Decision for dispute CAC-UDRP-102331

Case number	CAC-UDRP-102331
Time of filing	2019-01-31 08:53:27
Domain names	boursorama-client.net

Case administrator

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

Complainant

Organization	BOURSORAMA SA

Complainant representative

Organization	Nameshield (Enora Millocheau)

Respondent

Organization	Technology Vavalle

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

European Union Trademark number 001758614 BOURSORAMA, which has a registration date of 13 July 13, 2000.

FACTUAL BACKGROUND

The Complainant is a French bank that provides online banking, online brokerage, and online financial information services in France, the United Kingdom, Germany, and Spain. Boursorama SA was incorporated in 1995 and is headquartered in Boulogne-Billancourt, France.

It is the registered owner of European Union Trade Mark Number 001758614 BOURSORAMA, which was first filed on July 13, 2000 and subsequently proceeded to registration on October 19, 2001.

The Complainant is also the registrant of the domain names <boursorama.com> that has a creation date March 1, 1998 and <clients-boursorama.com> that has a creation date of March 23, 2017.

The disputed domain name is <boursorama-client.net>. It resolves to a webpage that appears to be a login portal that

requests visitors to enter login details. The title of the webpage states in French "Customer area: access to your accounts - Boursorama Banque". The webpage clearly displays the Complainant's BOURSORAMA trade mark and its unique logo. It has the convincing appearance of a legitimate login portal page belonging to the Complainant.

The Respondent provides its details as a business operating in Italy. However its e-mail is listed as izainf@hotmail.fr, which obviously operates through a French ccTLD. The Complainant provided a document from the Registrar confirming these details.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

In addition to asserting registered rights in BOURSORAMA the Complainant contends it operates a leading online banking business under that trade mark with over 1.5 million customers. It annexed to its complaint screen shots of its website with detailed information in relation to its business.

The Complainant contends that the disputed domain name is confusingly similar to its BOURSORAMA trade mark and that the Respondent has no legitimate rights in the disputed domain name. It further contends that given the use of the well-known BOURSORAMA trade mark together with the use of its logo in is reasonable to infer that the Respondent had "full knowledge" of the Complainant's trade mark.

In summary, the Complainant contends that the disputed domain name was registered for commercial gain and to attempt to obtain personal information through falsehood and confusion.

RESPONDENT:

The Respondent's contentions are short and can be summarised in two words: mistaken identity.

The Respondent provides no arguments against the Complainant's rights in the BOURSORAMA trade mark or that the disputed domain name is confusingly similar to such a trade mark. The Respondent also offers no explanation for the content of the webpage that the disputed domain name resolves to. Instead the Respondent discusses its right to use a totally unrelated domain name for its legitimate business.

The Respondent says it has never heard of the Complainant. In summary, the Respondent, in the Panels view, provides contentions in an attempt to present the image of a confused registrant who knows nothing of either the Complainant or the disputed domain name.

If such a contention were held to be true then, obviously, the Complaint would be refused and the result would be that an unknown entity gets the ongoing benefit of a domain name being used for flagrantly fraudulent purposes. However for the reasons set out below the Panel does not accept the Respondent's plea of mistaken identity.

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 (4)(a) of the Policy lists three elements that the Complainant must prove to merit a finding that the domain name registered by the Respondent be transferred to the Complainant:

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

2) the Respondent has no rights or legitimate interests in respect of the domain name; and

3) the domain name has been registered and is being used in bad faith.

The Panel is satisfied the Complainant has satisfied all three elements for the principal reasons set out below.

A. RIGHTS IN AN IDENTICAL OR CONFUSINGLY SIMILAR TRADEMARK

As mentioned above the Complainant asserts it has numerous trademark registrations for the word BOURSORAMA. As evidence to support this assertion it provides details of European Union Trademark Number 001758614 BOURSORAMA

To satisfy paragraph 4(a)(i) of the Policy it is enough that the Panel is satisfied that the Complainant has registered rights in a trademark that predates the registration of the disputed domain name in a single jurisdiction (even if that single jurisdiction is not one in which the Respondent resides or operates) (Koninklijke KPN N.V. v. Telepathy, Inc D2001-0217 (WIPO May 7, 2001); see also WIPO Case Nos. D2012-0141 and D2011-1436). The Panel is satisfied of such.

The next question is whether the disputed domain name is confusingly similar to BOURSORAMA trademark.

The Panel disregards the gTLD suffix ".net" for the purpose of this comparison. However the Panel further notes that if such a suffix were to add anything it would only make the disputed domain name more similar to the Complainant's <boursorama.com> domain name, which has been registered for over 20 years.

The Panel also notes that the registered trademark contains the elements "-client". The disputed domain name is clearly being used to mislead "clients" into believing they are accessing a client portal. In such circumstances the inclusion of these elements only increases, not decreases, the likelihood of confusion.

The disputed domain name is confusingly similar to the BOURSORAMA trademark.

NO RIGHTS OR LEGITIMATE INTERESTS

The Respondent's name according to the WHOIS extract is "Technology Vavalle". This name bears no resemblance to the disputed domain name and, for the reasons set out below, the Panel does not accept it is the real name of the Respondent in any event.

However, what is most telling is that the disputed domain name has been used as part of a fraudulent attempt to obtain information from online banking customers by pretending to be the Complainant. Such conduct could not be further from legitimate.

It is clear the Respondent has no rights or interests in the disputed domain name.

BAD FAITH

As mentioned above, the Panel finds that the Complainant has established that the Respondent has used the recently registered domain name as part of a fraudulent attempt to obtain information from online banking customers by pretending to be the Complainant. Such a blatant attempt to dishonestly acquire information in relation to online banking accounts is of the worst category of bad faith that the Policy is designed to address.

It is clear that the Respondent has registered and used the disputed domain name in bad faith.

ADDITIONAL RULING UNDER RULE 10(a)

Rule 10(a) of the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules") states:

(a) The Panel shall conduct the administrative proceeding in such manner as it considers appropriate in accordance with the Policy and these Rules.

In the Panels opinion this includes directing that the parties be accurately described in a published decision by reference to their true identities.

This matter is unusual in that a Response was filed by a party essentially claiming to be a legitimate Italian business that knows nothing of the subject matter of the dispute. The Response even contained the address of a website that appears to be promoting a legitimate business in Italy. However the Respondent uses the domain name izainf@hotmail.fr, which is obviously operates through a French ccTLD.

This all occurs in relation to a domain name dispute that just so happens to be over the clearly fraudulent use of a well-known French trade mark on a webpage written in the French language.

Put simply the Respondent is not who they say they are. The Respondent is engaging in a fraudulent endeavour. It is fanciful to believe they would record the domain name registration in their real name. Further it appears possible the name recorded in WHOIS record as the registrant may be the same name as some innocent third party.

The true Respondent is however the party who controls the disputed domain name and the e-mail address izainf@hotmail.fr and has been participating in this proceeding. They simply have not been doing so honesty. It is not only possible but likely the Respondent has pretended to be two entities in relation to this dispute. One on the webpage and one in the registrant details.

In such circumstances the panel directs that the Respondent's name should be recorded on the decision as "An entity using the pseudonym 'Technology Vavalle". This is an accurate record of who the Respondent is and avoids the unintended consequence of potentially tainting the reputation of an innocent 3rd party trading as "Technology Vavalle".

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

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

PANELLISTS

Name	**Mr Andrew Norman Sykes**

DATE OF PANEL DECISION 2019-03-01

Publish the Decision