Decision for dispute CAC-UDRP-103377

Case number	CAC-UDRP-103377
Time of filing	2020-10-30 11:20:21
Domain names	boursosecure.com, boursosecure.info, boursosecure.net, boursosecure.org

Case administrator

Organization	Denisa Bilík (CAC) (Case admin)

Complainant

Organization	BOURSORAMA SA

Complainant representative

Organization	Nameshield (Laurent Becker)

Respondent

Name	Franck Laloy

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other pending or decided legal proceedings which relate to the disputed domain nameS.

IDENTIFICATION OF RIGHTS

The Complainant is the owner, among others, of trademarks BOURSO and BOURSORAMA the oldest being registered since March 13, 1998:

-INPI (the France National Industrial Property Institute) trademark registration number 3009973 “BOURSO”, registered on February 22, 2000;

-INPI (the France National Industrial Property Institute) trademark registration number 98723359 “BOURSORAMA”, registered on March 13, 1998; and

-EUIPO trademark registration number 1758614 “BOURSORAMA”, registered on October 19, 2001.

The Complainant also owns a number of domain names, including the same distinctive wording BOURSORAMA, of which the domain name <boursorama.com>, registered since March 1, 1998, and BOURSO, such as <bourso.com> since January 11, 2000.

FACTUAL BACKGROUND

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

Founded in 1995, BOURSORAMA S.A. (the Complainant) grows in Europe with the emergence of e-commerce and the continuous expansion of the range of financial products online. In France, BOURSORAMA is the online banking reference with over 757,000 customers in late 2015. The portal <boursorama.com> is the first national financial and economic information site and online banking platform.

The Complainant is the owner, among others, of trademarks BOURSO and BOURSORAMA as identified above.

The disputed domain names were registered on October 21, 2020 and redirect to potentially harmful webpages which were blocked due to potential phishing scams or remain inactive.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

PARTIES' CONTENTIONS:

COMPLAINANT:
i) The Complainant has rights in the marks “BOURSO” and “BOURSORAMA” based on INPI and EUIPO trademark registrations. The disputed domain names exactly reproduce its trademark “BOURSO”, with the mere addition of the term “SECURE.”

ii) The Respondent has no rights or legitimate interests in respect of the disputed domain names. The Respondent is not known by the Complainant; the Respondent is not affiliated with him nor authorized by him in any way; he is not related in any way to its business; the Complainant does not carry out any activity for, nor has any business with the Respondent; and the disputed domain names, especially <boursosecure.com >, are used to potentially harmful webpages which were blocked due to potential phishing scams. The passive holding of the remaining disputed domain names does not constitute the Respondent’s rights or legitimate interests.

iii) The Respondent has registered and is using the disputed domain names in bad faith. The disputed domain names include the term “secure”, which in this case may serve as an additional evidence of the registration of the disputed domain names in bad faith. The Respondent had actual knowledge of Complainant’s trademark when he registered the disputed domain names.

RESPONDENT:
The Respondent did not submit a Response.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain names are 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 names (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 names have been registered and are 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

Paragraph 15(a) of the Rules for the UDRP ('the Policy') instructs this Panel to "decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable."

Paragraph 4(a) of the Policy requires that Complainant must prove each of the following three elements to obtain an order that a domain name should be cancelled or transferred:

(1) the domain name registered by Respondent is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
(2) Respondent has no rights or legitimate interests in respect of the domain name; and
(3) the domain name has been registered and is being used in bad faith.

In view of the Respondent's failure to submit a response, the Panel shall decide this administrative proceeding on the basis of the Complainant's undisputed representations pursuant to paragraphs 5(f), 14(a) and 15(a) of the Rules and draw such inferences it considers appropriate pursuant to paragraph 14(b) of the Rules. The Panel is entitled to accept all reasonable allegations and inferences set forth in the Complaint as true unless the evidence is clearly contradictory. See Vertical Solutions Mgmt., Inc. v. webnet-marketing, inc., FA 95095 (Forum July 31, 2000) (holding that the respondent's failure to respond allows all reasonable inferences of fact in the allegations of the complaint to be deemed true); see also Talk City, Inc. v. Robertson, D2000-0009 (WIPO February 29, 2000) ("In the absence of a response, it is appropriate to accept as true all allegations of the Complaint.").

Rights

The Complainant contends that it has rights in the marks "BOURSO" and "BOURSORAMA" based on INPI trademark registration number 3009973 "BOURSO", registered on February 22, 2000; INPI trademark registration number 98723359 "BOURSORAMA", registered on March 13, 1998; and EUIPO trademark registration number 1758614 "BOURSORAMA", registered on October 19, 2001. The Complainant has provided the Panel with each copy of the trademark registrations at issue. Registration of a mark with national and regional trademark authorities sufficiently establishes the required rights in the mark for purposes of the Policy. As such, the Panel finds that the Complainant has established its rights in the marks "BOURSO" and "BOURSORAMA."

The Complainant further contends that the disputed domain names are confusingly similar to the Complainant's trademarks "BOURSO" and "BOURSORAMA." The Complainant asserts that the disputed domain names exactly reproduce its trademark BOURSO in its entirety. The addition of the generic term "SECURE" is not sufficient elements to escape the finding that the disputed domain names are confusingly similar to the Complainant's trademarks.

The Panel agrees with the Complainant and notes that the addition of gTLDS such as '.com', '.info', '.net', 'org' and a descriptive term is generally disregarded in the assessment under paragraph 4(a)(i) of the Policy when comparing disputed domain name and trademarks. Therefore, the Panel finds that the disputed domain names are confusingly similar to the Complainant's trademark "BOURSO."

THE RESPONDENT HAS NO RIGHTS OR LEGITIMATE INTERESTS IN RESPECT OF THE DOMAIN NAME

The Complainant must first make a prima facie case that Respondent lacks rights and legitimate interests in the disputed domain name under Policy paragraph 4(a)(ii), then the burden shifts to Respondent to show it does have rights or legitimate interests. See Croatia Airlines d. d. v. Modern Empire Internet Ltd., WIPO Case No. D2003-0455 (the complainant is required to make out a prima facie case that the respondent lacks rights or legitimate interests. Once such prima facie case is made,

the respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the respondent fails to do so, the complainant is deemed to have satisfied paragraph 4(a) (ii) of the Policy). See also Advanced International Marketing Corporation v. AA-1 Corp, FA 780200 (Forum November 2, 2011) (finding that a complainant must offer some evidence to make its prima facie case and satisfy Policy paragraph 4(a)(ii)).

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain names. The Respondent is not known by the Complainant; the Respondent is not affiliated with him nor authorized by him in any way; he is not related in any way to its business; the Complainant does not carry out any activity for, nor has any business with the Respondent; and the disputed domain names, especially <boursosecure.com >, are used to potentially harmful webpages which were blocked due to potential phishing scams. The passive holding of the remaining disputed domain names does not constitute the Respondent's rights or legitimate interests.

The Panel finds that the Complainant has made out a prima facie case that arises from the considerations above. All of these matters go to make out the prima facie case against the Respondent. As the Respondent has not filed a Response or attempted by any other means to rebut the prima facie case against it, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain names.

Bad faith

Paragraph 4(b) of the Policy provides a non-exclusive list of circumstances that evidence registration and use of a domain name in bad faith. Any one of the following is sufficient to support a finding of bad faith:
(i) circumstances indicating that the respondent has registered or 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 the complainant, for valuable consideration in excess of the respondent's documented out-of-pocket costs directly related to the domain name; or
(ii) the respondent 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 respondent has engaged in a pattern of such conduct; or
(iii) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
(iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its 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 respondent's website or location or of a product or service on the respondent's website or location.

The Complainant contends that the Respondent has registered and is using the disputed domain names in bad faith. The disputed domain names include the term "secure", which in this case may serve as an additional evidence of the registration of the disputed domain names in bad faith. The Respondent had actual knowledge of Complainant's trademark when he registered the disputed domain names in light of the notoriety of the Complainant's marks.

The Panel observes that while constructive knowledge is insufficient to support a finding of bad faith, actual knowledge can be used to demonstrate a respondent's bad faith registration and use. See Orbitz Worldwide, LLC v. Domain Librarian, FA 1535826 (Forum February 6, 2014) ("The Panel notes that although the UDRP does not recognize 'constructive notice' as sufficient grounds for finding bad faith per paragraph 4(a)(iii) of the Policy, the Panel here finds actual knowledge through the name used for the domain and the use made of it."). The Panel infers, due to the notoriety of the Complainant's marks that the Respondent had actual knowledge of the Complainant's rights in "BOURSO" and "BOURSORAMA" marks before the registration of the disputed domain names, which constitutes bad faith registration and use per paragraph 4(a)(iii) of the Policy.

The Complainant contends that the disputed domain names, especially <boursosecure.com >, are used to potentially harmful webpages which were blocked due to potential phishing scams. The remaining three disputed domain names <boursosecure.info>, <boursosecure.net>, and <boursosecure.org> remain inactive.

The Panel agrees that the passive holding of a domain name does not necessarily circumvent a finding that the domain name is being used in bad faith within the requirements of paragraph 4(a)(iii) of the Policy. See Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003 (finding that in considering whether the passive holding of a domain name, following a bad faith registration of it, satisfies the requirements of paragraph 4(a)(iii), the panel must give close attention to all the circumstances of the respondent's behavior, and a remedy can be obtained under the Policy only if those circumstances show that the respondent's passive holding amounts to acting in bad faith.).

The particular circumstances of this case that the Panel has considered are:

i) Founded in 1995, BOURSORAMA S.A. (the Complainant) grows in Europe with the emergence of e-commerce and the continuous expansion of the range of financial products online. In France, BOURSORAMA is the online banking reference with over 757,000 customers in late 2015. The portal <boursorama.com> is the first national financial and economic information site and online banking platform. Therefore, the Complainant's trademarks "BOURSO" and "BOURSORAMA" are distinctive and well-known; and

ii) The Respondent has provided no evidence whatsoever of any actual or contemplated good faith use by it of the disputed domain names.

Taking into account all of the above, the Panel concludes that the Respondent's passive holding of the disputed domain names constitutes bad faith under Policy paragraph 4(a)(iii) and that the Respondent is using the disputed domain names in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **BOURSOSECURE.COM**: Transferred
2. **BOURSOSECURE.INFO**: Transferred
3. **BOURSOSECURE.NET**: Transferred
4. **BOURSOSECURE.ORG**: Transferred

PANELLISTS

Name	**Mr. Ho-Hyun Nahm, Esq.**

DATE OF PANEL DECISION 2020-11-28

Publish the Decision