Decision for dispute CAC-UDRP-102278

Case number	CAC-UDRP-102278
Time of filing	2018-12-27 11:00:48
Domain names	boursorama-ecopret.com

Case administrator

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

Complainant

Organization	BOURSORAMA

Complainant representative

Organization	Nameshield (Enora Millocheau)

Respondent

Name	yvette cristofoli

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other proceedings related to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of the European trademark BOURSORAMA number 1758614 registered since December 19, 2001. The Complainant also owns domain names including the same distinctive wording BOURSORAMA, such as the domain name <boursorama.com>, registered since March 1, 1998. The disputed domain name <boursorama-ecopret.com> was registered on December 19, 2018 and redirects to a registrar's parking page.

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:

The Complainant contends that it has been founded in 1995 and is the pioneer and the leader in its three core businesses, online brokerage, financial information on the Internet and online banking. In France, the Complainant is the online banking reference with over 1,5 million customers. The portal www.boursorama.com is the first national financial and economic information site and first French online banking platform.

The Complainant states that the disputed domain name is confusingly similar to its trademark BOURSORAMA and includes in its entirety the Complainant's trademark. The addition of the generic term "ECOPRET" (which can be translated as

“ECOLOAN”) is not sufficient to escape the finding that the disputed domain name is confusingly similar to the Complainant’s trademark. It does not change the overall impression of the designation as being connected to the Complainant’s trademark and it does not prevent the likelihood of confusion between the disputed domain name and the Complainant, its trademark and domain names associated. On the contrary, the addition of the French term “ECOPRET” increases the likelihood of confusion with the Complainant’s trademarks and activity, because “ECOPRET” refers to the Complainant activity, as this term is used as a designation for a financial measure taken by the French government plan for energy efficiency.

The addition of a generic term associated to a trademark does not create a new or different right to the mark or diminish confusing similarity (WIPO Case No. D2016-0239, LEGO Juris A/S v. Viktor Tkachev, Lego Town, <lego-town.com>).

Furthermore, the addition of the gTLD suffix “.COM” does not change the overall impression of the designation as being connected to Complainant’s trademark. It does not prevent the likelihood of confusion between the disputed domain name and Complainant, its trademark and its domain names associated (WIPO Case No. D2006-0451, F. Hoffmann-La Roche AG v. Macalve e-dominios S.A.).

Complainant’s rights to BOURSORAMA trademark has been confirmed by many UDRP decisions (CAC Case No. 102211, BOURSORAMA v. Olga Pererva <boursorma.com>; CAC Case No. 102017, OURSORAMA S.A. v. Morval Robert, <boursoramafinances.com>; - WIPO Case No. D2017-1360, BOURSORAMA S.A. v. Houndekponto Gaston, <boursorama-bank.info>).

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name and he is not affiliated with nor authorized by the Complainant in any way and does not carry out any activity for, nor has any business with the Respondent. Neither license nor authorization has been granted to the Respondent to make any use of the Complainant’s trademark BOURSORAMA or apply for registration of the disputed domain name. Furthermore, the disputed domain name redirects to a registrar’s parking page. Therefore, the Complainant contends that Respondent did not make any use of disputed domain name since its registration, and it confirms that Respondent has no demonstrable plan to use the disputed domain name. It demonstrates a lack of legitimate interests in respect of the disputed domain name.

The Complainant concludes that the Respondent has registered and is using the disputed domain name in bad faith. Given the distinctiveness of the Complainant's trademark and reputation, it is reasonable to infer that the Respondent has registered the disputed domain name with full knowledge of the Complainant's trademark. Moreover, the disputed domain name redirects to a registrar parking page and the Complainant contends that the Respondent fails to make an active use of the disputed domain name. Failure to make an active use of a disputed domain name is evidence of bad faith.

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

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

(i) The domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and

(ii) The respondent has no rights or legitimate interests in respect of the domain name; and

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

I. Identical or Confusingly Similar

The Complainant has established the fact that it has valid rights for the EU trademark No 1758614 BOURSORAMA registered on October 19, 2001, and that it owns domain names including the same distinctive wording BOURSORAMA. The disputed domain name has been registered on December 19, 2018, i.e. more than 17 years after the trademark registration, and wholly incorporates the Complainant's trademark and is therefore confusingly similar to it.

The term "ECOPRET" in the disputed domain name does not distinguish the disputed domain name from the Complainant's trademark. Moreover this term in the form of two words (Eco Pret) could mean "Eco Loan" as the "loan for the ecological purposes" and therefore is connected to the financial and banking activities of the Complainant. Added term "ECOPRET" therefore strengthens the likelihood of confusion between the disputed domain name and Complainant's trademark. The addition of the generic top level domain ".COM" does not change the overall impression of the designation as being connected to Complainant's trademark.

The Panel therefore considers the disputed domain name to be confusingly similar to the Complainant's trademark BOURSORAMA which the Complainant has rights in accordance with paragraph 4(a)(i) of the Policy.

II. Rights or Legitimate Interests

The Complainant has established a prima facie case (not challenged by the Respondent) that the Respondent has no rights or legitimate interests in the disputed domain name, since the Respondent is not related in any way with the Complainant. There is no website on the disputed domain name and the disputed domain name, therefore, does not constitute a bona fide offering of goods and services or a legitimate non-commercial fair use. The Respondent has no rights or legitimate interests in the disputed domain name, since there is no indication that the Respondent is commonly known by the term "BOURSORAMA" or its variations or that the Respondent is using the disputed domain name in connection with a bona fide offering of goods or services.

The Panel therefore considers that the Respondent has no rights or legitimate interests in respect of the disputed domain name within the meaning of paragraph 4(a)(ii) of the Policy.

III. Registered and Used in Bad Faith

Given the distinctiveness of the Complainant's trademark and reputation (as confirmed in several UDRP proceedings in the past) it is evident that the Respondent had the Complainant and its trademark in mind when registering the disputed domain name. This conclusion is supported by the fact that the word ECOPRET (with the meaning "eco loan" that points to the activities of the Complainant) has been added to the term BOURSORAMA (as the trademark of the Complainant). Furthermore, the website in connection with the disputed domain name is not used since its registration as redirects to the

parking page provided by the registrar only. The incorporation of a famous trademark into a domain name, coupled with an inactive website, may be evidence of bad faith registration and use.

The Panel therefore considers that 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 Panel finally considers that the Complainant has shown that the disputed domain name is identical or confusingly similar to a trademark in which the Complainant has rights, the Respondent has no rights or legitimate interests in respect of the disputed domain name and the disputed domain name has been registered and is being used in bad faith. The Complainant has thus established all three elements of paragraph 4(a) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

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

PANELLISTS

Name	**JUDr. Petr Hostaš**

DATE OF PANEL DECISION 2019-01-21

Publish the Decision