Decision for dispute CAC-UDRP-101629

Case number	CAC-UDRP-101629
Time of filing	2017-08-01 09:24:08
Domain names	m-clients-boursorama.com

Case administrator

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

Complainant

Organization	BOURSORAMA SA

Complainant representative

Organization	Nameshield (Maxime Benoist)

Respondent

Organization	MOHAMED le petit

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 Complainants company name is "BOURSORAMA" with the addition "S.A." which refers to the company type. The Complainant uses the domain name “BOURSORAMA.COM” and "CLIENTS.BOURSORAMA.COM" which have respectively been registered since 1 March 1998 and 23 March 2017. The Complainant is also the owner of the registered trademark for the name “BOURSORAMA” (European trademark registration no. 001758614, in classes 9, 16, 35, 36, 38, 41 and 42, registration date 19 October 2001).

FACTUAL BACKGROUND

The Complainant is a company with its legal seat in France. The Complainant is a leader in online brokerage, financial information on the Internet and online banking, and is the first national financial and economic information site and online banking platform in France. The main domain of the Complainant, "BOURSORAMA.COM", had over one million customers in January 2017.

The Respondent registered the disputed domain name “M-CLIENTS-BOURSORAMA.COM” on 24 July 2017. The disputed domain name is not currently used for an active website, but the domain indicates to be "under construction".

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

The disputed domain name contains the Complainants trademark "BOURSORAMA". The domain also contains the generic word "CLIENTS" and the letter "M" which is not enough to differ the disputed domain name from the trademark belonging to the Complainant. The hyphens and the ".COM" suffix are to be disregarded when assessing confusing similarity between domain names and trademark rights.

The Panel finds that the disputed domain name "M-CLIENTS-BOURSORAMA.COM" is confusingly similar to the Complainant's trademark.

No administratively compliant Response has been filed by the Respondent and in accordance with the UDRP Rule 5(f) the Panel must then decide the dispute based upon the Complaint, in the absence of exceptional circumstances. It is up to the Panel to decide whether the Complainant has made out a prima facie case, meaning that the Panel is not bound to transfer the disputed domain name to the Complainant solely based on the lack of Response by the Respondent. On the other hand the Panel takes into consideration that the Respondent did have time to file a Response but chose not to.

The disputed domain name was registered on 24 July 2017 and that the Complaint was filed on 28 July 2017. The Respondent had only been the proprietor of the disputed domain name for four days before the Complaint was filed. The Panel is not asserted that four days of "non-use" is in itself enough for the Complainant to have established a prima facie case of lack of rights or legitimate interests of the Respondent.

The Panel has conducted its own investigation at the time of the Decision and concluded that the Respondent is still not actively using the disputed domain name.

The question of a short period of "non-use" of the disputed domain name by a Respondent has been discussed in UDRP decision no. 101453, where the Panel decided that two weeks of "non-use" combined with the fact that the disputed domain could be interpreted as a generic word, lead the Panel to conclude that the Complainant had not to the satisfaction of the Panel shown that the Respondent had no legitimate rights or interest in the disputed domain name.

In the present dispute the Complainant contends that "BOURSORAMA" has no dictionary meaning and can therefore not be construed as generic. The Panel agrees that "BOURSORAMA" is a distinctive and non-descriptive trademark. The circumstances of the present dispute therefore differ from the circumstances in UDRP decision no. 101453. The Panel will

hereafter examine whether the Respondent has provided any other evidence supporting the contention that the Respondent lacks rights and legitimate interests in the disputed domain name.

The Complainant contents that it is well-known for its business in online banking at least in France, where the Respondent also resides. The Complainant had over 1 million customers in January 2017 and a GOOGLE search of "BOURSORAMA" almost solely refers to the business of the Complainant. In addition to the above the Complainant underlines that the disputed domain name is almost identical to an active subdomain "CLIENTS.BOURSORAMA.COM" which belongs to the Complainant.

The Panel concludes that the addition of the letter "M" and the generic word "CLIENT" to the Complainants trademark "BOURSORAMA" does not constitute a right or legitimate interest in the disputed domain name. The inclusion of the word "CLIENTS" in the disputed domain name supports the contention that the Respondent does not intended to use the disputed domain name to make a bona fide offering of goods or services or to make a non-commercial or fair use of the disputed domain name. The inclusion of the letter "M" can have various meanings, and the Complainant contends that is could mislead consumers to believe that the disputed domain name is the mobile website of the Complainant. The Panel agrees to this contention.

In addition to the above, the Complainant contends that the Respondent has no affiliation with nor is authorized by the Complainant and is in no way related to its business. The Complainant also contends that no trademark license has been granted to the Respondent.

The Complainant has to the satisfaction of the Panel made a prima facie case that the Respondent has no rights or legitimate interests in the disputed domain name. The Panel concludes that the Respondents' registration of the disputed domain name had been made in bad faith and to mislead consumers to believe that there would be an affiliation between the Respondent and the Complainant.

Based on the reasons set out above, the disputed domain name is to be transferred to the Complainant.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **M-CLIENTS-BOURSORAMA.COM**: Transferred

PANELLISTS

Name	**Lars Karnoe**

DATE OF PANEL DECISION 2017-09-05

Publish the Decision