Decision for dispute CAC-UDRP-101844

Case number	CAC-UDRP-101844
Time of filing	2018-01-22 08:59:30
Domain names	client-boursorama.net

Case administrator

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

Complainant

Organization	BOURSORAMA SA

Complainant representative

Organization	Nameshield (Laurent Becker)

Respondent

Name	likid french

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

Complainant is the owner the BOURSORAMA mark, EUIPO Registration No. 001758614, filed July 13, 2000 and issued 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:

Complainant contends that the Respondent is attempting to pass itself off as the Complainant by using its registered trademarks BOURSORAMA and BOURSORAMA BANQUE in violation of Policy.

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

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires the Complainant to show that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

A registered trademark provides a clear indication that the rights in the mark shown on the trademark certificate belong to its respective owner. The Complainant is the owner of a European trademark registration for the BOURSORAMA mark and has registered the mark in 2001.

The disputed domain name <client-boursorama.net> incorporates the Complainant’s trademarks BOURSORAMA in its entirety. The addition of the generic term “CLIENT” and the dash “-”, and the use of the gTLD suffix “.COM” are not sufficient to avoid confusing similarity between the disputed domain name and the Complainant's trademark. Also, the Complainant evidenced that the term BOURSORAMA is a distinctive term, only known in relation to the Complainant. The evidence shows that this mark has no meaning in the English or French languages.

Therefore, the Panel finds that the disputed domain name is confusingly similar to the Complainant’s trademarks BOURSORAMA.

B. Rights or Legitimate Interests

Once the Complainant establishes a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name, the burden of production shifts to the Respondent to show that it has rights or legitimate interests in respect to the disputed domain name (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Second Edition (“WIPO Overview 3.0”), paragraph 2.1).

In the present case, the Complainant has demonstrated to the Panel that the Respondent lacks rights or legitimate interests in respect of the disputed domain name and the Respondent had failed to assert any such rights or legitimate interests.

The Panel finds that the Complainant has established a prima facie case in this regard, inter alia, since the Complainant has not licensed or otherwise permitted the Respondent to use the “BOURSORAMA” trademark, or a variation thereof.

The Respondent is not commonly known by the disputed domain names nor is he known as BOURSORAMA. The Respondent has not submitted a response and did not provide any evidence to show any rights or legitimate interests in the disputed domain name that is sufficient to rebut the Complainant’s prima facie case.

In the circumstances of this case and in light of the Respondent's lack of use of the disputed domain name, set out in more detail below, the Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

C. Registered and Used in Bad Faith

The Complainant must show that the Respondent registered and is using the disputed domain name in bad faith ([paragraph 4(a)(iii) of the Policy)]. Paragraph 4(b) of the Policy provides circumstances that may evidence bad faith under paragraph 4(a)(iii) of the Policy.

To show that the Respondent registered the disputed domain name in bad faith, the Complainant argued that the disputed domain name and the Complainant´s mark are similar, that the Respondent knew of the Respondent's trademark due to the Complainant's trademark reputation and intended to take advantage of the Complainant's trademark and goodwill by pretending to be an official website of the Complainant. Based on this evidence the Complainant argued that the Respondent was attempting to pass off as the Complainant.

The Complainant has submitted evidence, which shows that the Respondent registered the disputed domain name long after the Complainant registered its trademark. According to the evidence filed by the Complainant, the Complainant has owned a registration for the BOURSORAMA trademark since at least the year 2001. The Complainant also owns a number of domain names, including the same distinctive wording BOURSORAMA, of which the domain name <boursorama.com>, registered since 1998, or <clients-boursorama.com> registered since 2017. It is suggestive of the Respondent's bad faith in these particular circumstances that the trademark and domain names, owned by the Complainant, were registered long before the registration of the disputed domain name.

In addition, while the disputed domain name is currently inactive, UDRP decisions have confirmed that the passive holding of a domain name coupled with other circumstances indicative of bad faith registration and use would suffice to establish the third element under the Policy (see, in this regard, Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003, Jupiters Limited v. Aaron Hall, WIPO Case No. D2000-0574). Therefore, the passive holding of the disputed domain name may be consistent with a finding of bad faith registration and use of both disputed domain name.

The burden placed on the complainant is to bring evidence showing circumstances that indicate that the respondent registered and used the disputed domain name in bad faith. A Panel will look into the totality of the circumstances in each case, and these can include evidence of the degree of distinctiveness or reputation of the mark, the failure of the respondent to file a response, the respondent concealing its identity and the implausibility of any good faith use to which the domain name may be put.

In the present case, the apparent similarities between the Complainant's mark and the disputed domain name, and the fact that the Complainant's mark has a high degree of distinctiveness and no meaning in the English or French languages serve as additional evidence of bad faith registration and use of the disputed domain name.

Considering these facts, including the absence of a Response, and the Respondent's apparent concealing of its identity through the use of a false name, and in view of the fact that there is no plausible good faith use the Complainant can make of the disputed domain name, the Panel finds 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 as to source, affiliation or endorsement, in the meaning of paragraph 4(b)(iv) of the Policy, and thus acted in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **CLIENT-BOURSORAMA.NET**: Transferred

PANELLISTS

Name	**Mr. Jonathan Agmon**

DATE OF PANEL DECISION 2018-02-28

Publish the Decision