Decision for dispute CAC-UDRP-103435

Case number	CAC-UDRP-103435
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Domain names	bousoramas.com

Case administrator

Organization	Denisa Bilík (CAC) (Case admin)

Complainant

Organization	BOURSORAMA SA

Complainant representative

Organization	Nameshield (Enora Millocheau)

Respondent

Name	lucien gunoiseau

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 is the owner of several trademarks "BOURSORAMA®", such as the European trademark n° 1758614 registered since 19 October 2001 for various goods and services in classes 9, 16, 35, 36, 38, 41, and 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.

The disputed domain name was registered on 21 November 2020 and resolves to an error page.

FACTUAL BACKGROUND

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

The Complainant has been founded in 1995 and since the time it grows in Europe with the emergence of e-commerce and the continuous expansion of the range of financial products online.

The Complainant is a pioneer and leader in its three core businesses, online brokerage, financial information on the Internet and online banking, BOURSORAMA S.A. based its growth on innovation, commitment and transparency.

In France, it is the online banking reference with over 2.37 million customers. The portal <boursorama.com> is the first national financial and economic information site and first French online banking platform.

PARTIES CONTENTIONS

ANY ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

COMPLAINANTS' CONTENTIONS:

I. The Complainant stated that the disputed domain name <bousoramas.com> is confusingly similar to its trademark BOURSORAMA®.

Indeed, the deletion of the letter “R” and the addition of the letter “S” in the trademark BOURSORAMA® is not sufficient to escape the finding that the domain name is confusingly similar to the trademark and branded goods BOURSORAMA®.

This is thus a clear case of "typosquatting“, i.e. the disputed domain name contains an obvious misspelling of the Complainant’s trademark: BOUSORAMAS instead of BOURSORAMA®.

Previous panels have found that the slight spelling variations does not prevent a disputed domain name from being confusingly similar to the Complainant’s trademark.

The Complainant recalled WIPO Case No. D2003-0093, Microsoft Corporation v. X-Obx Designs <xobx.com> (“Typographical error variations and misspellings of trademarked terms have long been found to be confusingly similar.”).

Moreover, the Complainant contends that the addition of the generic Top-Level Domain suffix “.COM” does not change the overall impression of the designation as being connected to the trademark BOURSORAMA® of the Complainant. It does not prevent the likelihood of confusion between the disputed domain name and the Complainant, its trademark and its domain names associated.

The Complainant recalled WIPO Case No. D2006-0451, F. Hoffmann-La Roche AG v. Macalve e-dominios S.A. (“It is also well established that the specific top level of a domain name such as “.com”, “.org” or “.net” does not affect the domain name for the purpose of determining whether it is identical or confusingly similar.”).

The Complainant recalled also others UDRP decisions which should have also confirmed the Complainant’s rights such as:
- CAC Case No. 102253, BOURSORAMA v. Brandsos.com <bboursorama.com> and al.;
- CAC Case No. 102211, BOURSORAMA SA v. Olga Pererva <boursorma.com>;
- CAC Case No. 102170, Boursorama SA v. johnny legend <boursoarma.com>.

Thus, the disputed domain name <bousoramas.com> is confusingly similar to the Complainant's trademark BOURSORAMA®.

II. The Respondent does not have any rights or legitimate interest in the domain name(s)

The Complainant recalled the WIPO Case No. D2003-0455, Croatia Airlines d.d. v. Modern Empire Internet Ltd., 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 UDRP.

The Complainant asserts that the Respondent is not identified in the Whois database as the disputed domain name. Past

panels have held that a Respondent was not commonly known by a disputed domain name if the Whois information was not similar to the disputed domain name. Thus, the Respondent is not known as the disputed domain name.

The Complainant recalled the Forum Case No. FA 1781783, Skechers U.S.A., Inc. and Skechers U.S.A., Inc. II v. Chad Moston / Elite Media Group <bobsfromsketchers.com> (“Here, the WHOIS information of record identifies Respondent as “Chad Moston / Elite Media Group.” The Panel therefore finds under Policy paragraph 4(c)(ii) that Respondent is not commonly known by the disputed domain name under Policy paragraph 4(c)(ii).”).

The Respondent is not known by the Complainant. The Complainant contends that Respondent is not affiliated with nor authorized by the Complainant in any way. The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name. 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 BOURSORAMA®, or apply for registration of the disputed domain name <bousoramas.com>.

Furthermore, the Complainant also claims that the disputed domain name is a typosquatted version of its trademark. Typosquatting is the practice of registering a domain name in an attempt to take advantage of Internet users’ typographical errors and can be evidence that a respondent lacks rights and legitimate interests in the domain name.

The Complainant recalled:
- Forum Case No. 1765498, Spotify AB v. The LINE The Line / The Line (“The Panel finds that Respondent’s registration of the domain name is typosquatting and indicates it lacks rights and legitimate interests in the domain name per Policy paragraph 4(a)(ii).”);
- Forum Case No. 1597465, The Hackett Group, Inc. v. Brian Herns / The Hackett Group (“The Panel agrees that typosquatting is occurring, and finds this is additional evidence that Respondent has no rights or legitimate interests under Policy paragraph 4(a)(ii).”).

Accordingly, Respondent has no rights or legitimate interests on the disputed domain name <bousoramas.com>.

III. The domain name(s) has been registered and is being used in bad faith

The disputed domain name <bousoramas.com> is confusingly similar to the Complainant's well-known trademark BOURSORAMA®.

Therefore, it is reasonable to infer that the Respondent has registered the domain name with full knowledge of the Complainant's trademark.

The Complainant recalled:
- 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.”)

Thus, the Complainant contends that the Respondent has registered and used the domain name <bousoramas.com> with full knowledge of the Complainant's trademark.

Moreover, the Complainant states that this misspelling in the disputed domain name was intentionally designed to be confusingly similar with the Complainant's trademarks. Previous UDRP Panels have seen such actions as evidence of bad faith.

The Complainant recalled the Forum Case No. 157321, Computerized Sec. Sys., Inc. v. Bennie Hu ("The Panel finds that Respondent's registration and use of a domain name that differs from Complainant's mark by only one letter indicates "typosquatting", which is evidence of bad faith registration and use.").

Furthermore, the disputed domain name resolves to an error page. The Complainant contends that it is not possible to conceive of any plausible actual or contemplated active use of the disputed domain name by the Respondent that would not be illegitimate, such as by being a passing off, an infringement of consumer protection legislation, or an infringement of the Complainant's rights under trademark law.

Consequently, the Complainant asserts that the Respondent has registered the disputed domain name in bad faith and has used it to create a likelihood of confusion with the Complainant's trademark as to source, affiliation or endorsement, in the meaning of paragraph 4(b)(iv) of the Policy, and thus acted in bad faith.

On these bases, the Complainant concludes that the Respondent has registered and is using the disputed domain name <bousoramas.com> in 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

The Panel is aware that under paragraph 4(a) of the Policy, the Complainant must prove that each of the following three elements is present:

(i) the disputed domain name is identical or confusingly similar to the Complainant's trademark; and

(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 in bad faith.

A. THE DISPUTED DOMAIN NAME IS CONFUSINGLY SIMILAR TO A TRADEMARK OR SERVICE MARK IN WHICH THE COMPLAINANT HAS RIGHTS

Based on the evidence before the Panel, the Panel cannot find any rights or legitimate interests of the Respondent either.

The Panel accepts that the disputed domain name is confusingly similar to the European trademark of the Complainant No. 1758614 as it consists of an obvious misspelling of the trademark.

The Panel finds that the disputed domain name <bousoramas.com> is confusingly similar to its trademark "BOURSORAMA®". The deletion of the letter “R” and the addition of the letter “S” in the given trademark is not sufficient to escape the finding that the domain name is confusingly similar to the trademark and branded goods BOURSORAMA®. This is a clear case of "typosquatting“. The Panel concludes that typographical error variations and misspellings of trademarked terms have long been found to be confusingly similar.

The addition of the generic Top-Level Domain suffix “.COM” does not change the overall impression of the designation as being connected to the trademark BOURSORAMA® of the Complainant. It does not prevent the likelihood of confusion between the disputed domain names and the Complainant, its trademark and its domain names associated. The specific top level of a domain name such as “.com”, “.org” or “.net” does not affect the domain name for the purpose of determining whether it is identical or confusingly similar.”

The Panel therefore finds that 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).

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

The Respondent does not correspond to the name nor has any other rights to the disputed domain name. The use of the Complainant´s trademark has to be authorized by the Complainant. The Respondent is not known under the disputed domain name. The Whois information shows that the disputed domain name is registered with LUCIEN GUNOISEAU which is obviously a different name from the trademarks of the Complainant. The Respondent has been granted neither license nor authorization to make any use of the Complainant’s trademark "BOURSORAMA®", or apply for registration of the disputed domain name <bousoramas.com>. Accordingly, Respondent has no rights or legitimate interests on the disputed domain name <bousoramas.com>.

The Panel therefore finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name (within the meaning of paragraph 4(a)(ii) of the Policy).

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

The Panel came to the conclusion that the disputed domain name <bousoramas.com> is confusingly similar to the Complainant's well-known trademark "BOURSORAMA®". Therefore, it is obvious that the Respondent has registered the domain name with full knowledge of the Complainant's trademark. 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 trademark "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. Thus, the Respondent has registered and used the domain name <bousoramas.com> with full knowledge of the Complainant's trademark.

The Panel finds that the disputed domain name resolves to an error page. Thus, it is not possible to conceive of any plausible actual or contemplated active use of the domain name by the Respondent that would not be illegitimate, such as by being a passing off, an infringement of consumer protection legislation, or an infringement of the Complainant’s rights under trademark law. Consequently, the Panel finds that the Respondent has registered the disputed domain name in bad faith and has used it to create a likelihood of confusion with the Complainant’s trademark as to source, affiliation or endorsement, in the meaning of paragraph 4(b)(iv) of the Policy, and thus acted in bad faith. The Panel concludes that the Respondent has registered and is using the disputed domain name <bousoramas.com> in bad faith.

The Panel is therefore convinced that the overall circumstances of this case suggest that the disputed domain name was registered and is being used in bad faith and 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. **BOUSORAMAS.COM**: Transferred

PANELLISTS

Name	**JUDr. Vojtěch Trapl**

DATE OF PANEL DECISION 2020-12-22

Publish the Decision