Decision for dispute CAC-UDRP-102936

Case number	CAC-UDRP-102936
Time of filing	2020-02-25 10:59:52
Domain names	groupeboursorama.vip

Case administrator

Name	Šárka Glasslová (Case admin)

Complainant

Organization	BOURSORAMA SA

Complainant representative

Organization	Nameshield (Enora Millocheau)

Respondent

Organization	masengo sa

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 owner of the trademark BOURSORAMA (EUTM Registration No. 1758614) registered on October 19, 2001.

The Complainant is also the holder of several domain names, including the domain names <boursorama.com>, registered on March 1, 1998, and <boursorama-banque.com>, registered on May 26, 2005.

FACTUAL BACKGROUND

The Complainant, BOURSORAMA S.A., was founded in 1995 and is one of Europe's pioneers for businesses in online brokerage, financial information on the Internet and online banking. In France, BOURSORAMA is the online banking reference with over 2 million customers. The website <www.boursorama.com> is the first national financial and economic information site and first French online banking platform.

The disputed domain name, <groupeboursorama.vip>, was registered on February 17, 2020 which presently resolves to an inactive webpage. It is the Complainant's evidence that the disputed domain name used to resolve to a website which

copied the Complainant's official website <boursorama-banque.com>, in particular the Complainant's customer access.

COMPLAINANT:

The Complainant contends that the disputed domain name is confusingly similar to the BOURSORAMA mark on the basis that the disputed domain name wholly incorporates the Complainant's trademark and there is additional generic French term "GROUPE" to its trademark and a generic top-level domain name suffix ("gTLD") ".vip" which are insufficient to avoid the finding that the disputed domain name is confusingly similar to its BOURSORAMA mark.

The Complainant also argues that the Respondent does not have any rights or legitimate interests in the disputed domain name. The Respondent was not identified in the WhoIs database prior to verification by the registrar. In addition, the Respondent is not affiliated with the Complainant nor did the Complainant license or authorize the Respondent to use the BOURSORAMA mark.

The Complainant further asserts that the disputed domain name has been registered and is being used in bad faith as the Respondent should have known of the Complainant's BOURSORAMA mark at the time of registration of the disputed domain name. The Complainant also asserts that the domain name is being used in bad faith as the disputed domain name resolved to a website which copied the Complainant's official website and the Respondent was using the disputed domain name to pass off as the Complainant to retrieve personal information from the Complainant's customers, i.e. their user ID and password, and that such impersonation of a complainant in furtherance of a fraudulent scheme may be evidence of bad faith.

RESPONDENT:

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

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 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

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires the complainant to show that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights.

A registered trademark provides a clear indication that the rights in the mark shown on the trademark certificate belong to its respective owner. The Complainant has provided evidence that it owns the trademark BOURSORAMA.

The differences between the disputed domain name <groupeboursorama.vip> and the Complainant's BOURSORAMA trademark are the addition of a generic term "GROUPE" and gTLD ".vip".

It is established that the addition of a generic term would not prevent a finding of confusing similarity under the first element (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0"), section 1.8). It is also established that the addition of a gTLD to a disputed domain name does not avoid confusing similarity as the use of a TLD is technically required to operate a domain name (see Accor v. Noldc Inc. WIPO Case No. D2005-0016; F. Hoffmann-La Roche AG v. Macalve e-dominios S.A., WIPO Case No. D2006-0451; Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003; L'Oréal v Tina Smith, WIPO Case No. 2013-0820; Titoni AG v Runxin Wang, WIPO Case No. D2008-0820; and Alstom v. Itete Peru S.A. WIPO Case No. D2009-0877).

The disputed domain name consists of the Complainant's BOURSORAMA mark and the addition of the generic term "GROUPE" and gTLD ".vip" which in the Panel's view does not avoid confusing similarity with the Complainant's trademark (see Schneider Electric S.A. v. Domain Whois Protect Service / Cyber Domain Services Pvt. Ltd., WIPO Case No. D2015-2333; WIPO Overview 3.0, section 1.9).

Therefore, the Panel finds that the disputed domain name is confusingly similar to the BOURSORAMA mark and the element under paragraph 4(a)(i) of the Policy is satisfied.

B. Rights or Legitimate Interests

Paragraph 4(a)(ii) of the Policy requires the complainant to show that the respondent has no rights or interests in respect of the domain name. Once the complainant establishes a prima facie case that the respondent lacks rights or legitimate interests in the disputed domain name, the burden of production shifts to the respondent to show that it has rights or legitimate interests in respect to the disputed domain name (see WIPO Overview 3.0, paragraph 2.1).

In the present case, the Complainant has demonstrated prima facie that the Respondent lacks rights or legitimate interests in respect of the disputed domain names and the Respondent has failed to assert any such rights or legitimate interests.

The Complainant submitted evidence that it did not authorize or license the Respondent to use the BOURSORAMA mark (See OSRAM GmbH. v. Mohammed Rafi/Domain Admin, Privacy Protection Service INC d/b/a PrivacyProtect.org, WIPO Case No. D2015-1149; Sanofi-Aventis v. Abigail Wallace, WIPO Case No. D2009-0735).

In addition, the evidence submitted by the Complainant shows that all the details of the registrant on the WhoIs database are blocked by a privacy shield. Thus, there is no evidence that the Respondent is commonly known by the disputed domain names.

Finally, the Complainant has submitted evidence showing that the webpage of the disputed domain name copied the Complainant's official website, in particular for the collection of the Complainant's customers' personal information, and the Respondent impersonated the Respondent. Past panels have categorically held that that the use of a domain name for illegal activity such as impersonation or other types of fraud can never confer rights or legitimate interests on a respondent (See WIPO Overview 3.0, section 2.13).

The Respondent did not submit a response in the present case and did not provide any explanation or evidence to show rights or legitimate interests in the disputed domain name which is sufficient to rebut the Complainant's prima facie case.

The Panel is therefore of the view that the Respondent has no rights or legitimate interests in respect of the disputed domain name and accordingly, paragraph 4(a)(ii) of the Policy is satisfied.

C. Registered and Used in Bad Faith

The complainant must show that the respondent registered and is using the disputed domain name in bad faith (Policy, paragraph 4(a)(iii)). Paragraph 4(b) of the Policy provides circumstances that may evidence bad faith under paragraph 4(a)(iii) of the Policy.

The Complainant has submitted evidence that the disputed domain name <groupeboursorama.vip> redirected to a page that mimics the Complainant's official website which requests for personal information of customers. Such impersonation for the purpose of deceiving potential or existing customers of the Complainant is a strong indicator of bad faith use of the disputed domain name by the Respondent. Given that the use of a domain name for per se illegitimate activity can never confer rights or legitimate interests on a respondent, such behavior is manifestly considered evidence of bad faith (see Walgreen Co. v. Muhammad Azeem / Wang Zheng, Nicenic International Group Co., Limited, WIPO Case No. D2016-1607; WIPO Overview 3.0, section 3.1.4).

It is also the Complainant's evidence that the Respondent could not have registered the disputed domain name without prior knowledge of the Complainant's mark as the Respondent's name has no connection with the Complainant's BOURSORAMA mark which was registered long ago. This is another indicator of bad faith on the part of the Respondent (see Boursorama SA v. Estrade Nicolas, WIPO Case No. D2017-1463). The Complainant's evidence is also indication that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's mark.

In addition, the Respondent did not submit a Response in this proceeding and used a privacy shield to hide their identity, as shown in the WhoIs database page submitted by the Complainant. These are all further indications of the Respondent's bad faith, which were considered by the Panel.

Based on the evidence presented to the Panel, including the confusing similarity between the disputed domain name and the Complainant's mark, the fact that the disputed domain name redirects to pages containing PPC links and the fact that no Response was submitted by the Respondent, the Panel draws the inference 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. **GROUPEBOURSORAMA.VIP**: Transferred

PANELLISTS

Name	**Mr. Jonathan Agmon**

DATE OF PANEL DECISION 2020-03-28

Publish the Decision