Decision for dispute CAC-UDRP-101344

Case number	CAC-UDRP-101344
Time of filing	2016-11-18 09:40:37
Domain names	borsorama.online

Case administrator

Name	Aneta Jelenová (Case admin)

Complainant

Organization	BOURSORAMA SA

Complainant representative

Organization	Nameshield (Maxime Benoist)

Respondent

Name	eunock eunock

IDENTIFICATION OF RIGHTS

The Complainant has provided evidence that it is the owner of two registered trade marks for BOURSORAMA:

(i) EU Trade Mark registration No. 001758614 registered October 19, 2001 in Classes 9, 16, 35, 36, 38, 41 and 42; and

(ii) French Trade Mark registration No. 98723359 registered March 13, 1998 in Classes 9, 16, 35, 36, 38 and 42.

FACTUAL BACKGROUND

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

Founded in 1995, the Complainant, i.e. BOURSORAMA S.A., is involved in the growing business of e-commerce and financial products online. The Complainant states:

1) it is a pioneer and leader in its three core businesses: online brokerage, financial information on the Internet and online banking;
2) in France, BOURSORAMA had over 757,000 customers in late 2015;
3) the portal <www.boursorama.com> is the premier national financial and economic information site and online banking platform;
4) the Domain Name <borsorama.online> is confusingly similar to the Complainant’s trademarks;

5) the Respondent is not affiliated with the Complainant nor authorized by the Complainant in any way, and has no right or legitimate interest in the Domain Name and the Complainant is not related in any way to its business. The Complainant does not carry out any activity for, nor has any business with the Respondent;
6) the Domain Name has been registered and is being used in bad faith.

The Domain Name was registered in November 2016.

UDRP decisions have confirmed the Complainant’s rights such as:

- CAC 101160 BOURSORAMA S.A. vs Mrugesh Thakkar < boursorama.online> ;
- CAC 101131 BOURSORAMA S.A. vs PD Host Inc - Ken Thomas <wwwboursorama.com> ;
- NAF 1635902 BOURSORAMA S.A. vs Sebastien Martin <boursorama.xyz>;
- CAC 100995 BOURSORAMA S.A. vs Stephane Arninda <boursoramasecuritycheck.com>;
- WIPO D2014-1522 Boursorama S.A. vs Osaki Kyle <service-boursorama.com>, <boursorama-msg.com>;
- WIPO DCO2014-0023 Boursorama S.A. vs Daven Mejon <boursorama.com.co>;
- CAC 100854 BOURSORAMA S.A. vs Williams HALUS <aspace-boursorama.com>

- WIPO case no. D2003-0455, “Croatia Airlines d.d. v. Modern Empire Internet Ltd
- NAF case FA 758981, Summit Group, LLC v. LSO, Ltd
- NAF case FA 241972 Juno Online Servs, Inc. v Nelson.

- NAF case no. FA 877979, Microsoft Corp. v. Domain Registration Philippines
- NAF case FA 105890, Am. Online, Inc. v. Miles

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).

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).

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).

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

Identical and/or Confusingly Similar

The Domain Name consists of a sign highly similar to the Complainant's registered trade mark BOURSORAMA save that a letter 'u' has been deleted and it has been registered in the gTLD .online. 'Borsorama', the dominant part of the Domain Name is confusingly similar to the Complainant's trade mark BOURSORAMA.

The gTLD .online does not serve to distinguish the Domain Name from the BOURSORAMA mark, which is the distinctive component of the Domain Names. See Red Hat Inc v Haecke FA 726010 (Nat Arb Forum July 24, 2006) (concluding that the redhat.org domain name is identical to the complainant's red hat mark because the mere addition of the gTLD was insufficient to differentiate the disputed domain name from the mark).

Accordingly, the Panel holds that the Domain Name is confusingly similar for the purposes of the Policy with a mark in which the Complainant has rights.

As such the Panel holds that Paragraph 4 (a) (i) of the Policy has been satisfied.

Rights or Legitimate Interests

Complainant has not given the Respondent permission to use the Domain Name. The Respondent does not appear to be commonly known by the Domain Name. Although the relevant site has now been taken down the Domain Name has been used for a site mimicking the official site of the Complainant and using a name and sign confusingly similar to the name and logo of the Complainant. As such the Respondent has not been using the Domain Name to offer bona fide goods and services and is not making a legitimate non commercial or fair use of the name. See Kmart of Mich., v. Cone, FA 655014 (Forum April 25, 2006) (The panel found the respondent’s attempt to pass itself off as the Complainant with a near identical website to the Complainant’s web site was not a bona fide offering of goods and service nor a legitimate non commercial or fair use).The site originally appears to have been set up for commercial benefit using the Complainant's intellectual property rights to gather commercial information, otherwise known as phishing which is not a legitimate purpose for a domain name. See Juno Online Servs, Inc. v Nelson NAF, FA241972.

Additionally the Domain Name appears to be a typosquatted version of the Complainant's domain name chosen in the hope that a customer might mistakenly reach Respondent's web site by mistakenly incorrectly typing when intending to access the Complainant’s site. See Amazon.com, Inc v JJ Domains, FA 514939 (Nat Arb. Forum Sept 2, 2005)(respondent lacks rights and legitimate interests in circumstances of typosquatting).

As such the Panel finds that the Respondent does not have rights or a legitimate interest in the Domain Name and that the Complainant has satisfied the second limb of the Policy.

Registration and Use in Bad Faith

The Respondent's use of the site was commercial and the use was confusing in that visitors to the site might reasonably believe it was connected to or approved by the Complainant offering financial services under a Domain Name which is a typosquatted version of the Complainant' Domain Name. The mimicking of the official site of the Complainant and the use of the Complainant's name with a logo mimicking the official logo of the Complainant on the Respondent's site increases the likelihood of that confusion and proves the Respondent is aware of the Complainant and its services and business. Accordingly, the Panel holds that the Respondent has intentionally attempted to attract for commercial gain Internet users to its website by creating likelihood of confusion with the Complainant's trade marks as to the source, sponsorship, affiliation or endorsement of the web site. See AM. Online, Inc. v Miles, FA 105890 (Forum May 31, 2002) (Where 4 (b)(iv) of the Policy was found to be contravened by a site prominently displaying the Complainant’s name and logo).

Finally, typosquatting itself is evidence of relevant bad faith registration and use. See Vanguard Group Inc. v IQ Mgmt. Corp FA 328127 (Nat Arb Forum Oct 28, 2004)(By engaging in typosquatting respondent has registered and used the vangard.com domain name in bad faith pursuant to Policy 4(a) (iii).

Phishing is also an indication of bad faith and use under the Policy.

As such, the Panel holds that the Complainant has made out its case that the Domain Name was registered and used in bad faith and has satisfied the third limb of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **BORSORAMA.ONLINE**: Transferred

PANELLISTS

Name	**Miss Dawn Osborne**

DATE OF PANEL DECISION 2016-12-18

Publish the Decision