Decision for dispute CAC-UDRP-103506

Case number	CAC-UDRP-103506
Time of filing	2021-01-14 09:30:33
Domain names	bours-oramabanks.com

Case administrator

Organization	Iveta Špiclová (Czech Arbitration Court) (Case admin)

Complainant

Organization	BOURSORAMA SA

Complainant representative

Organization	Nameshield (Enora Millocheau)

Respondent

Organization	Mina

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

In France, BOURSORAMA is an online banking service with over 2 million customers. The portal www.boursorama.com is the first national financial and economic information site and first French online banking platform.

The Complainant is the owner of an EU registration of the trademark BOURSORAMA®, n° 1758614 registered since 2001.

FACTUAL BACKGROUND

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

The disputed domain name <bours-oramabanks.com> was registered on January 5, 2021. The disputed domain name resolves to an index page.

PARTIES CONTENTIONS

No administratively compliant response has been filed. Therefore, the Panel may make accept reasonable contentions of the Complainant.

Complainant's contentions, which are relevant to the Decision, are discussed in the below sections.

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).

The Complainant states that the disputed domain name <bours-oramabanks.com> is confusingly similar to its trademark BOURSORAMA®. Indeed, the disputed domain name includes in its entirety the Complainant's trademark. The addition of the generic term "BANKS" (which refers to the Complainant's banking activities) and a hyphen is not sufficient to escape the finding that the disputed domain name is confusingly similar to the trademark BOURSORAMA®. It does not change the overall impression of the designation as being connected to the Complainant's trademark BOURSORAMA®. It does not prevent the likelihood of confusion between the disputed domain name and the Complainant and its trademark. It is well-established that "a domain name that wholly incorporates a Complainant's registered trademark may be sufficient to establish confusing similarity for purposes of the UDRP". WIPO Case No. D2003-0888, Dr. Ing. h.c. F. Porsche AG v. Vasiliy Terkin.

Also, many UDRP decisions have also confirmed 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>.

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).

According to 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 Policy.

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. For instance 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 4(c)(ii) that Respondent is not commonly known by the disputed domain name under Policy 4(c)(ii).").

The Complainant contends that Respondent is not affiliated with nor authorized by the Complainant in any way. The Complainant contends that 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 <bours-oramabanks.com>.

The disputed domain name only resolves to an index page. Therefore, the Complainant contends that Respondent did not make any use of the disputed domain name since the registration, and that Respondent has no demonstrable plan to use the

disputed domain name. This demonstrates a lack of legitimate interests in respect of the disputed domain name, at least sufficient to state a prima facie case as to this element. That shifts the burden to Respondent to prove any legitimate interest, if any. Because the Respondent has failed to submit a response, it has failed to meet its burden on this element.

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).

The disputed domain name <bours-oramabanks.com> is confusingly similar to the Complainant's well-known trademark BOURSORAMA®. Therefore, it is reasonable to infer that the Respondent has registered the disputed domain name with full knowledge of the Complainant's trademark.

See for example:

- 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.”).

Also, the addition of the term “BANKS” cannot be coincidental, as it directly refers to the Complainant’s core business activities. Finally, primary Google results for the terms “BOURS-ORAMA BANKS” refers to the Complainant and its activities. Thus, the Complainant contends, and the Panel agrees, that the Respondent had knowledge of the Complainant’s rights prior to the registration of the disputed domain name, which is a hallmark of bad faith.

The disputed domain name currently resolves only to an index page. Accordingly, the disputed domain name apparently is not in active use. Consequently, the Complainant contends that the Respondent has not demonstrated any activity in respect of the disputed domain name, and it is not possible to conceive of any plausible actual or contemplated active use of the disputed domain name by the Respondent that would be legitimate. Instead, any such use is likely to be a passing off an infringement of consumer protection legislation, an infringement of the Complainant’s rights under trademark law, or an attempt to attract, for commercial gain, Internet users to his own website, by creating a likelihood of confusion with Complainant's trademark as to the source, sponsorship, affiliation or endorsement of Respondent's website.

On these bases, the Panel concludes that the Respondent has registered and is using the disputed domain name <bours-oramabanks.com> in bad faith.

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 disputed domain name <bours-oramabanks.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. Also, the addition of the term “BANKS” cannot be coincidental, as it directly refers to the Complainant’s core business activities. Finally, primary Google results for the terms “BOURS-ORAMA BANKS” refers to the Complainant and its activities. Thus, the Complainant contends, and the Panel agrees, that the Respondent has knowledge of the Complainant’s rights prior to the registration of the disputed domain name, which is a hallmark of bad

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FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **BOURS-ORAMABANKS.COM**: Transferred

PANELLISTS

Name	**Mike Rodenbaugh**

DATE OF PANEL DECISION 2021-02-08

Publish the Decision