain name <aspace-boursorama.com> was registered on August 17, 2014, and was used for a phishing website until the Complainant obtained its suspension through a complaint to the registrar. The Complainant has no links with the Respondent and has not authorised its use of the disputed domain name or its mark in any way.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the 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).

The Complainant is the proprietor of a registered Community trademark for the invented word BOURSORAMA. The domain name incorporates the whole of this distinctive mark, together with the generic top level domain suffix and the prefix "aspace-".

The prefix combines the descriptive term "space" with the letter "a", which is adjacent to "s" on a keyboard and liable to be typed by mistake together with "s". The Panel considers that confusion is likely as a result both of typographical error and of the fact that the prefix is insufficient to distinguish the domain name from the inherently distinctive mark of the Complainant which it incorporates in its entirety. Therefore, the Panel concludes that the disputed domain name is confusingly similar to the Complainant’s registered trademark.

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 Domain Name (within the meaning of paragraph 4(a)(ii)of the Policy).

On the undisputed evidence in the file, the only use of the domain name made by the Respondent has been for a phishing website. This does not constitute a bona fide offer of goods or services, nor legitimate non-commercial or fair use. Furthermore, the Complainant claims that the Respondent is not commonly known by the disputed domain name and has not been authorised by the Complainant to use its mark in this or any other way.

The Panel finds that the BOURSORAMA mark is distinctive. The Complainant’s assertions that the Respondent is not commonly known by the disputed domain name and is not affiliated with nor authorised by the Complainant are sufficient to constitute a prima facie showing of absence of rights or legitimate interest in the disputed domain name on the part of the Respondent. The evidentiary burden therefore shifts to the Respondent to show by concrete evidence that it does have rights or legitimate interests in that name. The Respondent has made no attempt to do so. Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown the Domain Name has been registered and is being used in bad faith (within the meaning of paragraph 4(a)(iii)of the Policy).

By using the disputed domain name the Respondent has intentionally attempted to attract Internet users to his website for commercial gain through phishing by creating a likelihood of confusion with the Complainant's mark as to the source or affiliation of the website or services purportedly promoted on it. In accordance with paragraph 4(b)(iv) of the Policy this constitutes evidence of registration and use in bad faith. This presumption has not been displaced by any countervailing evidence.

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

Domain name containing Complainant's distinctive mark and descriptive elements, used for phishing.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **ASPACE-BOURSORAMA.COM**: Transferred

PANELLISTS

Name	**Jonathan Turner**

DATE OF PANEL DECISION 2014-10-14

Publish the Decision