Decision for dispute CAC-UDRP-103438

Case number	CAC-UDRP-103438
Time of filing	2020-12-01 09:26:10
Domain names	bourasama.com

Case administrator

Organization	Denisa Bilík (CAC) (Case admin)

Complainant

Organization	BOURSORAMA SA

Complainant representative

Organization	Nameshield (Laurent Becker)

Respondent

Name	Rama Bourso

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 bases its Complaint on the European Union trademark “BOURSORAMA”, No. 1758614, filed on 13.07.2000, registered on 19.10.2001, protected for goods and services in classes 9, 16, 35, 36, 38, 41, 42.

FACTUAL BACKGROUND

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

The Complainant is BOURSORAMA S.A.

Founded in 1995, BOURSORAMA S.A. is a pioneer and leader in its three core businesses, online brokerage, financial information on the Internet and online banking and based its growth on innovation, commitment and transparency.

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 2 million customers. The portal <boursorama.com> is the first national financial and economic information site and first French online banking platform.

The Complainant is the owner of several trademarks BOURSORAMA, such as the European trademark no. 1758614, filed on 13.07.2000, registered on 19.10.2001, protected for goods and services in classes 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 01.03.1998 and <boursorama-banque.com> registered since 26.05.2005.

The disputed domain name <bourasama.com> was registered on 23.11.2020 and redirects to the Registrar's page.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant's contentions are the following:

The disputed domain name <bourasama.com> is confusingly similar to the Complainant's earlier BOURSORAMA trademark since it contains an obvious misspelling of the Complainant's trademark: BOURASAMA instead of BOURSORAMA.

Therefore, the disputed domain name is a clear case of typosquatting. Previous UDRP Panels have found that slight spelling variations do not prevent a disputed domain name from being confusingly similar to the Complainant's trademark.

Furthermore, the Complainant contends that the addition of the gTLD ".COM" does not change the overall impression of the designation as being connected to the Complainant's trademark. The Complainant sustains that this does not prevent the likelihood of confusion between the disputed domain name and the Complainant and its trademark.

The Complainant further contends that the Respondent lacks rights or legitimate interests in the disputed domain name for a number of reasons.

First, the Complainant asserts that the Respondent is not known as the disputed domain name, but as "RAMA BOURSO". The Complainant asserts that it is false information intending to be confusing with its trademark and denomination. 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. Therefore, the Complainant asserts that, the Respondent is not known as the disputed domain name.

The Complainant further asserts 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. The Respondent is not a Complainant's licensee, nor has ever been authorised to make use of the Complainant's trademark or to apply for the registration of the disputed domain name.

The Complainant's further asserts that the disputed domain name redirects to the Registrar's page and that the domain name is also used for an attempt of scamming by reproducing the Registrant's official page.

Lastly, the Complainant points out that the disputed domain name has not been used for any bona fide offering of services

Accordingly, in the Complainant's view, the Respondent has no rights or legitimate interests in the disputed domain name <bourasama.com>.

The Complainant further argues that the disputed domain name has been registered, and is been used in bad faith.

The Complainant's maintains that its BOURSORAMA trademark is a well-known trademark and therefore, that the Respondent has registered the disputed domain name with full knowledge of the Complainant's trademark.

Furthermore, the disputed domain name is a form of typosquatting. Typosquatting is also evidence of bad faith.

The Complainant also asserts that the disputed domain name is used for scamming in order to obtain the client's access.

Based on the above, the Complainant asserts that the Respondent has registered and is using the disputed domain name <bourasama.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

I. Confusing Similarity

The Panel agrees that the slight misspelling under the form BOURASAMA in the Complainant's trademark BOURSORAMA is insufficient to avoid confusing similarity.

As a matter of fact, despite the slight misspelling, the Complainant's trademark is still recognizable within the disputed domain name. Previous UDRP CAC and WIPO decisions have recognized that typosquatting usually entails a finding of confusing similarity for the purpose of the first element under the Policy.

Moreover, the extension ".com" is not to be taken into consideration when examining the similarity between the Complainant's trademarks and the disputed domain name (WIPO Case No. D2005-0016, Accor v. Noldc Inc.). The mere adjunction of a gTLD such as ".com" is irrelevant as it is well established that the generic Top-Level Domain is insufficient to avoid a finding of confusing similarity (WIPO Case No. 2013-0820, L'Oréal v Tina Smith, WIPO Case No. D2008-0820 Titoni AG v Runxin Wang and WIPO Case No. D2009-0877, Alstom v. Itete Peru S.A.).

Therefore, the Panel is satisfied that the first condition under the Policy is met.

II. Lack of Respondent's rights or legitimate interests

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 burden of proof shifts to the respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such appropriate allegations or evidence, a complainant is generally deemed to have satisfied paragraph 4(a)(ii) of the UDRP.

Based on the available evidence, the Respondent does not appear to be known by the disputed domain name. The Respondent is not a licensee of, nor has any kind of relationship with, the Complainant. The Complainant has never authorised the Respondent to make use of its trademark, nor of a confusingly similar trademark in the disputed domain name.

The Respondent is not affiliated with nor has been authorized by the Complainant in any way to register the disputed domain name. The Complainant does not carry out any activity for, nor has any business with the Respondent.

Finally, the disputed domain name is a typosquatted version of the Complainant’s trademark, redirects to the Registrar’s page and is also used for what appears to be an attempt of scamming by reproducing the Registrant's official page. Such use does not amount to a bona fide offering of goods or services, or to a legitimate non-commercial or fair use of the disputed domain name.

The Panel notes that the Respondent had an opportunity to comment on the Complaint’s allegations by filing a Response, which the Respondent failed to do.

Thus, the Panel is satisfied that the Complainant has at least established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. Accordingly, the Panel takes the view that also the second requirement under the Policy is met.

III. Bad Faith

The Complainant's trademark is a well-known one as recognized also by past panels and the disputed domain name is a typosquatting of the Complainant’s trademark. Therefore, the Panel concludes that at the time of registration of the disputed domain name, the Respondent was well aware of the Complainant’s trademark and has intentionally registered one of its possible misspellings.

Numerous UDRP Panels have found that typosquatting constitutes bad faith (see, amongst others, NAF case no. FA0612000877979, Microsoft Corp. v. Domain Registration Philippines; ARCELORMITTAL S.A. v. stave co ltd, CAC Case No. 102180; Calvin Klein Trademark Trust, Calvin Klein, Inc. v. Moniker Privacy Services, WIPO Case No. D2015-2305; Wikimedia Foundation Inc v. Privacy Protect.org/Domain Tech Enterprises, WIPO Case No. D2015-1705; Moneyweek Limited v. he jianyi Case No. D2015-1700).

The disputed domain name appears to have been used for scamming in order to obtain the client’s access which is a bad faith practice as recognized by previous UDRP Panels as well.

In the present case, the following factors should be considered:

(i) the Complainant's trademark is a well-known one, being also highly distinctive;

(ii) the Respondent failed to submit any response and has not provided any evidence of actual or contemplated good faith use of the disputed domain name;

(iii) the Respondent registered the disputed domain name containing an obvious, common and intentional misspelling of the Complainant's trademark, which is a typical pattern used for abusive "typosquatting" registrations; and

(iv) any good faith use of the disputed domain name would be implausible, as the trademark BOURSORAMA is univocally linked to the Complainant and the Respondent has no business relationship with the Complainant, nor was ever authorised to use a domain name confusingly similar to the Complainant's trademark.

In light of the foregoing, the Panel concludes that the Respondent has registered and has been using the disputed domain name in bad faith. Thus, also the third and last condition under the Policy is satisfied.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **BOURASAMA.COM**: Transferred

PANELLISTS

Name	**Delia-Mihaela Belciu**

DATE OF PANEL DECISION 2021-01-06

Publish the Decision