Decision for dispute CAC-UDRP-103399

Case number	CAC-UDRP-103399
Time of filing	2020-11-09 09:13:53
Domain names	boursorama-espace.com

Case administrator

Organization	Denisa Bilík (CAC) (Case admin)

Complainant

Organization	BOURSORAMA SA

Complainant representative

Organization	Nameshield (Laurent Becker)

Respondent

Name	tadouri nadia

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 has submitted evidence, which the Panel accepts, showing that it is the registered owner of the EU trademark BOURSORAMA. (Registration n°1758614).

Moreover, the Complainant is also the owner of the domain names bearing the sign “BOURSORAMA” such as <boursorama.com>.

FACTUAL BACKGROUND

The Complainant, BOURSORAMA S.A., is a leading company in three core business areas: online brokerage, financial information on the Internet and online banking.

The Complainant holds EU trademark registration for “BOURSORAMA” (Registration n°1758614) and the Complainant also holds domain names bearing “BOURSORAMA” such as <boursorama.com>.

The Respondent registered the disputed domain name <boursorama-espace.com> on October 26, 2020 and the domain

name is currently inactive.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant, BOURSORAMA S.A., founded in 1995 and is a leading company in finance with over 2 million customers in France.

The Complainant holds the EU trademark registration for the trademark “BOURSORAMA” and also is the owner of several domain names bearing “BOURSORAMA”.

1. THE DISPUTED DOMAIN NAME IS CONFUSINGLY SIMILAR

The Complainant alleges that the disputed domain name <boursorama-espace.com> is confusingly similar to the Complainant’s trademark “BOURSORAMA” as it bears the Complainant’s trademark as a whole.

The Complainant states that the addition of the descriptive term “ESPACE” which means “space” is not sufficient to abolish the confusing similarity between the disputed domain name and the “BOURSORAMA” trademark.

Further, the addition of the GTLD “.com” does not abolish the confusing similarity.

The Complainant states that many prior Panel decisions have accepted the Complainant’s rights such as:
- WIPO Case No. D2019-0653, Boursorama S.A. v. Privacy Protection / Natalya Rustmovna <boursorama-connexion.site>;
- WIPO Case No. D2019-0422, Boursorama S.A. v. sabine jeane <b-sorama-group.com>;
- CAC Case No. 102340, BOURSORAMA SA v. Céline Levy <boursorama-clients.com>.

2. NO RIGHTS OR LEGITIMATE INTERESTS IN RESPECT OF THE DISPUTED DOMAIN NAME

The Complainant states that the Respondent has no rights in the disputed domain name as the Respondent is not known as the disputed domain name.

Moreover, the Complainant states that neither license nor authorization has been granted to the Respondent to use the Complainant’s trademark “BOURSORAMA”.

The Complainant argues that the disputed domain name is suspended for abusive use.

The Complainant also argues that the Respondent did never use the disputed domain name and it demonstrates the lack of rights or legitimate interests.

3. THE DISPUTED DOMAIN NAME WAS REGISTERED AND IS USED IN BAD FAITH

The Complainant states that the disputed domain name was registered and is being used in bad faith.

The Complainant asserts that the Complainant’s trademark is widely-known and that the Respondent a French citizen, has registered and used the disputed domain name with full knowledge of the Complainant’s trademark “BOURSORAMA”.

The Complainant refers to earlier Panel decisions:
- CAC Case No. 101131, BOURSORAMA v. PD Host Inc - Ken Thomas (“In the case at hand, the Respondent acted in bad faith especially because the Respondent, who has no connection with the well-known "BOURSORAMA" trademark, registered a domain name, which incorporates the well-known "BOURSORAMA" trademark and it is totally irrealistic to believe that the

Respondent did not know the Complainant's trademark when registered the domain name <wwwboursorama.com>.");
- WIPO Case No. D2017-1463, Boursorama SA v. Estrade Nicolas ("Given the circumstances of the case including the evidence on record of the longstanding of use of the Complainant's trademark, and the distinctive nature of the mark BOURSORAMA, it is inconceivable to the Panel in the current circumstances that the Respondent registered the disputed domain name without prior knowledge of the Complainant and the Complainant's mark.").

The Complainant also states that the disputed domain name is not being used for any bona fide offering and this fact, no use of the disputed domain name, alone is sufficient to prove the bad faith of the Respondent according to many WIPO UDRP decisions.

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

Paragraph 15 of the Rules provides that the Panel is to decide the Complaint on the basis of the statements and documents submitted and in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

In this context, the Panel also notes that the burden of proof is on the Complainant to make out its case and past UDRP panels have consistently said that a Complainant must show that all three elements of the Policy have been made out before any order can be made to transfer a domain name.

For the Complainant to succeed it must prove, within the meaning of paragraph 4(a) of the Policy, that:
A. The disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
B. the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
C. the disputed domain name has been registered and is being used in bad faith.

The Panel will therefore deal with each of these requirements in turn.

A. IDENTICAL OR CONFUSINGLY SIMILAR

The Policy simply requires the Complainant to demonstrate that the disputed domain name is identical or confusingly similar to a trademark in which the Complainant has rights. The Panel is satisfied that the Complainant is the owner of registration of the "BOURSORAMA" trademark.

The Panel finds that the disputed domain name contains the Complainant’s trademark “BOURSORAMA” as a whole and the addition of the descriptive term “ESPACE” is not enough to abolish the similarity.

Moreover, the addition of the gTLD “.CLOUD” is not enough to abolish the similarity.

The Panel is of the opinion that the Internet users will easily fall into false impression that the disputed domain name is an official domain name of the Complainant. The Panel recognizes the Complainant's rights and concludes that the disputed domain name is confusingly similar with the Complainant's trademark. Therefore, the Panel concludes that the requirements of paragraph 4(a)(i) of the Policy is provided.

B. NO RIGHTS OR LEGITIMATE INTERESTS

Under paragraph 4(a)(ii) of the Policy, the complainant has the burden of establishing that the respondent has no rights or legitimate interests in respect of the domain name.

It is open to a respondent to establish its rights or legitimate interests in a domain name, among other circumstances, by showing any of the following elements:

(i) before any notice to the respondent of the dispute, the use or making demonstrable preparations to use the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or

(ii) the respondent of the dispute (as an individual, business, or other organization) has been commonly known by the domain name, even if it has acquired no trademark or service mark rights; or

(iii) the respondent of the dispute is making a legitimate non-commercial or fair use of the domain name, without an intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

Thus, if the Respondent proves any of these elements or indeed anything else that shows that it has a right or legitimate interest in the disputed domain name, the Complainant will have failed to discharge its burden of proof and the Complaint will fail. The burden is on the Complainant to demonstrate a prima facie case that the Respondent does not have rights or legitimate interests in the disputed domain name. Once the Complainant has made out a prima facie case, then the Respondent may, inter alia, by showing one of the above circumstances, demonstrate rights or legitimate interests in the disputed domain name.

The Complainant contends that the Respondent has nothing to do with the Complaint and any use of the trademark “BOURSORAMA” has to be authorized by the Complainant and there is no such authorization. Moreover, the disputed domain name has no relation with the Respondent and the Respondent is not commonly known as the disputed domain name.

In the absence of a response, the Panel accepts the Complainant's allegations as true that the Respondent has no authorization to use the Complainant’s trademark in the disputed domain name. Hence, as the Complainant has made out its prima facie case, and as the Respondent has not demonstrated any rights or legitimate interests as illustrated under paragraph 4(c) of the Policy, nor has the Panel found any other basis for finding any rights or legitimate interests of the Respondent in the disputed domain dame, the Panel concludes that the Complainant has satisfied the requirements of paragraph 4(a)(ii) of the Policy.

C. BAD FAITH

The Panel concludes that the Complainant's BOURSORAMA trademark has a significant reputation and is of distinctive character. Therefore, the Panel is of the opinion that due to the earlier rights of the Complainant in the BOURSORAMA trademark and the associated domain name, the Respondent, was aware of the Complainant and its trademark at the time of registration of the disputed domain name (see e.g., Ebay Inc. v. Wangming, WIPO Case No. D2006-1107). Referring to

Parfums Christian Dior v. Javier Garcia Quintas and Christiandior.net, WIPO Case No. D2000-0226, the Panel believes that the awareness of the Complainant's trademark at the time of the registration of the disputed domain name is to be considered an inference of bad faith registration.

Moreover the link <http://www.boursorama-espace.com/cgi-sys/defaultwebpage.cgi> is currently inactive.

Therefore, in light of the above-mentioned circumstances in the present case, the Panel finds that the disputed domain name has been registered and is being used in bad faith and that the Complainant has established the third element under 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-ESPACE.COM**: Transferred

PANELLISTS

Name	**Mrs Selma Ünlü**

DATE OF PANEL DECISION 2020-12-14

Publish the Decision