Decision for dispute CAC-UDRP-103076

Case number	CAC-UDRP-103076
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Domain names	BOURSORAMA.STORE

Case administrator

Name	Šárka Glasslová (Case admin)

Complainant

Organization	BOURSORAMA SA

Complainant representative

Organization	Nameshield (Laurent Becker)

Respondent

Name	Abdallah IZEM

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 claims ownership of International Trademark Registration No. 1758614, registered on October 19, 2001 for the word BOURSORAMA in relation to a range of financial services such as online brokering, online banking, and the providing of financial information.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

Founded in 1995, the Complainant is a pioneer and leader in its three core businesses: online brokerage, financial information on the internet, and online banking. The Complainant has also owned the domain name <boursorama.com> since March 1, 1998 and it owns other domain names such as <boursorama.fr>. In France, the Complainant is the online banking reference with over 757,000 customers as of late 2015 and its website is the first national financial and economic information site and online banking platform in the country.

The disputed domain name <boursorama.store> was registered on May 19, 2020 and resolves to a parked website that displays commercial links.

RESPONDENT:

“Respondent has never put any commercial links on this domain, it has asked also the provider of this domain (namecheap) if they had put any commercial links, without its permission, but they confirmed the same thing that they never put anything on the webpage of this domain name.

When the Respondent registered this domain it did not know that is owned by the organization cited in the Complainant's files, the domain name was not owned by anyone, the day that the Respondent registered it, and its intent was never ever been to do something bad with it or to use in bad faith. The Respondent's very unique intent is to create an e-commerce store with it, as the TLD(.store) was convenient for that. The Respondent was trying to build an online business and to help also in same time its neighbor shop which is selling computer parts, that's where the idea came to use this domain name. If the Respondent's intent was bad it would not register this domain name with its real contact info.”

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

Paragraph 4(a)(i) of the Policy is a standing requirement which is satisfied if the disputed domain name is identical or confusingly similar to a trademark in which the Complainant has rights. Furthermore, it is not as extensive as the “likelihood of confusion” test for trademark infringement applied by many courts. Rather, under the Policy confusing similarity is commonly tested by comparing the Complainant’s trademark and the disputed domain name in appearance, sound, meaning, and overall impression. See Administradora de Marcas RD, S. de R.L. de C.V. v. DNS Manager / Profile Group, Case No. 101341 (CAC November 28, 2016).

In this case, the Complainant has submitted evidence that it owns a registration of the BOURSORAMA trademark and that it offers services in the area of online finance and information. Complainant also hosts its company websites at <boursorama.com> and <boursorama.fr>.

The disputed domain name reproduces Complainant’s trademark in its entirety and merely adds the “.store” TLD. Thus, the second level of the disputed domain name is identical to the Complainant’s trademark and might lead internet users to wrongly believe that the disputed domain name is endorsed by Complainant. Groupon, Inc. v. Hily Jiang, D2019-3213 (WIPO February 28, 2020) (“the disputed domain name [groupon.app] consists of the Complainant’s registered word trademark

GROUPON in its entirety. Accordingly, the Panel finds that the disputed domain name is identical to a trademark in which the Complainant has rights.").

Further, the extension ".store" at best adds no meaning to the second level of the disputed domain name but, at worst, conveys the impression that it leads to an outlet at which products or services bearing the Complainant's trademark may be purchased. LEGO Juris A/S v. Nadir Boukeraa, D2020-0874 (WIPO May 22, 2020) ("the use of "store" as the gTLD in the disputed domain name creates the overall impression that the disputed domain name will lead to a website at which an Internet user might reasonably believe that he/she may acquire only products or services offered by the Complainant under its LEGO mark.").

Accordingly, this Panel finds that the Complainant has rights to the BOURSORAMA trademark and that the disputed domain name is identical or confusingly similar to the Complainant's trademark. Thus, the Complainant has satisfied paragraph 4(a)(i) of the Policy.

B. The Respondent has no rights or legitimate interests in respect of the disputed domain name

Pursuant to paragraph 4(a)(ii) of the Policy, a complainant has the burden of making a prima facie showing that the respondent has no rights or legitimate interests in a domain name. Cephalon, Inc. v. RiskIQ, Inc., 100834 (CAC, September 12, 2014). Once this burden is met, it shifts to the respondent to demonstrate that it does have rights or legitimate interests in the domain name.

Paragraph 4(c) of the Policy offers respondents several examples of how to demonstrate their rights or legitimate interests to a domain name.

The Complaint states that the Respondent is not known to, is not affiliated with, and is not authorized by the Complainant to use its trademark in any way. The Respondent does not contest this. As such, the Panel concludes that the Respondent is not affiliated with the Complainant, nor is it authorized or licensed to use the Complainant's trademark or to seek registration of any domain name incorporating the aforementioned trademark.

Under Paragraphs 4(c)(i) and 4(c)(iii) of the Policy the Panel considers whether the Respondent is using the disputed domain name to make a bona fide offering of goods or services or whether it is making a legitimate non-commercial or fair use of the disputed domain name. Resolving a confusingly similar domain name to a page at which monetized pay-per-click links are offered is typically not considered to be a bona fide use in past UDRP decisions. See, Kimberly-Clark Worldwide, Inc. v. Carolina Rodrigues / Fundacion Comercio Electronico, FA 1894753 (FORUM June 4, 2020) (where a pay-per-click page resolved from the disputed domain, the Panel found that "Use of a disputed domain name to divert users to a site containing various commercial hyperlinks is not considered a bona fide offering of goods or services or legitimate noncommercial or fair use under Policy 4(c)(i) or (iii).").

Here, the Complainant has submitted a screenshot of the Respondent's website. The site displays pay-per-click links with such titles as "Crédit", "Boursorama Banque", and "Assurance Enterprise". These links either specifically name the Complainant or directly relate to its services in the fields of online banking, brokerage, and financial information. When a user clicks on one of these links it is brought to the commercial websites of third parties who, in some cases, may be the Complainant's competitors. Considering this evidence, it is apparent to this Panel that the Respondent is not using the disputed domain name for a bona fide offering of goods or services or in connection with a legitimate non-commercial or fair use.

For its part, the Respondent claims that its "very unique intent is to create an ecommerce store" with the disputed domain name. It further states that it is "trying to build an online business" in connection with his neighbor's shop "which is selling computer parts". However, the Respondent provides no evidence or even further details for these claims and so the Panel is not in a position to accept them solely on their face.

Further, the Respondent claims that “I have never put any commercial links on this domain” and further asserts that its registrar has confirmed “that they never put anything on the webpage of this domain name.” Although not referred to in its Response, the Respondent submits into evidence a screenshot of a website for the disputed domain name which bears the notice “This site can’t be reached”. However, the Panel notes that the failure to make use of a confusingly similar domain name, or the display of a blank page therefrom, is also typically not a bona fide use under the Policy. Société Air France v. Gary Van Til, Response Science Ltd, D2017-0203 (WIPO March 15, 2017) (no rights or legitimate interest found where “the websites to which the Disputed Domain Names resolve are blank.”); Victoria's Secret Stores Brand Management, Inc. v. Travis Martin c/o Dynadot Privacy, FA 1250363 (FORUM April 22, 2009) (“the failure of Respondent’s confusingly similar <victoriassecrret.com> domain name to resolve to any website is evidence that Respondent has not made a bona fide offering of goods and services under Policy 4(c)(i) or a legitimate noncommercial or fair use under Policy 4(c)(iii).”).

With respect to paragraph 4(c)(ii) of the Policy, the Respondent does not appear to be commonly known by the name Boursorama nor the disputed domain name. The Whois record for the disputed domain name, as revealed by the registrar, identifies the Respondent only as “Abdallah IZEM”. As the Respondent has not provided any evidence that it is commonly known by the disputed domain name, this Panel cannot conclude that it is so known and so no benefit is derived from Paragraph 4(c)(ii) of the Policy.

For all of the above-stated reasons, this Panel finds, by a preponderance of the evidence, that the Complainant has met its burden of proof and that the Respondent has not refuted this to show that it has any rights or legitimate interests in the disputed domain name. Thus, it is held that the Respondent has no rights or legitimate interests in respect to the disputed domain name under Paragraph 4(a)(ii) of the Policy.

C. The disputed domain name was registered and is being used in bad faith

Under paragraph 4(a)(iii) of the Policy, the complainant must demonstrate both that the domain name was registered and is being used in bad faith. Further guidance on that requirement is found in paragraph 4(b) of the Policy, which sets out four examples of actions by a respondent that may satisfy this burden of proof.

A threshold question here is whether, at the time that it registered the disputed domain name, Respondent was aware of the Complainant’s BOURSORAMA trademark. The registration of the Complainant's trademark preceded the creation of the disputed domain name by many years. Further, the Complainant asserts that “the term BOURSORAMA is a distinctive term, only known in relation to the Complainant. It has no meaning whatsoever in English, French or in any other language.” In support, the Complainant submits a screenshot of a page at its <boursorama.fr> which sets out some of the Complainant’s history, its size, and its geographic scope. Also submitted are screenshots of a Google search for the word “Boursorama” showing results that exclusively refer to the Complainant, as well as an article about the Complainant that appears in the French publication called Challenges. Further, prior UDRP panels have found that the Complainant’s trademark is well known. Boursorama S.A. v. WhoisGuard, Inc. / Margaret Robinson, D2020-0083 (WIPO February 25, 2020) (“The Panel is satisfied that the Complainant’s BOURSORAMA Mark is well known in its industry in Europe.”).

In its defence, the Respondent states that “when I registered this domain I did not know that is owned by the organization cited in your files, the domain name was not owned by anyone, the day that I registered it”. This statement is a bit confusing as it is unclear whether the Respondent is claiming that it had no knowledge of the BOURSOURAMA trademark or only of the ownership of the disputed domain name itself. However, even assuming the former, it must be noted that the Respondent is located in France, the Complainant’s primary country of operation, and the second level of the disputed domain name is an identical copy of the Complainant’s trademark which had been registered and used for nearly 20 years. As such, this Panel finds it to be far more likely than not that the Respondent was aware the Complainant’s trademark when it registered the disputed domain name and that it intentionally sought to copy the trademark.

Next, attention is given to the Complainant’s claim that the Respondent uses the disputed domain name in bad faith. Here, the disputed domain name was created in 2020 which is long after the issuance of the Complainant’s cited trademark registration and after the Complainant began use of its BOURSORAMA trademark in commerce. Paragraph 4(b)(iv) of the Policy states that bad faith may be found where a respondent intentionally attempts to attract, for commercial gain, internet

users to its website by creating a likelihood of confusion with a complainant's trademark as to the source, sponsorship, affiliation, or endorsement of its products or services. It has been held in many prior UDRP decisions that the operation of a pay-per-click website using a confusingly similar domain name is evidence of bad faith under Paragraph 4(b)(iv) of the Policy. Securian Financial Group, Inc. v. Zhichao Yang, FA 1893148 (FORUM May 21, 2020) („Use of a disputed domain name to display pay-per-click hyperlinks relating to competing goods or services can be evidence of bad faith disruption of a complainant's business under Policy 4(b)(iii) and an attempt to attract users for commercial gain under Policy 4(b)(iv).") As noted above, the screenshot submitted by the Complainant shows that the disputed domain name resolves to a website that displays pay-per-click links with titles that mention the Complainant and refer to services within its industry. This satisfies the Complainant's burden of proving that the disputed domain name is used in bad faith.

In rebuttal, the Respondent claims that he was "trying to build an online business" and help his neighbor's shop "which is selling computer parts". However, as noted, no evidence is submitted on this point by the Respondent and such unsupported statements are given little weight by Panels. Philipp Plein v. Seth Ward, D2015-1049 (WIPO August 3, 2015) ("the Panel is reluctant to accept the unsupported allegation of counterfeiting asserted by the Complainant as based only on mere conclusory statements.").

Further, the Respondent states that "I have never put any commercial links on this domain, I have asked also the provider of this domain (namecheap) if they had put any commercial links, without my permission, but they confirmed me same thing that they never put anything on the webpage of this domain name." These statements by the Respondent are rather difficult to accept as the Complainant has submitted a screenshot of the Respondent's website clearly showing the existence of pay-per-click links and the Respondent, itself, submitted a screenshot of its website showing no content (this screenshot is dated May 27, 2020, long after the present dispute was engaged suggesting that the Respondent had removed the prior content). Even taking the Respondent at his word, UDRP decisions are quite clear that the content of a website is solely the responsibility of a domain registrant as it is completely within their control to dictate the content of their website. Vance Int'l, Inc. v. Abend, FA 970871 (FORUM June 8, 2007) ("Although the websites accessed via the Disputed Domains may be operated by domain parking service providers, that activity is legally and practically attributable back to respondent.").

Finally, the Respondent states that "if my intent was bad I would not register this domain name with my real contact info." However, the WHOIS record submitted into evidence by the Complainant shows that the Respondent was using the Whoisguard, Inc. privacy protection service to shield his identity from those who would seek to investigate the owner of the disputed domain name. The Respondent's identity was only disclosed by its registrar after the filing of the present Complaint. As such, this assertion by the Respondent is not supported by the evidence and so it is not accepted by the Panel in considering the question of bad faith.

In view of the above-mentioned circumstances, this Panel finds, by a preponderance of the evidence, that the disputed domain name was registered and used in bad faith under Paragraph 4(b)(iv) of the Policy. Thus, the Complainant has satisfied paragraph 4(a)(iii) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **BOURSORAMA.STORE**: Transferred

PANELLISTS

Name	**Steven M. Levy, Esq.**

DATE OF PANEL DECISION 2020-06-09

Publish the Decision