Decision for dispute CAC-UDRP-102367

Case number	CAC-UDRP-102367
Time of filing	2019-02-22 09:05:46
Domain names	bourso.online

Case administrator

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

Complainant

Organization	BOURSORAMA SA

Complainant representative

Organization	Nameshield (Laurent Becker)

Respondent

Organization	Bassete Bensadallah

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

The Complainant is the holder of trademark registrations consisting of or comprising the word BOURSO, including EU trademark registration No. 001758614 for the word mark “BOURSORAMA”, registered with the EUIPO on October 19, 2001 in classes 9, 16, 35, 36, 38, 41 and 42, and the French trademark registration for BOURSO No.3009973 as of 2000-02-22 , renewed with the INPI on 2010-04-16 in classes 09,35,36,38,41,42

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:
The Complainant, BOURSORAMA S.A., is a French company founded in 1995 active in online brokerage and provision of financial information especially in relation to Internet and online banking.
Boursorama has 1.500 000 customers with more than 300.000 exchanged accounts and 25 million visitors.
The Domain Name <BOURSO.ONLINE> was registered on February 18th 2019 and redirects to a parking page. After the usual checks it came up that it belongs to Bassete Bensadallah which is known (with his family) by the Complainant for other previous arbitration cases such as WIPO case D2019-0343 “ “Menuiserieboursorama.com” ; WIPO case D2019-0354 “meneserieboursorama.com” and CAC case 102362 “boursorama.space”. All these decisions were decided in favour of the Complainant.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:
The Complainant considers the Domain Name to be confusingly similar to its main trademark BOURSORAMA and identical to BOURSO French registration in which the Complainant has rights recently renewed in the same Jurisdiction where the Registrant has his own address in Clermont Ferrand Alpes de haute Provence. The Complaiant's trademark are quite famous in France
The Complainant claims that the Respondent has no rights or legitimate interests in respect of the Domain Name. According to the Complainant, the Respondent does not use the Domain Name in connection with any legitimate use but the disputed domain name redirects to a parking page. Also, according to the Complainant, the Respondent has not been commonly known by the Domain Name. Finally, the Complainant considers that the Domain Name was registered and used in bad faith.

RESPONDENT:
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

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.
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 names are identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
2. The Respondent has no rights or legitimate interests in respect of the domain names; and
3. The domain names have been registered and are being used in bad faith.
The Panel has therefore dealt with each of these requirements in turn.

Domain Name identical with the earlier existing rights and confusingly similar to other registered trademark

The Complainant must first establish that there is a trademark or service mark in which it has rights. Since Complainant is

the holder of the BOURSE registered trademark and other BOURSORAMA trademarks, which are used in connection with its business, it is established that the Complainant owns valid rights where the Respondent is resident.
The Domain Name <bourse.online> incorporates the Complainant's BOURSO trademark in its entirety. Boursorama is also a well known trademark in France.
Accordingly, the Complainant has made out the first of the three elements that it must establish.

No legitimate rights

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that Respondent has no rights or legitimate interests in respect of the domain names.

It is established case law that it is sufficient for the Complainant to make a prima facie showing that Respondent has no right or legitimate interest in the 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 <championinnovation.com>; Croatia Airlines d.d. v. Modern Empire Internet Ltd., WIPO case No. D2003-0455 <croatiaairlines.com>; Belupo d.d. v. WACHEM d.o.o., WIPO case No. 2004-0110 <belupo.com>).
The Complainant contends that the disputed domain name resolves to a parking page in which the domain name is also offered for sale; Past panels have found it is not a bona fide offering of goods or services or legitimate non-commercial or fair use.

As Registrant decided not to file any Response and to rebut the above mentioned arguments the Panel finds that Registrant has no rights or legitimate interests in the disputed domain name per paragraph 4(a)(ii) of the Policy.

The Panel notes that the Respondent has not been commonly known by the domain name and that the Respondent has not acquired trademark or service mark rights. Respondent's use and registration of the Domain Name was not authorized by the Complainant. There are no indications that a connection between Complainant and Respondent existed.
Furthermore, the disputed domain name points to an inactive website since its registration in which the only message shown on it is related to a possible offer for sale.

Bad faith

Complainant must prove on the balance of probabilities that the 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).

Policy Paragraph 4(b) provides a non-exclusive list of factors, any one of which may demonstrate bad faith registration and use, namely:

(i) circumstances indicating that the domain name is registered or acquired primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant or to a competitor of the Complainant, for valuable consideration in excess of documented out-of-pocket costs directly related to the domain name (Policy Paragraph 4(b)(i));
(ii) the registration of a domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that Respondent has engaged in a pattern of such conduct (Policy Paragraph 4(b)(ii));
(iii) the registration of a domain name primarily for the purpose of disrupting the business of a competitor (Policy Paragraph 4(b)(iii)); and
(iv) the use of a domain name for intentionally attempting to attract, for commercial gain, Internet users to a web site or other on-line location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of Respondent's web site or location or of a product or service on Respondent's web site or location (Policy Paragraph 4(b)(iv)).

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.
Furthermore it is proved ex tabula that the actual respondent knew very well the Complainant's trademarks and the activities having been a Respondent on at least three previous cases one also before the CAC. Therefore there is a pattern of bad faith behavior against the trademark BOURSORAMA and now against BOURSO (which is the short for BOURSORAMA) that is self-evident.
Furthermore the Panel notes that the disputed Domain Name refers to a website in which the Domain Name at issue is offered for sale. It seems therefore that the above four grounds are applicable to the case at issue and to support the Complainant's arguments of the Registrant's bad faith.
Specific CAC decisions on the above issues are a certain number all with the same final outcome: CAC 102331 on Boursoroma-client.net of 8 March 2019; CAC 102017 Boursorama-Fimatex.com of16 November 2018; CAC 101844 Cliet-Boursorama.net of 9 March 2018; CAC 101160 Boursorama.online of 18 March 2016; CAC 101369 Boursorama.top of 20.1.2017 and many others.
Considering the above, the Panel finds that the Complainant has made out the three elements that it must establish.
Massimo Cimoli

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **BOURSO.ONLINE**: Transferred

PANELLISTS

Name	**Massimo Cimoli**

DATE OF PANEL DECISION 2019-03-28

Publish the Decision