Decision for dispute CAC-UDRP-101620

Case number	CAC-UDRP-101620
Time of filing	2017-07-25 10:40:02
Domain names	clients-boursorama.frl

Case administrator

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

Complainant

Organization	BOURSORAMA SA

Complainant representative

Organization	Nameshield (Maxime Benoist)

Respondent

Organization	spawen ablecat

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings that are pending or decided and that relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant relies on its company name, BOURSORAMA, and has sufficiently demonstrated to be owner of trademarks, characterized by the fancy and distinctive word BOURSORAMA, registered in the European Union and in France (where the Respondent resides according to the Whois data):

- EUTM word mark "BOURSORAMA" no. 001758614, filed on July 13, 2000, registered on October 19, 2001 in the Int. classes (Nice Classification) 9, 16, 35, 36, 38, 41, 42

- French word mark "BOURSORAMA" no. 98723359, registered on March 13, 1998 in the Int. classes (Nice Classification) 9, 16, 35, 36, 38, 42

- French figurative mark "BOURSORAMA BANQUE" no. 3370460, registered on July 13, 2005 in the Int. classes (Nice Classification) 9, 35, 36, 38, 41

- French figurative mark "BOURSORAMA BANQUE" no. 3676762, registered on September 16, 2009, in the Int. classes (Nice

Classification) 35, 36, 38

(hereinafter together "BOURSORAMA Trademarks").

FACTUAL BACKGROUND

The Complainant asserts and provides evidentiary documentation of the following facts, which are not contested by the Respondent.

The Complainant, a French corporation founded in 1995, is a subsidiary of Société Générale. In France the Complainant is a leading Internet-based financial information provider with the www.boursorama.com portal and a key player in online brokerage and online banking under the trademark "BOURSORAMA BANQUE" with over 1 million customers in January 2017.

The disputed domain name <CLIENTS-BOURSORAMA.FRL> was registered on July 19, 2017 by spawen ablecat and at the moment of filing the Complaint it displayed a webpage indicating that the website is under construction. On 2017-07-25 14:46:41 the Complainant submitted ad additional documentary evidence, affirming that the disputed domain name was used for phishing, since it resolved to a website similar the Complainant's login page displaying the Complainant's figurative trademarks and, thus, creating the false impression in the Internet users that the disputed domain name is associated with the Complainant.

The Complainant contends that the disputed domain name is confusingly similar to its distinctive and well-known BOURSORAMA Trademarks, since the addition of the generic term "CLIENTS" does not distinguish the disputed domain name from its trademarks.

The Complainant submits that the Respondent does not have any rights or legitimate interest in the disputed domain name:

- the Respondent is not known by the Complainant, not affiliated with the Complainant, not authorized to use in any way, nor has any right nor legitimate interest in the disputed domain name and it not related in any way to the Complainant's business;

- the Complainant does not carry out any activity for, nor has any business with the Respondent;

- the disputed domain name first displayed a webpage indicating that the website is under construction and later on a webpage similar to the online access page of the Complainant;

- considering the reputation of the Complainant and the notoriety of the BOURSORAMA Trademarks and the fact that both the Respondent and the Complainant are French, it is likely that the Respondent has deliberately (with the Complainant and the Complainant's marks in its mind) registered the disputed domain name in order to create a likelihood of confusion with the Complainant’s business and trademarks.

The disputed domain name therefore does not constitute a bona fide offering of goods and services or a legitimate noncommercial or fair use.

The Complainant also states that the disputed domain name has been registered and is being used in bad faith for the following cumulative circumstances:

- the Complainant's BOURSORAMA Trademarks are well-known and the Respondent has registered the domain name which is confusingly similar to such marks;

- given the distinctiveness and reputation of the Complainant's trademarks, it is inconceivable that the Respondent could have registered the disputed domain name without actual knowledge of the Complainant's rights in the trademarks;

- the website in relation to the disputed domain name was first inactive ("under construction") and then used for phising

activities.

The Complainant, therefore, requests the transfer of the disputed domain name <CLIENTS-BOURSORAMA.FRL>.

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

According to paragraph 4(a) of the UDRP Policy the Complainant is required to prove each of the following three elements to obtain the transfer or the revocation of the disputed domain name:

(i) the disputed 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 disputed domain name; and

(iii) the disputed domain name has been registered and is being used in bad faith.

I. RIGHTS AND IDENTITY OR CONFUSING SIMILARITY

The Complainant has established that it has rights in the trademarks corresponding and/or containing the distinctive part "BOURSORAMA" since 1998. The BOURSORAMA Trademarks were registered prior to the registration of the disputed domain name (July 19, 2017) and are valid and well-known in particularly in France where the Respondent resides according to the Whois data.

The Panel finds that the disputed domain name <CLIENTS-BOURSORAMA.FRL> is confusingly similar to the Complainant's trademarks because it wholly incorporates the distinctive part of such marks, namely the wording "BOURSORAMA".

The addition of the generic term "CLIENTS" and the hyphen to the distinctive part of the Complainant's registered and well-known marks neither affects the attractive power of such trademarks, nor is sufficient to negate the confusingly similarity between the disputed domain name and the Complainant's marks (see paragraph 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition - hereinafter WIPO Overview 3.0).

UDRP Panels also agree that the top-level domain (TLD), in this case .FRL, is usually to be ignored for the purpose of

determination of identity or confusing similarity between the disputed domain name and the trademark of the Complainant as it is a technical requirement of registration (see paragraph 1.11.1 WIPO Overview 3.0). The practice of disregarding the TLD in determining identity or confusing similarity is applied irrespective of the particular TLD, including with regard to new generic TLDs (like in this case the .FRL extension); the ordinary meaning ascribed to a particular TLD would not necessarily impact assessment of the first element (see paragraph 1.11.2 WIPO Overview 3.0). The TLD ".FRL" has no meaning, but it is similar to the country code TLD ".FR". Considering the fact that both parties are located in France, the choice of the Respondent to register the disputed domain name under the TLD ".FRL" seems to be intentional and even enhances the likelihood of confusion between the disputed domain name and the BOURSORAMA Trademarks.

Accordingly, the Panel finds that the Complainant has proven the first element of the paragraph 4(a) of the UDRP Policy.

II. LACK OF RIGHTS OR LEGITIMATE INTERESTS

It is a consensus view of UDRP Panels that the Complainant shall establish a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name to shift the burden of proof to the Respondent (see paragraph 2.1 of the WIPO Overview 3.0: "[...] where the Complainant makes out a prima facie case that the Respondent lacks rights or legitimate interests, the burden of production on this element shifts to the Respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the Respondent fails to come forward with such relevant evidence, the Complainant is deemed to have satisfied the second element.")

The Complainant has no relationship with the Respondent whatsoever. The Respondent has never received any approval of the Complainant, expressed or implied, to use the BOURSORAMA Trademarks or any other mark identical or confusingly similar to such marks.

As per the WHOIS records, confirmed by the Registrar, the Respondent is spawen ablecat and there is no evidence that the Respondent has been commonly known by the domain name <CLIENTS-BOURSORAMA.FRL> or has acquired any rights in a trademark or trade name corresponding to the disputed domain name.

The disputed domain name is not used actively and there is no evidence that the Respondent, before any notice of the dispute, used or carried out demonstrable preparations to use the disputed domain name or a name corresponding to the disputed domain name in connection with a bona fide offering of goods or services.

The Panel finds that the Complainant has established its prima facie case and the Respondent, in not formally responding to the Complaint, has failed to invoke any of the circumstances, which could demonstrate any rights or legitimate interests in the disputed domain name. Thus, the Panel is satisfied that the Complainant has met the second requirement of the paragraph 4(a) of the UDRP Policy.

III. BAD FAITH REGISTRATION AND USE

The Respondent has registered the disputed domain name containing in its entirety the distinctive part of the well-known trademarks of the Complainant (BOURSORAMA) adding the generic term "CLIENTS" and a hyphen, creating in such way a likelihood of confusion with such marks. Considering the notoriety of the Complainant's activities and its marks in particularly in France, where the Respondent is located, it is unlikely that the registration of the disputed domain name may be attributed to a mere chance and not, as is, with a full awareness and intent to exploit the reputation of the Complainant and its mark acquired in these years in its core businesses.

The Complainant at the moment of the filing of the Complaint submitted a screenshot of the disputed domain name resolving to a webpage which displayed: "www.clients-boursorama.frl Under Construction" . On 2017-07-25 14:46:41 the Complainant submitted ad additional documentary evidence, affirming that the disputed domain name, at that moment, was used for phishing, due to the fact that it was linked to a website similar the Complainant's login page, displaying the Complainant's figurative trademarks as well, and, thus, creating the false impression in the Internet users that the disputed domain name was associated with the Complainant. Upon review of such documentation, this Panel finds that the additional

evidence consists in a screenshot of the webpage www.clients-boursorama.eu and does not relate clearly to the disputed domain name.

The screenshot captured of the disputed domain name by Czech Arbitration Court on 2017-08-15 10:51 shows that the disputed domain name did not resolve to an active website.

According to the paragraphs 10 and 12 of the UDRP Rules and the paragraph 4.8 of the WIPO Overview 3.0, the Panel "may undertake limited factual research into matters of public record if it would consider such information useful to assessing the case merits and reaching a decision. This may include visiting the website linked to the disputed domain name in order to obtain more information about the respondent or its use of the domain name, consulting historical resources such as the Internet Archive (www.archive.org) in order to obtain an indication of how a domain name may have been used in the relevant past, reviewing dictionaries or encyclopedias (e.g., Wikipedia), or accessing trademark registration databases".

At the moment of the drafting of this decision the disputed domain name did not resolve to any active website. This Panel has not either found any records related to the disputed domain name on archive.org. Hence, on the basis of the statements and documents submitted by the Complainant, the case file forwarded by CAC to the Panel and the Panel's own searches (limited to visiting the website linked to the disputed domain name and consulting historical resources regarding the content of the website), the Panel determines that the disputed domain name is not actively used.

UDRP Panels consider the following factors when applying the passive holding doctrine:

- the degree of distinctiveness or reputation of the complainant’s mark

- the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good faith use

- the respondent’s concealing its identity or use of false contact details (noted to be in breach of its registration agreement)

- the implausibility of any good faith use to which the disputed domain name may be put.

Taken into account all circumstances of this case, the Panel finds that it is implausible that there is any legitimate purpose in the registration of the disputed domain name by the Respondent.

The Panel, thus, finds that the Complainant has discharged the burden of proof to show that the disputed domain name has been registered and is being used in bad faith (paragraph 4(a)(iii) of the UDRP Policy).

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **CLIENTS-BOURSORAMA.FRL**: Transferred

PANELLISTS

Name	**Avv. Ivett Paulovics**

DATE OF PANEL DECISION 2017-08-25

Publish the Decision