Decision for dispute CAC-UDRP-103246

Case number	CAC-UDRP-103246
Time of filing	2020-08-20 11:28:00
Domain names	boursorafinance.com

Case administrator

Name	Olga Slanařová (Case admin)

Complainant

Organization	BOURSORAMA SA

Complainant representative

Organization	Nameshield (Laurent Becker)

Respondent

Name	Ozin Franck

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

The Complainant is the owner of the following trademark registrations:

- BOURSORAMA, EUTM registration No. 1758614, filed on 13 July 2000, and registered on 19 October 2001, for goods and services in classes 9, 16, 35, 36, 38, 41 and 42;

- BOURSO, French registration No. 3009973, of 22 February 2000, for goods and services in classes 9, 35, 36, 38, 41 and 42.

The Complainant also owns and operates the domain name <boursorama.com>, which was registered on 13 March 1998.

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:

The Complainant is a French financial institution, founded in 1995, and a pioneer and leader in online brokerage, financial information on the Internet and online banking. In France, the Complainant has over 2 million customers and its portal at www.boursorama.com is the first national financial and economic information site and the first French online banking

platform.

The disputed domain name was registered on 16 August 2020 and is inactive.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

According to the Complainant, the disputed domain name is confusingly similar to the Complainant's trademarks as it fully incorporates them and the addition of the term "finance" does not change the overall impression that the disputed domain name is connected to the Complainant.

The Complainant further maintains that the Respondent lacks rights or legitimate interests in the disputed domain name as the Respondent is not connected with the Complainant and is not one of the Complainant's affiliates or licensees. Moreover, the Complainant never authorized the Respondent to make use of its trademarks or to apply for the registration of the disputed domain name.

The Complainant also claims that the Respondent is not commonly known by the Disputed domain name as it is not listed in the relevant WhoIs information as the disputed domain name.Lastly, the Complainant points out that the disputed domain name is not used in connection with a bona fide offering of goods or services or for a legitimate, noncommercial or fair use, as it resolves to an inactive website.

In relation to the registration and use of the disputed domain name in bad faith, the Complainant asserts that its trademarks are well-known and therefore it is reasonable to infer that the Respondent registered the disputed domain name with full knowledge of the Complainant's trademark. The addition of the term "finance" to the Complainant's trademark is further evidence of the fact that the Respondent was aware of the Complainant's trademark at the time of the registration of the disputed domain name.

Finally, the Complainant maintains that under certain circumstances the passive holding of a domain name cannot prevent a finding of bad faith and that the case at issue is one where the passive holding of the disputed domain name cannot avoid bad faith.

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

I. The Disputed Domain Name is 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).

The Complainant has successfully demonstrated to be the owner of the trademarks BOURSO and BOURSORAMA registered in France and in the European Union for several classes of goods and services, and in particular for financial services in class 36. These trademarks predate the date of registration of the disputed domain name. The disputed domain name <boursorafinance.com> reflects the trademark BOURSO and a great portion of the trademark BOUSORAMA, and includes the generic word "finance", which refers to the primary activity of the Complainant. It is therefore highly likely that in viewing the disputed domain name the Internet users will immediately associate it with the Complainant's trademarks.

Accordingly, the Panel concludes that the Complainant has proved that the disputed domain name is confusingly similar to the Complainant's trademarks.

II. The Respondent lack of rights or legitimate interests in the Disputed Domain Name (within the meaning of paragraph 4(a)(ii) of the Policy).

According to the WIPO Overview 3.0. "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 Complainant has indicated that the Respondent is not affiliated with the Complainant, nor is a licensee of the Complainant, and that the Complainant does not carry out any activity for, nor has any business with, the Respondent. It has also indicated that it never granted any authorization to the Respondent to register a domain name encompassing its earlier trademarks. The Panel further notices that nothing in the file shows that the Respondent has been commonly known by the disputed domain name, and that the disputed domain name is not currently used in connection with a bona fide offering of goods and services or a legitimate noncommercial or fair use, as it is passively held.
The Respondent had the opportunity to rebut the Complainant’s arguments and to provide evidence attesting to its rights or legitimate interests in the disputed domain name, but it chose not to file a Response. Hence, the Panel finds that the Complainant’s assumptions are sufficient to demonstrate that the Respondent lacks rights or legitimate interests in the disputed domain name.

III. 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).

As far as registration in bad faith is concerned, the Panel notes that the Respondent registered a domain name, which includes the trademark BOURSO, and almost all the trademark BOURSORAMA. Furthermore, the disputed domain name contains the generic term "finance", which coincides with the Complainant's business. Considering the above and the fact that the Complainant's trademark is distinctive and well-known (as established in several other UDRP decisions, such as CAC Decision No. 103166, CAC Decision No. 103108, and CAC Decision 102866, to name only a few), the Panel concludes that the Respondent was aware of the Complainant's trademark and activity at the time of the registration of the disputed domain name. The unauthorized registration of a domain name confusingly similar to a third party's distinctive and well-known trademark, being aware of its existence and lacking any legitimate right or interest, amounts to registration in bad faith.

As far as use in bad faith is concerned, the fact that the disputed domain name is passively used cannot prevent a finding of bad faith. In order to evaluate whether the disputed domain name has been used in bad faith, in accordance with the requirement set forth in paragraph 4(a)(iii) of the Policy, it is necessary to evaluate the general circumstances of the case, taking into account (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, and (iv) the implausibility of any good faith use to which the domain name may be put (see paragraph 3.3. of the WIPO Jurisprudential Overview 3.0).

In the instant case, the Complainant's trademarks are distinctive and well-known, the Respondent did not submit a Response and no plausible good faith use of the disputed domain name seems to be possible.

For all reasons mentioned above, the Panel concludes that the Respondent registered and used the disputed domain name in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **BOURSORAFINANCE.COM**: Transferred

PANELLISTS

Name	**Angelica Lodigiani**

DATE OF PANEL DECISION 2020-09-25

Publish the Decision