Decision for dispute CAC-UDRP-103166

Case number	CAC-UDRP-103166
Time of filing	2020-07-17 09:32:29
Domain names	recover-bousorama.link

Case administrator

Name	Šárka Glasslová (Case admin)

Complainant

Organization	BOURSORAMA SA

Complainant representative

Organization	Nameshield (Laurent Becker)

Respondent

Organization	Cloud DNS Ltd

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any legal proceeding, pending or decided, which relates to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant relies on its company name and has sufficiently demonstrated to be owner of the European Union trademark BOURSORAMA no. 1758614, filed on 13 July 2000, registered on 19 October 2001 in the International classes (Nice Classification) 9, 16, 35, 36, 38, 41, 42.

The Complainant also owns a number of domain names, including the same distinctive wording BOURSORAMA, such as the domain name <boursorama.com>, registered since 1 March 1998, and <boursorama-banque.com>, registered since 26 May 2005.

FACTUAL BACKGROUND

The Complainant asserts and provides evidentiary documentation of the following facts, which are not contested by the Respondent.

The Complainant is a French corporation founded in 1995, a subsidiary of Société Générale. The Complainant is pioneer and leader in three core businesses: online banking, online brokerage and online financial information.

In France, the Complainant is the online banking reference with over 2 million customers. The Complainant's main website (<boursorama.com>) is the first national financial and economic information site and the first French online banking platform.

The disputed domain name was registered by the Respondent on 1 July 2020. At the moment of the filing of the Complaint, the disputed domain name was inactive.

The screenshot of the disputed domain name captured by the Czech Arbitration Court on 20 July 2020 also shows that the disputed domain name did not resolve to any active website.

At the moment of the drafting of the present decision, the disputed domain name resolved to a pay-per-click page with third parties' links related to online trading.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant contends that the disputed domain name constitutes a misspelled version of its trademark. Neither the deletion of the letter <R> in the Complainant's trademark, nor the addition of the generic term <recover>, a hyphen and the use of the TLD <.link> are sufficient to escape the finding that the disputed domain name is confusingly similar to the Complainant’s trademark or change the overall impression of the designation as being connected to such mark.

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant affirms that the Respondent is not affiliated with nor authorized by the Complainant in any way. The Complainant does not carry out any activity for, nor has any business with the Respondent. Neither license nor authorization has been granted to the Respondent to make any use of the Complainant’s trademark, or apply for registration of the disputed domain name by the Complainant.

The Complainant finally contends that the registration of disputed domain name with an intentional misspelling of the Complainant's well-known trademark and, thus, the constructive knowledge on behalf of the Respondent of the Complainant’s potential rights, as well as the non-use of the disputed domain name, clearly shows the Respondent’s bad faith both in the registration and in the use of the disputed domain name.

The Complainant, therefore, requests the transfer of the disputed domain name.

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

Under paragraph 4(a) of the UDRP Policy, the Complainant is required to prove each of the following three elements to succeed in the administrative proceeding:
(i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
(ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
(iii) the disputed domain name has been registered and is being used by the Respondent in bad faith.

I. RIGHTS AND IDENTITY OR CONFUSING SIMILARITY

The Complainant has established to have rights in the trademark consisting in the distinctive word BOURSORAMA, corresponding to its company name, since 2000. The Complainant's mark was registered prior to the registration of the disputed domain name (1 July 2020) and, although under the Policy it is not a required that the Complainant holds trademark within the territory where the Respondent is located, the Panel notes that such trademark is valid in the entire territory of the European Union of which the Respondent's country is a Member State.

The disputed domain name consists of the words <recover> and <bousorama>, a hyphen between the two words and the TLD <.link>.

In assessing identity or confusing similarity, the Panel finds that the disputed domain name is a typosquatted version of the Complainant's trademark. The Respondent merely deleted the letter <R> of the Complainant's trademark.

A domain name which contains sufficiently recognizable aspects of the relevant mark and uses a common, obvious, or intentional misspelling of such trademark is considered by UDRP Panels confusingly similar to the relevant mark for purposes of the first element (see paragraph 1.9 WIPO Overview 3.0). Examples of such typos include (i) adjacent keyboard letters, (ii) substitution of similar-appearing characters (e.g., upper vs lower-case letters or numbers used to look like letters), (iii) the use of different letters that appear similar in different fonts, (iv) the use of non-Latin internationalized or accented characters, (v) the inversion of letters and numbers, or (vi) the addition or interspersion of other terms or numbers. The practice of registering a domain name in an attempt to take advantage of Internet users' typographical errors is commonly called typosquatting.

The addition of the generic word <recover> to the Complainant's trademark and the hyphen neither affects the attractive power of such trademark, nor is sufficient to distinguish the disputed domain name from the Complainant's mark (see paragraph 1.8 WIPO Overview 3.0).

UDRP Panels also agree that the TLD is usually to be ignored for the purpose of determination of identity or confusing similarity between the disputed domain name and the Complainant's trademark, as it is a technical requirement of the registration. The practice of disregarding the TLD in determining identity or confusing similarity is applied irrespective of the particular TLD, including with regard to new generic TLDs (like in this case <.link>); the ordinary meaning ascribed to a particular TLD would not necessarily impact assessment of the first element (see paragraph 1.11.1 WIPO Overview 3.0).

Therefore, this Panel finds that the Complainant has proven the first element of the paragraph 4(a) of the Policy and the disputed domain name is confusingly similar to the Complainant's trademark.

II. THE RESPONDENT'S LACK OF RIGHTS OR LEGITIMATE INTERESTS TO THE DISPUTED DOMAIN NAME

It is a consensus view of UDRP panels that the Complainant shall establish a prima facie case that the Respondent lacks

rights or legitimate interests in the disputed domain name to shift the burden of proof to the Respondent (see paragraph 2.1 WIPO Overview 3.0: <[...] 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 disputed domain name was registered by Cloud DNS Ltd, located in Bulgaria.

The Complainant has no relationship with the Respondent whatsoever. The Respondent has never received any approval of the Complainant, expressed or implied, to use the Complainant's trademark or to register the disputed domain name. There is no evidence that the Respondent has been commonly known by the disputed domain name or has acquired any rights in a trademark or trade name corresponding to the disputed domain name.

At the moment of the filing of the Complaint, the disputed domain name, which is a typosquatted version of the Complainant's trademark, was inactive. The screenshot of the disputed domain name captured by CAC on 20 July 2020 shows that the disputed domain name did not resolve to any active website. At the moment of the drafting of the present decision, the disputed domain name resolved to a pay-per-click page with third parties' links related to online trading (business in which the Complainant is active). None of such uses of the disputed domain name is a legitimate non-commercial or fair use, without intent for commercial gain to misleadingly divert consumers or to tarnish the Complainant’s marks.

While the Complainant has established its prima facie case, the Respondent has not submitted a Response to the Complaint and, thus, has failed to invoke any of the circumstances, which could demonstrate any rights or legitimate interests in the disputed domain name.

Therefore, the Panel is satisfied that the Complainant has met the second requirement of the paragraph 4(a) of the Policy and finds that the Respondent lacks rights or legitimate interests to the disputed domain name.

III. BAD FAITH REGISTRATION AND USE OF THE DISPUTED DOMAIN NAME

The Complainant has sufficiently demonstrated to be owner of the well-known BOURSORAMA trademark, registered prior to the registration of the disputed domain name and valid in the territory of Respondent.

The disputed domain name is confusingly similar to Complainant's trademark, since it contains sufficiently recognizable aspects of the such mark and uses a common, obvious, or intentional typo of such trademark (the deletion of the letter <R>). The disputed domain name differs from the Complainant's trademark by merely adding the generic term <recover> and the hyphen, which are insufficient to negate the confusing similarity of the disputed domain name to such mark.

The Complainant, regrettably, has been victim of typosquatting numerous times (see WIPO Case no. D2019-1820, WIPO Case no. D2017-1463, CAC Case no. 101131).

Given the good-will and reputation of the Complainant and its mark acquired over the years, it is inconceivable that the Respondent could have registered the disputed domain name for a mere chance without actual knowledge of the Complainant and its trademark and the intention to exploit such reputation by diverting traffic away from the Complainant’s website.

Concerning non-use, UDRP Panels consider the following factors when applying the passive holding doctrine (see paragraph 3.3 WIPO Overview 3.0):
- the degree of distinctiveness or reputation of the Complainant’s mark;
- the failure of the Respondent to submit a response or to provide any evidence of actual or contemplated good faith use;
- the Respondent’s concealing its identity or use of false contact details;
- the implausibility of any good faith use to which the disputed domain name may be put.

In the light of the above, the Panel finds that it is implausible that there was any good faith use to which the disputed domain name might have been put.

Moreover, the fact that, during the present administrative proceeding, the disputed domain name was put in active use by the Respondent and, at the moment of the drafting of the present decision, resolved to a pay-per-click page with third parties' links related to online trading (business in which the Complainant is active), confirms the Respondent's bad faith intention to switch from its passive holding to the clear and active exploitation of the Complainant's trademark.

UDRP Panels may indeed consider the change in the content of any website to which the domain name directs and the timing thereof in assessing whether the Respondent’s registration and use of a domain name is in bad faith (see paragraph 3.2.1 WIPO Overview 3.0).

Therefore, the Panel finds that the Respondent, by using passively and then actively the disputed domain name, has intentionally attempted to attract, for commercial gain, Internet users to its 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 its web site or location or of a product or service on its web site or location (paragraph 4(b)(iv) of the Policy).

On the basis of the statements and documents submitted by the Complainant, the case file forwarded by CAC to the Panel and the Panel's own search (limited to visiting the website linked to the disputed domain name - see paragraphs 10 and 12 UDRP Rules and paragraph 4.8 WIPO Overview 3.0), the Panel determines that the disputed domain name has been registered and is being used in bad faith.

The disputed domain name is to be transferred to the Complainant.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **RECOVER-BOUSORAMA.LINK**: Transferred

PANELLISTS

Name	**Avv. Ivett Paulovics**

DATE OF PANEL DECISION 2020-08-22

Publish the Decision