Decision for dispute CAC-UDRP-102340

Case number	CAC-UDRP-102340
Time of filing	2019-02-05 13:13:21
Domain names	boursorama-clients.com

Case administrator

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

Complainant

Organization	BOURSORAMA SA

Complainant representative

Organization	Nameshield (Laurent Becker)

Respondent

Name	Céline Levy

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other pending or decided legal proceedings relating to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant is the owner the European trademark n° 1758614 for “BOURSORAMA” from October 19, 2001.

FACTUAL BACKGROUND

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

Founded in 1995, BOURSORAMA S.A. (the Complainant) grows in Europe with the emergence of e-commerce and the continuous expansion of the range of financial products online. Pioneer and leader in its three core businesses, online brokerage, financial information on the Internet and online banking, BOURSORAMA S.A. based its growth on innovation, commitment and transparency.

In France, BOURSORAMA 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 also owns a number of domain names, including the same distinctive wording BOURSORAMA®, such as

the domain name <boursorama.com>, registered since March 1, 1998 and <clients-boursorama.com> registered since March 23, 2017.

The disputed domain name was registered on January 29, 2019.

The disputed domain name is not used by the Respondent.

PARTIES CONTENTIONS

COMPLAINANT:

I. The Complainant states that the disputed domain name is confusingly similar to its trademark BOURSORAMA® as it includes in its entirety the Complainant's trademark.

The addition of a hyphen and the generic term "CLIENTS" is not sufficient to escape the finding that the disputed domain name is confusingly similar to the trademark BOURSORAMA®. It does not change the overall impression of the designation as being connected to the Complainant's trademark BOURSORAMA®. It does not prevent the likelihood of confusion between the disputed domain name and the Complainant and its trademark.

It is well-established that "a domain name that wholly incorporates a Complainant's registered trademark may be sufficient to establish confusing similarity for purposes of the UDRP".

Moreover, the Complainant contends that the addition of the generic Top-Level Domain suffix ".COM" does not change the overall impression of the designation as being connected to the trademark BOURSORAMA ® of the Complainant. It does not prevent the likelihood of confusion between the disputed domain name and the Complainant and its trademark.

Thus, the disputed domain name <boursorama-clients.com> is confusingly similar to the Complainant's trademark BOURSORAMA®.

II. Once a prima facie case is made, the respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the respondent fails to do so, the complainant is deemed to have satisfied paragraph 4(a) (ii) of the Policy.

The Complainant asserts that the Respondent is not known as the disputed domain name.

Past panels have held that a Respondent was not commonly known by a disputed domain name if the WhoIs information was not similar to the disputed domain name. Thus, the Respondent is not known as the disputed domain name.

The Respondent is not known by the Complainant. The Complainant contends that Respondent is not affiliated with nor authorized by the Complainant in any way. The Complainant contends that Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant 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.

Moreover, the disputed domain nameis not used in which is insufficient to show a bona fide offering of goods or services or a legitimate non-commercial or fair use.

Accordingly, Respondent has no rights or legitimate interests on the disputed domain name.

III. The disputed domain name is confusingly similar to the Complainant's well-known trademark BOURSORAMA®.

Therefore, it is reasonable to infer that the Respondent has registered the disputed domain name with full knowledge of the

Complainant's trademark. Thus, the Complainant contends that the Respondent has knowledge of the Complainant's rights prior to the registration of the disputed domain name, which is a hallmark of bad faith.

Further, the Respondent has not demonstrated a bona fide offering of goods or services or a legitimate non-commercial or fair use in respect of the disputed domain name. Therefore, the Complainant contends that the Respondent has registered the disputed domain name in order to create a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation or endorsement of Respondent's website. Such circumstances are evidence of registration and use of the disputed domain name in bad faith within the meaning of paragraph 4(b)(iv) of the Policy.

On these bases, the Complainant concludes that the Respondent has registered and is using the disputed domain name in bad faith.

RESPONDENT:

No administratively compliant Response was filed.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain nameis 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 namehas 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 the Decision.

PRINCIPAL REASONS FOR THE DECISION

As contained under paragraph 4(a) of the Policy, for the Complaint to succeed in relation to the disputed domain name, the Complainant must succeed in showing the following:

(i) The disputed 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 disputed domain name; and

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

In the present case, the Respondent did not produce a Response, therefore, the Panel for the purposes of this Decision may treat as uncontested the assertions submitted by the Complainant. The Panel will now review each of these elements.

A. Identical or Confusingly Similar

The Complainant, as per the evidence on record, has established its rights in the trademark "BOURSORAMA" since at least 2001. Further to this, the Complainant provided evidence to the effect that the trademark has achieved recognition through

its use and is widely-known, as it has been found in previous UDRP proceedings.

Once having established the rights in the trademark, we now turn to the analysis of confusing similarity between the disputed domain name and the Complainant's trademarks. The disputed domain name incorporates the entirety of the trademark, namely "BOURSORAMA", followed by a hyphen and the word "CLIENTS". This term "CLIENTS" is synonymous to "customer" in both English and French. Based on common sense and without any proof or assentation to the contrary, this leads the Panel to conclude that the term "CLIENTS" has been used to reference a term commonly associated to one of the main activities of the Complainant, namely financial services. Being that the disputed domain name incorporates the Complainant's Trademark in its entirety, with the addition of a generic term commonly associated with the activity of the Complainant, the Panel finds that the disputed domain name is confusingly similar with the Complainant's Trademark, as per the summary of consensus panel views set forth under paragraph 1.8 of WIPO Overview 3.0. It does not escape the Panel that the use of the additional text following the Complainant's Trademark in the disputed domain name may have a bearing in enhancing the likelihood of confusion between the disputed domain name and the Trademark, but that analysis is the object of consideration under the following elements.

The Panel therefore finds that the Complaint has satisfied the first element set under paragraph 4(a) of the Policy.

B. Rights or Legitimate Interests

The Complainant states that the Respondent is not commonly known as the disputed domain name. Additionally, the Complainant states it has not authorized the Respondent to carry out any activity on behalf of the Complainant and that there is no existing business relationship between the two of them. In the view of the Panel, these assertions are enough to establish a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name (see 2.1 of WIPO 3.0 Overview).

The Respondent in failing to respond to the Complainant's contentions has not rebutted the prima facie case, as above-mentioned. There is no other available evidence on record that would otherwise allow the Panel to find any rights or legitimate interests for the Respondent in the disputed domain name. If anything, there is clear indicia of bad faith, specifically in the use of a generic term in conjunction with the Trademark, which enhances the likelihood of confusion between the disputed domain name and the Trademark. This suggests, as per 2.15 of WIPO 3.0 Overview, there cannot be any respondent rights or legitimate interests. In this case, the Panel believes that the discussion of this element will be entangled with the discussion under the third element, as contained below.

The Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name and therefore the Complainant has fulfilled the second requirement set under paragraph 4(a) of the Policy.

C. Registered and Used in Bad Faith

The Panel finds, as per the evidence on record, that the Respondent was probably aware of the Complainant and targeted the Complainant's Trademark when registering the disputed domain name. This conclusion is reinforced by the fact that the Complainant has a well-known Trademark and the chain of analysis shows that the Respondent incorporated in the disputed domain name the entirety of the Trademark with the addition of a generic term – that is commonly associated to one of the main activities of the Complainant – further cementing the bad faith use and registration. This, coupled with the lack of response from the Respondent leave the Panel no other option than to conclude that that the most likely intention of the Respondent in relation to the disputed domain name was to intentionally attempted to attract, for commercial gain, Internet users to its website/Domain Name, by creating a likelihood of confusion with the Complainant's Trademark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website and/or Domain Name (3.1 of WIPO 3.0 Overview).

The Panel consequently finds that the Complainant has satisfied the third and final element required under paragraph 4(a)(iii) of the Policy.

D. Decision

For the preceding reasons and in conformity with the provisions contained under Paragraph 4(i) of the Policy and Paragraph 15 of the Rules, the Panel orders the transfer of the disputed domain name to the Complainant.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

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

PANELLISTS

Name	**Rodolfo Carlos Rivas Rea**

DATE OF PANEL DECISION 2019-03-04

Publish the Decision