Decision for dispute CAC-UDRP-101605

Case number	CAC-UDRP-101605
Time of filing	2017-07-14 10:53:16
Domain names	assitance-boursorama-banque.com

Case administrator

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

Complainant

Organization	BOURSORAMA SA

Complainant representative

Organization	Nameshield (Maxime Benoist)

Respondent

Organization	Kurtz Kurtz

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings that relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of different trademarks consisting in whole or in part of the word "BOURSORAMA", notably:

- Community Trade Mark (no. 001758614), registered under classes 9, 16, 35, 36, 38, 41 and 42 with a priority date as of July 13th, 2000;

- French trademark (no. 98723359), registered under classes 9, 16, 35, 36, 38 and 42 with a priority date as of March 13th, 1998;

- Combined French trademark (no. 3676762), registered under classes 35, 36, 38 with a priority date as of September 16th, 2009;

- Combined French trademark (no. 3370460), registered under classes 9, 35, 36, 38 and 41 with a priority date as of July 13th, 2005.

FACTUAL BACKGROUND

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

The Complainant is a French company which was founded in 1995 and provides banking and financial services.

The Complainant uses the domain names "boursorama.com" (registered on March 1st, 1998) and "boursorama-banque.com" (registered on May 26th, 2005) which are connected to official web sites of the Complainant as well as the domain names "boursorama-banque.net" (registered on November 23th 2005), "boursoramabanque.com" (registered on May 26th, 2005), "boursorama.fr" (registered on June 3th, 2005), "boursorama-banque.fr" (registered on May 27th, 2005) and "clients-boursorama.com" (registered on March 23th, 2017).

The Respondent registered the disputed domain name "assitance-boursorama-banque.com" on July 3rd, 2017. On July 11th, 2017 the domain (in particular; the subdomain "srv2." followed by the disputed second level domain name) pointed to a highly similar content of the Complainant's official account client's connection webpage. By now the disputed domain name is in passive holding (parking page). It is used to display several commercial links.

The Complainant states that the Respondent is not affiliated with him nor authorized by him in any way, and has no right nor legitimate interest in the disputed domain name and he is not related in any way to its business.

The Complainant assumes that the disputed domain name is confusingly similar to its registered trademarks. The Complainant also states, that the addition of the generic term "assitance" - being a typosquatting of the term "assistance" - and "banque" between the trademark "BOURSORAMA" separated by hyphens and the use of the gTLD suffix ".com" is not sufficient to escape the finding that the disputed domain name is confusingly similar to its trademarks.

Furthermore the Complainant assumes that the Respondent has registered the disputed domain name in bad faith and has used the disputed domain name to attract Internet users on its website by creating a likelihood of confusion with the Complainant's trademark. He also assumes that the aim of the registration and use of the disputed domain name was to grab banking information of the Complainant's customers.

PARTIES CONTENTIONS

The Respondent did not provide any Response to the Complaint.

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 even as the ADR Provider (CAC) addressed the written notice of the Complaint to “Kurz Kurz” instead to “Kurtz Kurtz” as stated in the WHOIS Data and the Registrar verification. But this typo is irrelevant for the unsuccessful delivery attempt of the written notice of the Complaint as the handwritten comment of the mailman on the envelope states that the house number “56” does not exist in the street the Respondent indicated upon registration of the disputed domain name. It is reasonable to assume that the Respondent filled in a false address, especially when considering that a name and surname “Kurtz Kurtz” is not common in Germany.

PRINCIPAL REASONS FOR THE DECISION

According to paragraph 4(a) of the Policy the Complainant must prove for the requested transfer of the disputed domain name "assitance-boursorama-banque" that

(i) the domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
(ii) the Respondent has no rights or legitimate interests in respect to the domain name; and
(iii) the domain name has been registered and is being used in bad faith.

There is no reasonable doubt that the Complaint complies with all these requirements:

(i) The Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark BOURSORAMA as it includes the trademark in its entirety, with the mere addition of hyphens, the generic term of "assitance" (with missing "s" before "t" - typing error of "assistance") and the Top-Level domain ".com" which is not sufficient to exclude the likelihood of confusion.

(ii) Furthermore the Complainant provided prima facie evidence that the Respondent has no rights or legitimate interests in the disputed domain name "assitance-boursorama-banque". The Complainant stated that the Respondent is not affiliated with or authorized by the Complainantt in any way. There is no evidence that the Respondent is been commonly known by the disputed domain name "assitance-boursorama-banque" or by a name corresponding to the disputed domain name.

The Panel finds that the Respondent has made no use of, or demonstrable preparations to use, the domain name in connection with a bona fide offering of goods or services, is not making a legitimate non-commercial or fair use of the disputed domain name. In fact, the disputed domain name displayed highly similar content of the account service connection page of the Complainant using the subdomain "clients.boursorama.com" right after its registration in July 2017 in a fraudulent scheme to deceive internet users into providing personal information, which is neither a bona fide offering of goods and services nor a legitimate noncommercial use (see Juno Online Servs, Inc. v Nelson, NAF Case No. FA 241972).

In lack of any Response from the Respondent, or any other information indicating the contrary, the Panel concludes that the Respondent has no rights or legitimate interests in respect of "assitance-boursorama-banque.com".

(iii)
For a Complaint to succeed, a panel must be satisfied that a domain name has been registered and is being used in bad faith (Policy, paragraph 4(a)(iii)).

Bad faith requires the Respondent to be aware of the Complainant's trademark. In the present case, the Panel finds it hard to believe that the Respondent would have chosen and registered the disputed domain name "assitance-boursorama-banque.com" in good faith, without having been aware of the Complainant's BOURSORAMA trademarks. The disputed domain name is now linked to a mere inactive page (passive holding) displaying several commercial links. However, the Complainant provided evidence that the disputed domain was linked to a fraudulent "phishing" page right after its registration in July 2017. There is no reasonable doubt in the Panel's opinion that the Respondent was very well aware of the Complainant's trademarks, and that the disputed domain name has been registered, and is being used to attract Internet users to the Respondent's website for commercial gain, by creating a likelihood of confusion and leading Internet users to believe that the Respondent's website is linked to the Complainant.

As previous UDRP panels ruled, the use of a domain name for purposes of a phishing scheme - which is alleged by the Complainant and uncontested by the Respondent - is perhaps the clearest evidence of registration and use of a domain name in bad faith (see Boursorama S.A. v. Daven Mejon, WIPO Case No. DCO2014-0023).

Therefore the Panel finds, that the disputed domain name "assitance-boursorama-banque.com" has been registered and is

being used in bad faith under paragraph 4(a)(iii) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **ASSITANCE-BOURSORAMA-BANQUE.COM**: Transferred

PANELLISTS

Name	**Prof. Dr. Lambert Grosskopf, LL.M.Eur.**

DATE OF PANEL DECISION 2017-08-11

Publish the Decision