Decision for dispute CAC-UDRP-102190

Case number	CAC-UDRP-102190
Time of filing	2018-10-10 13:52:55
Domain names	BOURSORAMA-FIMATEX.COM

Case administrator

Name	Šárka Glasslová (Case admin)

Complainant

Organization	Boursorama SA

Complainant representative

Organization	Nameshield (Laurent Becker)

Respondent

Organization	archite

OTHER LEGAL PROCEEDINGS

The Complainant has declared that there are noproceedings pending or decided and relating to the disputed domain name. The Panel is not aware of any such proceedings.

IDENTIFICATION OF RIGHTS

The Complainant is the proprietor of a number of marks, including EUTM 1758614 (BOURSORAMA) first registered 2001 and currently active, in classes including 36 (financial/monetary affairs) and 41 (financial information).

FACTUAL BACKGROUND

The Complainant is a financial and financial information services provider, with its seat in France. It was founded in 1995, and has operated a website at the domain name <boursorama.com> since 1998.

The Respondent 'archite' has provided an address in France, although as noted below this address is not recognised by the postal system. It registered the disputed domain name on 7 October 2018. At all known points during proceedings, and at the time of this decision, the disputed domain name points to a 'parking' page containing the text 'This domain is parked free, courtesy of Domains4Bitcoins.com | A parked domain means that the owner / registrant has not yet published a website or pointed the domain to online content', or does not resolve to an active web page at all.

PARTIES CONTENTIONS

No administratively compliant response has been filed. The Provider attempted to contact the Respondent. Written notice of the Complaint was returned as undeliverable; one email sent to the address listed in WHOIS records was relayed, and the Respondent is recorded as having accessed the Provider's online platform.

The Complainant contends that the disputed domain name is confusingly similar to its trademarks; it adds that it has no business (including licence or authorisation) with the Respondent, and urges the Panel to find that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant states that the Respondent has registered the disputed domain name despite its knowledge of the Complainant's rights, and that the Respondent's use of the disputed domain name is disruptive and an intentional attempt to attract users for commercial gain through likelihood of confusion. It requests transfer of the disputed domain name.

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).

The relevant trade mark, as noted above, is BOURSORAMA. This differs from the disputed domain name by way of the additional text (in the name, but not in the mark) FIMATEX, with the two words connected by a hyphen, and the gTLD .com. The Panel disregards both for the assessment of similarity. The Complainant has not provided evidence of any marks in respect of FIMATEX.

The Complainant points out that it was known as FIMATEX until 2003. There is therefore an association between the two words, which does not serve to challenge the possibility of similarity. Indeed, it serves to reinforce it - in a similar way to (though perhaps even more persuasive than) those many cases under the Policy where a Domain Name consists of a mark and a description of the services provided under that mark. (See WIPO Jurisprudential Overview, version 3.0, para 1.8; see further, for example, the recent decision at this Provider in CAC Case 102121, RATP v petek sarigul, concerning <RATPTRAVELRETAIL.COM>). The Complainant has not made any claim that it has rights in the name FIMATEX; the Panel notes on its own initiative that the marks associated with the former business have expired, and so for the avoidance of doubt finds that the text accompanying the valid mark is, in essence, either descriptive of the services provided under said mark, or insufficient to displace the effect of similarity created by the verbatim incorporation of the mark into the longer text.

The Panel was provided with an unhelpful screenshot of an undated news report referring to the name FIMATEX, which did not constitute sufficiently useful evidence of the connection between the names. However, the Complainant has declared the connection in the Complaint, and the Panel was able to verify it through publicly available reports (e.g. 'Fimatex Deal Highlights Demise of Online Broking', Wall Street Journal, 2 January 2003, available at https://www.wsj.com/).

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).

There is no possible basis on which rights or legitimate interests concerning the Respondent could be found. As noted above, the Complainant has stated that the Respondent is not related in any way with the Complainant, does not carry out any activity for, nor has any business with the Respondent, and has not been granted any licence or authorisation. There is no information (e.g. on a website under the disputed domain name) that would indicate the possibility of legitimate interests (e.g. critical commentary on the Complainant's services).

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).

The Complainant points to a number of past cases, where Panels have found that it can be inferred that other Respondents

registered other domain names (similar to the Complainant's mark) with full knowledge of the Complainant's trademarks. This is because of the Complaint's reputation and the distinctiveness of the mark. These cases include CAC Case 101131, Boursorama v PD Host Inc - Ken Thomas (concerning <wwwboursorama.com>) and WIPO Case D2017-1463, Boursorama v Estrade Nicolas (concerning <bousorama.org>).

The Complainant wrongly argues that 'visitors to the site might reasonably believe it is connected to or approved by the Complainant'. Given the lack of a 'site', this is speculative at best.

Similarly, the Complainant's contention that the Respondent 'has intentionally attempted to attract for commercial gain Internet users to its website by creating likelihood of confusion with Complainant's trademark as to the source, sponsorship, affiliation or endorsement of the web site likely to disrupt the business of Complainant' is unhelpful. Although the UDRP is not cited in the submissions, it is apparent to the Panel that this unusual sentence is a combination of paragraphs 4(b)(iii) (disruption) and 4(b)(iv) (likelihood of confusion). The Panel fails to see the value of merging these examples of registration and use in bad faith, given the significant body of cases under each (separate) example. Moreover, the Complainant has not adduced relevant evidence in support of its merged claim.

Nonetheless, the Panel can find registration and use in bad faith on the same basis as the earlier decisions cited by the Complainant. In this particular case, the registration is that of the name of a well-known business (noting that the Respondent also purports to have an address in the same jurisdiction as the company), joined to the predecessor name of said business. The words have no apparent alternative meaning; BOURSORAMA, for instance, clearly draws upon the well-known French word bourse (market), but does not itself have a secondary meaning, to the knowledge of the Panel. And so, the Panel can, in the absence of any submissions from the Respondent, accept that the disputed Domain Name was registered in bad faith. As to use, while not particularly helped by the Complainant's submissions (nor the earlier decisions referred to, which can be distinguished in light of the longer operation of the sites that were the subject of those earlier cases), this appears to be a case (however brief) of passive holding.

Applying the helpful summary of cases set out in the WIPO Jurisprudential Overview, version 3.0, para 3.2 (taking note of the line of cases commencing with WIPO Case No. D2000-0003 Telstra v Nuclear Marshmallows) is helpful. Under (i) the degree of distinctiveness or reputation of the complainant’s mark, the Panel is satisfied that the mark is distinctive and enjoys an obvious reputation. Regarding (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, the Panel notes that the Respondent is said to have accessed the online platform, but not engaged beyond this. Regarding (iii) the respondent’s concealing its identity or use of false contact details (noted to be in breach of its registration agreement), the Panel notes that the Provider was unable to contact the Respondent by post due to an unrecognised address, and that the Respondent's legal name is unclear. Finally, regarding (iv) the implausibility of any good faith use to which the domain name may be put, the Panel has not identified such a plausible use.

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.

Parties are however reminded that providing undated and decontextualised screenshots of web pages has very limited value as evidence in proceedings.

PRINCIPAL REASONS FOR THE DECISION

The reasons are as set out above. The disputed domain name is confusingly similar to the Complainant's relevant trade mark, on account of the relationship between the disputed domain name and the mark (differing only by the addition of a name formerly used by the Complainant and a hyphen). No rights or legitimate interests on the part of the Respondent have been identified. The Panel considered the submissions made by the Complainant regarding bad faith and finds that the disputed domain name was registered and is being used in bad faith due to the 'passive holding' of the disputed domain name by the Respondent in circumstances where the mark is well-known.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **BOURSORAMA-FIMATEX.COM**: Transferred

PANELLISTS

Name	**Prof Daithi Mac Sithigh**

DATE OF PANEL DECISION 2018-11-12

Publish the Decision