Decision for dispute CAC-UDRP-102250

Case number	CAC-UDRP-102250
Time of filing	2018-12-06 09:38:09
Domain names	WwwBoursorama.co

Case administrator

Name	Šárka Glasslová (Case admin)

Complainant

Organization	Boursorama SA

Complainant representative

Organization	Nameshield (Laurent Becker)

Respondent

Organization	houchang li

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 Complainant is inter alia the owner of:

European Union trademark BOURSORAMA reg. no. 001758614, registered on October 19, 2001;

and

French trademark BOURSORAMA reg. no. 98723359, filed on March 13, 1998.

The Complainant also registered the following domain names < boursorama.com>, <boursorama.net>, < boursorama.org>, < boursorama.tel>, < boursorama.mobi>, <boursorama.info>, < boursorama.eu> and < boursorama.fr>.

FACTUAL BACKGROUND

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

The Complainant was founded in 1995 along with the internet, and has developed in Europe thanks to the rise of e-commerce and the expansion of the distribution of financial products online.

The Complainant is active in online brokerage, financial information on the internet, and online banking.

The Complainant has proven to be the owner of the BOURSORAMA trademark.

The disputed domain name was registered on January 10, 2004 and resolves to a parking page containing sponsored links. The Complainant's trademark and domain name registrations predate the registration of the disputed domain name.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant contends that the disputed domain name is confusingly similar to the BOURSORAMA trademarks, that the Respondent has no rights or legitimate interests in respect of the disputed domain name, and that the disputed domain name has been registered and is being used in bad faith.

RESPONDENT:

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

The Respondent did not submit a formal response, but, in response to the Provider's notification of the Complaint, sent a short email on December 7, 2018, affirming: "we can transfer the domain to you. Please contact the registrat."

This extremely short email does not contain any denial and/or rebuttal of the Complainant's assertions, nor any information regarding the existence of any rights and/or legitimate interest in the disputed domain name or in a corresponding name. It is therefore the Panel's opinion that this message amounts to an admission or at least to an inference of the Respondent's lack of any rights and/or legitimate interests in 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).

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

There are a number of procedural complications in this case. They are as follows:

(i) The Complainant filed the Complaint in English rather than in Japanese (i.e. the language of the registration agreement);
(ii) The CAC's online platform currently does not work in Japanese;
(iii) The response to the complaint is not administratively correct;
(iv) The Panel decided that an additional fee was due from the Complainant.

Language of the Proceeding

Pursuant to paragraph 11(a) of the Rules, unless otherwise agreed by the parties, or otherwise specified in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding. Paragraph 10(b) and (c) of the Rules requires the Panel to ensure that the proceeding takes place with due expedition and that the parties are treated fairly and given a fair opportunity to present their respective cases.

The language of the Registration Agreement for the disputed domain names is Japanese. From the evidence on record, no agreement appears to have been entered into between the Complainant and the Respondent regarding the language issue. The Complainant filed its Complaint in English and then requested change of the language of the proceeding to English.

The Panel notes that:

(a) the Provider has notified the Respondent of the proceeding in both Japanese and English;
(b) the Respondent has been given the opportunity to present its case in this proceeding and to respond formally to the issue of the language of the proceeding;
(c) the content displayed on the website corresponding to the disputed domain name <www.WWWBOURSORAMA.CO> is in English;
(d) the Respondent, in response to the notification of the complaint, submitted an email in English;
(e) the Respondent did not respond to nor contest the Complainants' request for a change of the language from Japanese to English.

Considering the above circumstances, the Panel finds that the choice of English as the language of the present proceeding is fair to both parties and is not prejudicial to either one of the parties in his or her ability to articulate the arguments for this case.

The Panel has also taken into consideration the fact that to require the Complaint and all supporting documents to be re-filed in Japanese would cause an unnecessary burden of cost to the Complainant and would unnecessarily delay the proceeding.

Having considered all the above matters, the Panel determines under paragraph 11(a) of the Rules that (i) it will accept the Complaint and all supporting materials as filed in English; and (ii) English will be the language of the proceeding and the decision will be rendered in English.

Formal Deficiencies of the Response

There is no provision regulating the consequences for responses that do not meet the formal requirements comparable to paragraph 3(b) of the UDRP Rules for complaints. Whether and under what conditions responses are to be taken into account if they do not satisfy the formal requirements of paragraph 5 of the UDRP Rules has been determined differently by different panels. The majority of the panelists assume that they are entitled at their discretion to determine whether to consider responses which are formally incorrect (Young Genius Software AB v. MWD, James Vargas, WIPO Case No. D2000-0591 - <younggenius.com>).

In this case, the Panel finds that the fact that the Respondent's response was submitted solely via email does not prejudice the Complainant and therefore, at its discretion, accepts the Response.

Indeed, the Panel, having regard to the information available and the circumstances of the case, finds that to accept the Respondent's response, as will be shown in the following section, it is not detrimental to the Complainant's case. On the contrary, the assertion made by the Respondent reinforces the Complainant's claims regarding bad faith registration of the disputed domain name.

Additional fee

The Panel's decision that an additional fee was due from the Complainant is principally motivated by the fact that it is this Panel's opinion that cases that present circumstances such as those at issue cannot be treated in a simplified decision.

In view of all of the above, 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) Confusing similarity

The disputed domain name contains the Complainant's registered trademark BOURSORAMA with the addition of the generic term "www".

This Panel agrees with the Complainant's and previous Panels' view, that the addition of the term "WWW", at the beginning of the disputed domain name, is not sufficient to escape the finding that the disputed domain name is confusingly similar to the trademark BOURSORAMA, and that this can be considered a classic case of typo-squatting.

B) Lack of legitimate rights or interests

The disputed domain name is a distinctive, non-descriptive name. It is unlikely that the Respondent registered the disputed domain name without having the Complainant firmly in mind. The Complainant's assertions that the Respondent is not commonly known by the disputed domain name and is not affiliated with nor authorized by the Complainant are sufficient to constitute a prima facie demonstration of the absence of rights or legitimate interests in the disputed domain name on the part of the Respondent. The burden of evidence therefore shifts to the Respondent to show, using tangible evidence, that it does have rights or legitimate interests in the disputed domain name. The Respondent has made no attempt to do so. Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.

C) Registered or Used in Bad Faith

The Complainant gives sound bases for its contention that the disputed domain name was registered and has been used in bad faith.

Firstly, owing to the distinctiveness of the Complainant's trademark and reputation, it is reasonable to infer that the Respondent registered the disputed domain name with full knowledge of the Complainant's trademark, and so the Panel finds on the balance of probabilities that the Respondent was aware of the Complainant's trademark when registering the disputed domain name.
Secondly, the Panel accepts the Complainant's unchallenged assertion that the Respondent registered the disputed domain name with the aim of creating a likelihood of confusion with the Complainant's trademark.
Thirdly, it appears that the disputed domain name redirects to commercial links that refer to the Complainant and to the Complainant's area of business. The Panel here agrees with the Complainant's assertion that while the intention to earn click-through-revenue is not in itself unlawful, the use of a domain name that is deceptively similar to a trademark to obtain click-through-revenue is found to be bad faith use.
Fourthly, the Respondent has not responded to nor denied any of the assertions made by the Complainant in this

proceeding. On the contrary, the only email sent by the Respondent is, in the Panel's opinion, an admission or at least an inference of the Respondent's acknowledgement of the Complainant's rights and requests.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **WWWBOURSORAMA.CO**: Transferred

PANELLISTS

Name	**Dr. Fabrizio Bedarida**

DATE OF PANEL DECISION 2019-02-08

Publish the Decision