Decision for dispute CAC-UDRP-102341

Case number	CAC-UDRP-102341
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Domain names	bourosrama.com

Case administrator

Name	Šárka Glasslová (Case admin)

Complainant

Organization	BOURSORAMA SA

Complainant representative

Organization	Nameshield (Enora Millocheau)

Respondent

Organization	Milen Radumilo

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 the holder of trademark rights for the word mark BOURSORAMA (e.g. European word mark registered with the European Union Intellectual Property Office (EUIPO) under registration No. 001758614 since October 19, 2001, duly renewed, and covering goods and services in classes 9, 16, 35, 36, 38, 41 and 42).

FACTUAL BACKGROUND

The Complainant, Boursorama S.A., is a French company and operator of a leading online information portal providing stock market, political and general financial information since 1995. The Complainant is also a provider of online banking and brokerage services.

The Complainant is the owner of the registered EU word mark BOURSORAMA in several classes.

The disputed domain name <bourosrama.com> has been registered on January 31, 2019 by the Respondent using a proxy service. The disputed domain name resolves to a parking page displaying sponsored links related to the Complainant and its financial information business.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:
The Complainant considers the disputed domain name to be confusingly similar to trademarks in which it has rights. The Complainant claims that the Respondent has no rights or legitimate interests in respect of the disputed domain name. According to the Complainant, the Respondent does not use the disputed domain name in connection with any legitimate use. Also, according to the Complainant, the Respondent has not been authorized to register or use the disputed domain name. Finally, the Complainant considers that the disputed domain name was registered and is being used in bad faith. The Complainant contends that the Respondent knew, or at least should have known, of the existence of the Complainant's trademark and that that this constitutes a clear case of typosquatting. The Complainant further claims that the Respondent has used the disputed domain name in order to intentionally attempt to attract, for commercial gain, Internet users to his website, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website. The Complainant also contends that the Respondent has engaged in a pattern of trademark-abusive domain name registrations.

RESPONDENT:
The Respondent did not reply to the Complainant's contentions.

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 in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

The onus is on the Complainant to make out its case and it is apparent, both from the terms of the Policy and the decisions of past UDRP panels, that the Complainant must show that all three elements set out in Paragraph 4 (a) of the Policy have been established before any order can be made to transfer a domain name. As the proceedings are civil, the standard of proof is the balance of probabilities.

Thus, for the Complainant to succeed it must prove, within the meaning of Paragraph 4(a) of the Policy and on the balance of probabilities that:

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

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 has therefore dealt with each of these requirements in turn.

1. Confusing similarity of the Domain Name with existing rights

The Complainant must first establish that there is a trademark or service mark in which it has rights. Since the Complainant is the holder of the registered BOURSORAMA trademark, which is used in connection with the Complainant's financial information and online banking business, it is established that there is a trademark in which the Complainant has rights. The disputed domain name <bourosrama.com> incorporates the Complainant's BOURSORAMA trademark in its entirety, merely switching the letters "o" and "s". The swapping of two letters does not significantly affect the appearance or pronunciation of the disputed domain name. This practice is commonly referred to as "typosquatting" and creates virtually identical and/or confusingly similar marks to the Complainants' trademark (Mapfre S.A. y Fundación Mapfre v. Josep Sitjar; WIPO Case No. D2011-0692, Compagnie Gervais Danone of Paris v. Jose Gregorio Hernandez Quintero, WIPO Case No. D2009-1050).

Additionally, it is well established that the generic top-level suffix ".com" may be disregarded when considering whether the disputed domain name is confusingly similar to the trademark in which the Complainant has rights.

Therefore, the Panel finds that the disputed domain name <bourosrama.com> is confusingly similar to the Complainant's trademark. Accordingly, the Complainant have made out the first of the three elements that they must establish.

2. 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 established case law that it is sufficient for the Complainant to make a prima facie showing that the Respondent has no right or legitimate interest in the disputed domain name in order to shift the burden of proof to the Respondent (See Champion Innovations, Ltd. V. Udo Dussling (45FHH), WIPO case No. D2005-1094; Croatia Airlines d.d. v. Modern Empire Internet Ltd., WIPO case No. D2003-0455; Belupo d.d. v. WACHEM d.o.o., WIPO case No. 2004-0110).

The Panel notes that the Respondent has not been commonly known by the disputed domain name and that the Respondent has not acquired trademark or service mark rights. The Whois records relating to the disputed domain name indicate that the Respondent is known as "Milen Radumilo". The Respondent's use and registration of the disputed domain name was not authorized by the Complainant. There are no indications that a connection between the Complainant and the Respondent existed.

Moreover, the Panel is of the opinion that the Respondent is not making a legitimate non-commercial or fair use of the disputed domain name. It appears that the Respondent has been using the disputed domain name to refer to a standard parking page with sponsored links that refer directly to the Complainant or promote products and services of third parties which are either competing with or closely related to the products and services offered by the Complainant. According to the Panel, this cannot be considered as fair use of the disputed domain name.

The Respondent had the opportunity to demonstrate its rights or legitimate interests but did not do so. In the absence of a Response from the Respondent, the prima facie case established by the Complainant has not been rebutted.

Based on the available record, the Panel finds that the Complainant has established a prima facie case, which was not refuted, and that the Respondent lacks rights or legitimate interests in the disputed domain name. Therefore, the

Complainant has satisfied the second requirement that the Respondent has no rights or legitimate interests in the disputed domain name, under paragraph 4(a)(ii) of the Policy.

3. Bad faith

Complainant must prove on the balance of probabilities that the disputed domain name was registered in bad faith and that it is being used in bad faith (See e.g. Telstra Corporation Limited v. Nuclear Marshmallow, WIPO Case No. D2000-0003; Control Techniques Limited v. Lektronix Ltd, WIPO Case No. D2006-1052).

According to the Panel, the awareness of a respondent of the complainant and/or the complainant's trademark rights at the time of registration can evidence bad faith (see Red Bull GmbH v. Credit du Léman SA, Jean-Denis Deletraz, WIPO Case No. D2011-2209; Nintendo of America Inc v. Marco Beijen, Beijen Consulting, Pokemon Fan Clubs Org., and Pokemon Fans Unite, WIPO Case No. D2001-1070). In the instant case, the Panel finds that the Respondent must have had knowledge of the Complainant's rights in the BOURSORAMA trademark at the moment it registered the disputed domain name, since the disputed domain name incorporates the Complainant's distinctive BOURSORAMA trademark in its entirety, merely swapping two letters. This indicates that the disputed domain name was registered for the purpose of "typosquatting".

The Respondent has been using the disputed domain name in relation to a standard parking page displaying sponsored PPC links. While the intention to earn click through-revenue is not in itself illegitimate, the Panel finds that 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 (see Mpire Corporation v. Michael Frey, WIPO Case No. D2009-0258; L'Oréal, Biotherm, Lancôme Parfums et Beauté & Cie v. Unasi, Inc, WIPO Case No. D2005-0623). The Panel finds that by using the disputed domain name incorporating the Complainant's trademark in connection with a website containing links directly referring to the Complainant or to products and services relating to the Complainant and its business, the Respondent has intentionally attempted to attract Internet users to its website for commercial gain by creating a likelihood of confusion with the Complainant's trademark.

Additionally, the Panel holds that the swapping of the letters "o" and "s" in the term "boursorama" in the disputed domain name is a form of typosquatting which is further evidence of bad faith (ESPN, Inc. v. XC2, WIPO Case No. D2005-0444; WestJet Airlines Ltd. v. Taranga Services Pty Ltd, WIPO Case No. D2010-1814; and Compagnie Générale des Etablissements Michelin v. Terramonte Corp, Domain Manager, WIPO Case No. D2011-1951).

Therefore, the Panel finds that, on the balance of probabilities, it is sufficiently shown that the disputed domain name was registered and is being used in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **BOUROSRAMA.COM**: Transferred

PANELLISTS

Name	**Flip Petillion**

DATE OF PANEL DECISION 2019-03-08

Publish the Decision