Decision for dispute CAC-UDRP-102199

Case number	CAC-UDRP-102199
Time of filing	2018-10-19 09:54:38
Domain names	boursurama.com

Case administrator

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

Complainant

Organization	BOURSORAMA

Complainant representative

Organization	Nameshield (Enora Millocheau)

Respondent

Name	Josef Barguali

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 has submitted evidence, which the Panel accepts, showing that it is the registered owner of the following:

- the EU trademark BOURSORAMA (Registration n°1758614) dated October 19, 2001;
- the French trademark BOURSORAMA (Registration n°98723359) dated March 13, 1998.

Moreover, the Complainant is also the owner of a number of domain names bearing the sign „BOURSORAMA“ such as <boursorama.com> dated March 1, 1998.

FACTUAL BACKGROUND

The Complainant is a French based online brokerage, financial information on the Internet and online banking company which if founded in 1995 and providing online banking services for over 1.5 million customers in France. It also owns the first national financial and economic information site and online banking portal, www.boursorama.com, which was visited more than 30 million monthly.

The Complainant holds several trademark registrations for “BOURSORAMA” and the Complainant also holds domain names including “BOURSORAMA”.

On October 15, 2018, the Respondent registered the disputed domain name. When visiting the domain name, a page is opened where it is stated that „Welcome to boursurama.com This Web page is parked for FREE, courtesy of GoDaddy.com.“ which shows that there is no current and commercial use at the disputed domain name.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant is a French based online brokerage, financial information on the Internet and online banking company which if founded in 1995 and providing online banking services for over 1.5 million customers in France. It also owns the first national financial and economic information site and online banking portal, www.boursorama.com, which was visited more than 30 million monthly.

1. THE DISPUTED DOMAIN NAME IS ALMOST IDENTICAL TO THE COMPLAINANT’S TRADEMARKS „BOURSORAMA“

It is more than obvious that the disputed domain name is almost identical to the Complainant’s trademarks “BOURSORAMA”, as it differs only on the substitution of the sixth letter „O“ by the letter „U“ which is not sufficient to exclude the likelihood of confusion.

The term BOURSORAMA is a distinctive term which has no meaning in any language, only known in relation to the Complainant.

In particular, it is undeniable that this case represents a clear example of typosquatting, where the disputed domain name is one letter different from the Complainant's mark. For instance, CAC Case No. 101871, ArcelorMittal SA v ABA.

2. THE RESPONDENT HAS NO RIGHTS OR LEGITIMATE INTERESTS IN RESPECT OF THE DISPUTED DOMAIN NAME

The Complainant states that the Respondent has no rights on the disputed domain name, the Respondent is not affiliated with nor authorized by BOURSORAMA in any way. The Complainant does not carry out any activity for or has any business with the Respondent. Therefore the Respondent also has not been authorized or licensed by the Complainant to use the disputed domain name.

The Complainant states that there is no fair or non-commercial uses of the disputed domain name as well.

Furthermore, the Complainant alleges that the Respondent has registered the disputed domain name in order to create a likelihood of confusion and to phish the banking information since the website under the disputed domain name contains a dialogue boz which necessitate the user ID and password to be submitted. Accordingly, the Respondent argues that this dialogue box is placed into a website which is confusingly similar with the registered and well-known trademark of the Respondent.

Therefore, the Complainant concludes that the Respondent has no right or legitimate interest in the disputed domain name.

3. THE DISPUTED DOMAIN NAME WAS REGISTERED AND IS USED IN BAD FAITH

The Complainant states that the disputed domain name was registered and is being used in bad faith. The Complainant alleges that minor changes are not sufficient to vanish the confusing similarity between the disputed domain name and the registered French and EU trademarks.

The Complainant also asserts that trademark BOURSORAMA is well-known as is hold by WIPO in Case No. 102017 which is BOURSORAMA S.A. v. Morval Robert and that the Respondent has registered and used the disputed domain name with full knowledge of the Complainant's trademark BOURSORAMA. Moreover, the Complainant indicates that the Respondent might have the disputed domain name registered for phishing purposes since the website under the disputed domain name contains a dialogue boz which necessitate the user ID and password to be submitted.

RESPONDENT:

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

Paragraph 15 of the Rules provides that the Panel is to decide the Complaint on the basis of the statements and documents submitted and in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

In this context, the Panel also notes that the burden of proof is on the Complainant to make out its case and past UDRP panels have consistently said that a Complainant must show that all three elements of the Policy have been made out before any order can be made to transfer a domain name.

For the Complainant to succeed it must prove, within the meaning of paragraph 4(a) of the Policy, that:

A. The Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and

B. The Respondent has no rights or legitimate interests in respect of the Disputed Domain Name; and

C. The Disputed Domain Name has been registered and is being used in bad faith.

The Panel will therefore deal with each of these requirements in turn.

A. IDENTICAL OR CONFUSINGLY SIMILAR

The Policy simply requires the Complainant to demonstrate that the disputed domain name is identical or confusingly similar to a trademark in which the Complainant has rights. The Panel is satisfied that the Complainant is the owner of registration of the BOURSORAMA trademarks.

The Panel finds that the disputed domain name is nearly identical with the Complainant's BOURSORAMA trademarks since the differentiation of the letter "O" as the letter "U" is not sufficient to vanish the similarity.

The Panel is of the opinion that the internet users will easily fall into false impression that the disputed domain name is an official domain name of the Complainant. The Panel recognizes the Complainant's rights and concludes that the disputed domain name is confusingly similar with the Complainant's trademarks. Therefore, the Panel concludes that the requirements of paragraph 4(a)(i) of the Policy is provided.

B. NO RIGHTS OR LEGITIMATE INTERESTS

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

It is open to a Respondent to establish its rights or legitimate interests in the disputed domain name, among other circumstances, by showing any of the following elements:

(i) before any notice to the respondent of the dispute, the use or making demonstrable preparations to use the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or

(ii) the respondent of the dispute (as an individual, business, or other organization) has been commonly known by the domain name, even if it has have acquired no trademark or service mark rights; or

(iii) the respondent of the dispute is making a legitimate non-commercial or fair use of the domain name, without an intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

Thus, if the Respondent proves any of these elements or indeed anything else that shows that it has a right or legitimate interest in the disputed domain name, the Complainant will have failed to discharge its burden of proof and the Complaint will fail. The burden is on the Complainant to demonstrate a prima facie case that the Respondent does not have rights or legitimate interests in the disputed domain name. Once the Complainant has made out a prima facie case, then the Respondent may, inter alia, by showing one of the above circumstances, demonstrate rights or legitimate interests in the disputed domain name.

The Complainant contends that the Respondent has no legal or commercial relationship with the Complaint and any use of the trademark BOURSORAMA has to be authorized by the Complainant and there is no such authorization. Moreover, the disputed domain name has no relation with the Respondent and the Respondent is not commanly known as the disputed domain name. Finally, there is no fair or non-commercial uses of the disputed domain name found.

In the absence of a response, the Panel accepts the Complainant's allegations as true that the Respondent has no authorization to use the Complainant's trademarks in the disputed domain name. Hence, as the Complainant has made out its prima facie case, and as the Respondent has not demonstrated any rights or legitimate interests as illustrated under paragraph 4(c) of the Policy, nor has the Panel found any other basis for finding any rights or legitimate interests of the Respondent in the disputed domain name, the Panel concludes that the Complainant has satisfied the requirements of paragraph 4(a)(ii) of the Policy.

C. BAD FAITH

The Panel concludes that the Complainant's BOURSORAMA trademarks have significant reputation and is of distinctive character. Therefore, the Panel is of the opinion that due to the earlier rights of the Complainant in the BOURSORAMA trademarks and the associated domain name, the Respondent, was aware of the Complainant and its trademarks at the time of registration of the Disputed Domain Name (see e.g., Ebay Inc. v. Wangming, WIPO Case No. D2006-1107). Referring to Parfums Christian Dior v. Javier Garcia Quintas and Christiandior.net, WIPO Case No. D2000-0226, the Panel believes that the awareness of the Complainant's trademark at the time of the registration of the disputed domain name is to be

considered an inference of bad faith registration.

Therefore, in light of the above-mentioned circumstances in the present case, the Panel finds that the disputed domain name has been registered and is being used in bad faith and that the Complainant has established the third element 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. **BOURSURAMA.COM**: Transferred

PANELLISTS

Name	**Mrs Selma Ünlü**

DATE OF PANEL DECISION 2018-12-03

Publish the Decision