Decision for dispute CAC-UDRP-102826

Case number	CAC-UDRP-102826
Time of filing	2019-12-17 09:30:14
Domain names	boursoraama.com

Case administrator

Name	Šárka Glasslová (Case admin)

Complainant

Organization	Boursorama SA

Complainant representative

Organization	Nameshield (Enora Millocheau)

Respondent

Name	Lucille R. Ragan

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings that are pending or decided and that relate to the Disputed Domain Name.

IDENTIFICATION OF RIGHTS

Complainant states, and provides evidence to support, that it is the owner of certain trademark registrations in the United States and the European Union that consist of or contain the mark BOURSORAMA (the "BOURSORAMA Trademark"), including EU Reg. No. 001,758,614 for the mark BOURSORAMA (registered October 19, 2001) for use in connection with, inter alia, "Insurance underwriting; financial affairs; monetary affairs; real-estate affairs; financial information services; listing of financial information."

FACTUAL BACKGROUND

Complainant states that it was founded in 1995 and "is the online banking reference" in France "with more than 2,000,000 customers" and a website with the domain name <boursorama.com> (created March 1, 1998) that "has more than 30 million monthly visits." Complainant further states that it has "three core businesses: online brokerage, online financial information and online banking."

The Disputed Domain Name was created on December 10, 2019, and is not being used in connection with an active website.

Paragraph 4(a)(i): Complainant states, inter alia, that the Disputed Domain Name is confusingly similar to the BOURSORAMA Trademark because it "contains an obvious misspelling of the Complainant's trademark BOURSORAMA" and the "addition of the letter 'A' is not sufficient to avoid the likelihood of confusion."

Paragraph 4(a)(ii): Complainant states that Respondent has no rights or legitimate interests in the Disputed Domain Name because, inter alia, "Respondent is not identified in the Whois as the disputed domain name"; Respondent "is not related in any way with the Complainant"; and "the disputed domain name is a typosquatted version of the trademark BOURSORAMA."

Paragraph 4(a)(iii): Complainant states that the Disputed Domain Name was registered and is being used in bad faith because, inter alia, "[g]iven the distinctiveness of the Complainant's trademarks and reputation, it is reasonable to infer that the Respondent has registered the domain name with full knowledge of the Complainant's trademark"; "the misspelling of the trademark BOURSORAMA® was intentionally designed to be confusingly similar with the Complainant's trademark"; and although "the website related to the disputed domain name is currently inactive… it is not possible to conceive of any plausible actual or contemplated active use of the domain name by the Respondent that would not be illegitimate, such as by being a passing off, an infringement of consumer protection legislation, or an infringement of the Complainant's rights under trademark law."

PARTIES CONTENTIONS

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 UDRP).

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 UDRP).

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 UDRP).

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

Identical or Confusingly Similar: Paragraph 4(a)(i):

Based upon the trademark registration cited by Complainant, it is apparent that Complainant has rights in and to the BOURSORAMA Trademark.

As to whether the Disputed Domain Name is identical or confusingly similar to the BOURSORAMA Trademark, the relevant comparison to be made is with the second-level portion of the Disputed Domain Name only (i.e., "boursoraama") because "[t]he applicable Top Level Domain ('TLD') in a domain name (e.g., '.com', '.club', '.nyc') is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test." WIPO Overview of WIPO Overview 3.0, section 1.11.1.

Here, the Disputed Domain Name contains the BOURSORAMA Trademark in its entirety, simply adding an additional letter "a". As set forth in section 1.7 of WIPO Overview 3.0, "in cases where a domain name incorporates the entirety of a

trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing." Further, section 1.9 of WIPO Overview 3.0 states: " A domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element."

Accordingly, the Panel finds that Complainant has proven the first element of the UDRP.

Rights or Legitimate Interests: Paragraph 4(a)(ii)

Complainant states, inter alia, that "Respondent is not identified in the Whois as the disputed domain name"; Respondent "is not related in any way with the Complainant"; and "the disputed domain name is a typosquatted version of the trademark BOURSORAMA

WIPO Overview 3.0, section 2.1, states: "While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of 'proving a negative', requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element."

The Panel finds that Complainant has established its prima facie case and without any evidence from Respondent to the contrary, the Panel is satisfied that Complainant has satisfied the second element of the UDRP.

Registered and Used in Bad Faith: Paragraph 4(a)(iii)

Whether a domain name is registered and used in bad faith for purposes of the UDRP may be determined by evaluating four (non-exhaustive) factors set forth in paragraph 4(b) of the UDRP: (i) circumstances indicating that the registrant has registered or the registrant has acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of the registrant's documented out-of-pocket costs directly related to the domain name; or (ii) the registrant has registered the 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 the registrant has engaged in a pattern of such conduct; or (iii) the registrant has registered the domain name primarily for the purpose of disrupting the business of a competitor; or (iv) by using the domain name, the registrant has intentionally attempted to attract, for commercial gain, Internet users to the registrant's website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the registrant's website or location or of a product or service on the registrant's website or location.

WIPO Overview 3.0, section 3.1.4, states: "Panels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith."

Further, WIPO Overview 3.0, section 3.3, states: "From the inception of the UDRP, panelists have found that the non-use of a domain name (including a blank or 'coming soon"' page) would not prevent a finding of bad faith under the doctrine of passive holding.

"While panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put."

Accordingly, the Panel finds that Complainant has proven the third element of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **BOURSORAAMA.COM**: Transferred

PANELLISTS

Name	**Douglas M. Isenberg**

DATE OF PANEL DECISION 2020-01-29

Publish the Decision