

Decision for dispute CAC-UDRP-103539

Case number CAC-UDRP-103539

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Domain names boursorama.com

Case administrator

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

Complainant

Organization BOURSORAMA SA

Complainant representative

Organization Nameshield (Enora Millocheau)

Respondent

Organization See PrivacyGuardian.org

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 EUTM, BOURSORAMA, registration n° 1758614 registered on 19 October 2001 for goods and services in classes 9, 16, 35, 36, 38 and 41.

The disputed domain name was registered on 25 January 2021 and is registered using a privacy service to conceal the identity of the registrant on the published WhoIs.

FACTUAL BACKGROUND

The Complainant carries on three core businesses, online brokerage, financial information on the Internet which it carries on using its registered trademark BOURSORAMA for which it owns the EUTM described above.

The Complainant has an established online presence with its website at <www.boursorama.com> is the first national financial and economic information site and first French online banking platform. The Complainant's <boursorama.com> domain name was created on 1 March 1998.

The disputed domain name <boursorarna.com> was registered on 26 January 2021 and resolves to an index page and is configured to an MX servers i.e. facilitating use the domain name as an e-mail address.

As there was no response from the Respondent, there is no information available about Complainant except for that provided in the Complaint and on the Registrar's Whois.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant claims rights in the BOURSORAMA trademark and service mark acquired through its ownership of the above mentioned registered trademark and its use of the mark in its online banking business with over 2.37 million customers in France.

The Complainant alleges that the disputed domain name <boursorarna.com> is identical or confusingly similar to the BOURSORAMA trademark or service mark in which the Complainant has rights within the meaning of paragraph 4(a)(i) of the Policy.

The Complainant alleges that this is a clear case of "typosquatting", i.e. the disputed domain name contains an obvious misspelling of the Complainant's trademark: BOUSORARNA instead of the Complainant's BOURSORAMA.

The Complaint argues that the replacement of the letter "m" in the Complainant's mark, by the letters "r" and "n" in the disputed domain name, is not sufficient to escape the finding that the disputed domain name is confusingly similar to the trademark and branded goods BOURSORAMA.

The Complainant argues that previous panels have found that such slight spelling variations do not prevent a disputed domain name from being confusingly similar to the Complainant's trademark, citing for instance 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 submits that the addition of the generic Top-Level Domain ("gTLD") extension <.com> does not change the overall impression of a connection with the Complainant's mark. The Complainant refers in this regard to 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 alleges that the Respondent has no rights or legitimate interests on the disputed domain name <boursorarna.com> arguing that the Respondent is not identified in the Whois database as the disputed domain name. Past panels have held that, as in this case, a respondent is not commonly known by a disputed domain name if the Whois information is not similar to the domain name in issue. Thus, in the present case, the Respondent is not known as the disputed domain name. Please see 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 argues that neither license nor authorization has been granted to the Respondent to make any use of the Complainant's trademark BOURSORAMA, or to apply for registration of the disputed domain name <boursorarna.com> and the Respondent is not known to the Complainant.

The Complainant furthermore asserts that the Respondent is not affiliated with nor authorized by the Complainant in any way, adding that the Complainant does not carry out any activity for, nor has any business with the Respondent. Please see

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).”).

Finally, the Complainant argues that the website to which the disputed domain name <boursorarna.com> resolves, is not used by the Respondent, nor did the Respondent make any use of disputed domain name since its registration. The Complainant submits that this confirms that the Respondent has no demonstrable plan to use the disputed domain name since its registration. Past panels have held that the lack of use of a domain name is considered as an important indicator of the absence of legitimate interests by the Respondent. Forum Case No. FA 1773444, Ashley Furniture Industries, Inc. v. Joannet Macket / JM Consultants (“The Panel finds that Respondent’s lack of content at the disputed domain shows the lack of a bona fide offering of goods or services or a legitimate noncommercial or fair use per Policy 4(c)(i) and (iii).”).

The Complainant submits according to the WIPO Case No. D2003-0455, Croatia Airlines d.d. v. Modern Empire Internet Ltd., once a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the respondent carries the burden of demonstrating rights or legitimate interests in the domain name and if the respondent fails to do so, the complainant is deemed to have satisfied paragraph 4(a) (ii) of the Policy. The Complainant contends that, in the present case, the Respondent has failed to answer the prima facie case made out by the Complainant and therefore has failed to discharge the burden of production. WIPO Case No. D2000-1164, Boeing Co. v. Bressi (“the Respondent has advanced no basis on which he could conclude that it has a right or legitimate interest in the domain names”);

The Complainant submits that the disputed domain name was registered and is being used in bad faith, alleging that because the disputed domain name <boursorarna.com> is confusingly similar to the Complainant's well-known trademark BOURSORAMA it is reasonable to infer that the Respondent has registered the disputed domain name with full knowledge of the Complainant's trademark.

The Complainant alleges that the misspelling of the Complainant’s well-known and famous trade mark is an act of typosquatting and that 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 including:

- 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 unrealistic to believe that the Respondent did not know the Complainant's trademark when registered the domain name <wwwboursorama.com>.”); and
- 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 further contends the Respondent has not demonstrated any activity in respect of the disputed domain name, and argues 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. Prior panels established under the Policy have held, the incorporation of a famous mark into a domain name, coupled with an inactive website, may be evidence of bad faith registration and use. In support of this submission the Complainant cites for instance WIPO Case No. D2000-0003, Telstra Corporation Limited v. Nuclear Marshmallows.

Finally, the Complainant submits that the disputed domain name has been set up with MX records which suggests that it may be actively used for e-mail purposes. This is also indicative of bad faith registration and use because any e-mail emanating from the disputed domain name could not be used for any good faith purpose. Citing for instance the decision in

CAC Case No. 102827, JCDECAUX SA v. Handi Hariyono (“There is no present use of the disputed domain name but there are several active MX records connected to the disputed domain name. It is concluded that it is inconceivable that the Respondent will be able to make any good faith use of the disputed domain name as part of an e-mail address.”).

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

The Complainant has provided credible, clear, convincing and uncontested evidence that it has rights in the BO9URSORAMA trademark and service mark acquired through its ownership of the portfolio of trademark registrations described above and the extensive use of the mark in its online banking business with over 2.37 million customers in France.

The disputed domain name has no obvious meaning and the only significance that it appears to have is a misspelling of the Complainant’s BOURSORAMA trademark by the replacement of the letter “m” in the service mark by the letters “r” and “n” in the disputed domain name.

In lower case in particular the letters “rn” look very similar to the letter “m” and therefore this Panel is satisfied that the element “ boursorarna” in disputed domain name is confusingly similar to Complainant’s BOURSORAMA mark, particularly in lowercase i.e. “boursorama” which is usual in domain names.

In the circumstances of this Complaint, the gTLD extension <.com>, may be ignored for the purposes of comparison as it is likely to be perceived that the domain extension is an essential element for a domain name and does not change the overall impression of the designation as being connected to the Complainant’s mark resulting in confusing similarity.

The Complainant has therefore succeeded in the first element of the test in paragraph 4(a)(i) of the Policy.

The Complainant has made out a prima facie case, referring to a screenshot of the page to which the disputed domain name resolves adduced in an annex to the Complaint, that the Respondent has no rights or legitimate interests in the disputed domain name <boursorarna.com>.

The Complainant alleges that

- the Respondent is not known by the Complainant;

- the Respondent is not identified in the Whois database as the disputed domain name;
- the Respondent was not commonly known by the disputed domain name;
- 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 <boursorarna.com>;
- the Respondent is not affiliated with nor authorized by the Complainant in any way and neither does the Complainant carry out any activity for, nor has any business with the Respondent; and
- the website to which the disputed domain name <boursorarna.com> resolves is not used and the Respondent has not made any use of disputed domain name since its registration which confirms that the Respondent has no demonstrable plan to use the disputed domain name since its registration.

It is well established that Complainant is required to make out a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name and thereafter the burden of production shifts to the Respondent to prove that it has such rights or legitimate interests. The Respondent has failed to answer the prima facie case made out by the Complainant and therefore has failed to discharge the burden of production. This Panel must therefore find that the Respondent has no rights or legitimate interests in the disputed domain name and therefore the Complainant has also succeeded in the second element of the test in paragraph 4(a)(ii) of the Policy.

The Complainant's BOURSORAMA service mark has a strong reputation. The uncontested evidence is that the mark is extensively used by the Complainant in online banking business with over 2.37 million customers in France. The disputed domain name has no obvious meaning other than as a misspelling of the Complainant's mark. The particular letters which are changed namely the letters "rn" in the disputed domain name, replacing the visually similar letter "m" in the mark indicates strongly that the disputed domain name was specifically chosen and registered to create confusion with the Complainant's mark.

This Panel finds therefore on the balance of probabilities the disputed domain name was registered in order to take predatory; advantage the goodwill and reputation of the Complainant's name and mark as an act of typosquatting.

Since the disputed domain name was registered the evidence shows that it is has been held inactively. In the circumstances of this case this Panel finds that on the balance of probabilities, that the passive holding of the disputed domain name is evidence of bad faith registration and use.

While it is not unreasonable that the Complainant might fear that the disputed domain name may be used as an e-mail address, there is no evidence of such use. Given the strength of the Complainant's case otherwise, it is not necessary to consider or make a finding on this element of the Complainant's allegations.

As this Panel has found that the disputed domain name was registered and is being used in bad faith, the Complainant has succeeded in the third and final element of the test in paragraph 4(a)(iii) of the Policy and is entitled to the reliefs requested in the Complaint.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. BOURSORARNA.COM: Transferred

PANELLISTS

Name **Mr James Jude Bridgeman**

DATE OF PANEL DECISION **2021-03-02**

Publish the Decision
