

Decision for dispute CAC-UDRP-103784

Case number	CAC-UDRP-103784
Time of filing	2021-05-05 10:03:24
Domain names	boursoramaconnexion.digital

Case administrator

Organization	Denisa Bilík (CAC) (Case admin)
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Complainant

Organization	BOURSORAMA SA
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Complainant representative

Organization	Nameshield (Laurent Becker)
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Respondent

Name	tadouri nadia
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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 the EU registered trademark "BOURSORAMA" no. 1758614 registered since 2001-10-19.

According to the WHOIS Record adduced by the Complainant, it is also the owner of the domain name <boursorama.com> which was created on 1998-02-28.

FACTUAL BACKGROUND

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

The Complainant, BOURSORAMA S.A., was founded in 1995. It is a pioneer and leader in its three core businesses: online brokerage; financial information on the Internet; and online banking.

The Complainant based its growth on innovation, commitment, and transparency.

In France, the Complainant is the online banking reference with over 2.6 million customers. The portal

<www.boursorama.com> is the first national financial and economic information site and first French online banking platform.

The Respondent registered the disputed domain name <boursoramaconnexion.digital> on 2021-04-28.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown 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.

The Complainant contends that the disputed domain name is confusingly similar to its trademark “BOURSORAMA”, to which trademark the Respondent has included in the disputed domain name in its entirety.

The Complainant further contends that the addition of the French term “CONNEXION”, which is translated in English to mean “LOGIN”, is not sufficient to escape the finding that the disputed domain name is confusingly similar to the Complainant’s trademark “BOURSORAMA” and its branded goods.

When part of a domain name is identical to a well-known trademark, it increases the likelihood of confusion or association between the domain name holder and the trademark owner. It is, therefore, sufficient to establish identity or confusing similarity for the purposes of the Policy. See *Oki Data Americas, Inc. v. ASD, Inc*, WIPO Case No. D2001-0902; *Dr. Ing. h.c. F. Porsche AG v Vasily Terkin*, WIPO Case No D2003-003-0888.

The Panel notes that the suffix “.digital” is a new generic top-level domain (gTLD) that allows registrants to choose an address beyond a country level or a very generic domain.

It is now a well-established principle in the domain name space that specific top-level domains such as “.com”, “.org” or “.net” do not affect the domain name for the purpose of determining whether it is identical or confusingly similar. See, for example, *WIPO Case No. D2006-0451, F. Hoffmann-La Roche AG v. Macalve e-dominios S.A.*

Applying the above well-established principles to the present case, the Panel finds as follows:

(a) The addition of the generic top-Level domain suffix “.digital” does not change the overall impression of the designation of a disputed domain name as being connected to a trademark. It does not prevent the likelihood of confusion between a disputed domain name and the true owner of the trademark, and the domain name associated with the true owner of the trademark.

(b) The mere addition of the word “CONNEXION” to change a domain name so as to avoid it being identical to the trademark is nevertheless in this case confusing or likely to confuse legitimate consumers intending to seek out the Complainant’s business.

(c) The Complainant’s trademark “BOURSORAMA” is a well-known registered trademark that has been used in connection with its business services and offerings. To incorporate the entirety of the Complainant’s trademark into the disputed domain name is, in the Panel’s view, confusingly similar to the Complainant’s trademark.

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.

A complainant is required to make out a prima facie case that the respondent lacks rights or legitimate interests. Once such

a prima facie case is made, the respondent carries the burden of demonstrating rights or legitimate interests in the disputed domain name. If the respondent fails to do so, the complainant is deemed to have satisfied paragraph 4(a)(ii) of the UDRP. See WIPO Case No. D2003-0455, Croatia Airlines d.d. v. Modern Empire Internet Ltd.

In support of this ground, the Complainant makes three contentions:

First, the Respondent is not identified in the WHOIS database as the disputed domain name.

Where information in the WHOIS database is not similar to the disputed domain name, a respondent is not commonly known by the disputed domain name. See, for example, fForum Case No. FA 1781783, Skechers U.S.A., Inc. and Skechers U.S.A., Inc. II v. Chad Moston / Elite Media Group <bobsfromsketchers.com>.

The Panel accepts this contention, which is supported by the evidence from the WHOIS database adduced by the Complainant.

Secondly, the Complainant asserts that the Respondent is not known by the Complainant. The specific contentions the Complainant developed in its submissions are as follows:

- (a) the Respondent is not affiliated with nor authorized by the Complainant in any way;
- (b) the Complainant does not carry out any activity for nor has any business with the Respondent;
- (c) the Complainant has not licensed nor authorized the Respondent to make use of its trademark "BOURSORAMA" or apply for registration of the disputed domain name.

As such the Complainant contends that Respondent has no rights or legitimate interests in the disputed domain name.

The Respondent has not filed any administrative compliant response to the Amended Complaint.

Accordingly, the Panel accepts these uncontradicted contentions.

Thirdly, the disputed domain name resolves to the registrar's parking page.

Where a disputed domain name resolves to a parking page, without more it cannot be said that a respondent is not seeking to offer a bona fide offering of services or fair use. There must be evidence of attempts by a respondent to pass itself off as the complainant online or some other evidence to show that the respondent is not intending to use the disputed domain name for a legitimate purpose but instead it is for an unauthorized use of the complainant's trademark. See, for example, Forum Case No. FA 156251, Am. Int'l Group, Inc. v. Busby.

The evidence shows that the disputed domain name was registered in April this year, many years after the registration of the Complainant's trademark and domain name. The disputed domain name resolves to a parking page that has some words in the Russian language.

The Panel considers that the evidence adduced by the Complainant supports its contention that there is no bona fide offering of goods or services nor a legitimate non-commercial or fair use of the disputed domain name. See Ustream.TV, Inc. v. Vertical Axis, Inc, WIPO Case No. D2008-0598.

The Panel is prepared to draw the adverse inference that the Respondent is likely profiting from the confusion likely to arise from consumers believing that the disputed domain name is connected to or associated with the Complainant's trademark and its business.

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.

There are two elements that must be satisfied – registration and use in bad faith.

Registration in bad faith

The evidence shows that the Complainant's trademark "BOURSORAMA" is a well-known trademark. The Complainant's address and business are located in France. The Respondent also appears to be located in France. The Complainant contends that it is reasonable to infer that the Respondent registered the disputed domain name with full knowledge of the Complainant's trademark.

The Panel notes that other past panel decisions referred to the well-known nature of the Complainant's trademark. See CAC Case No. 101131, BOURSORAMA v. PD Host Inc - Ken Thomas; WIPO Case No. D2017-1463, Boursorama SA v. Estrade Nicolas.

The Panel accepts the Complainant's trademark "BOURSORAMA" is well-known; it has a longstanding use of its trademark in relation to the services it offers; and accordingly, it is inconceivable that the Respondent would have registered the disputed domain name without being aware of the Complainant's legal rights.

What about use in bad faith

The Panel has already referred to the uncontroverted facts set out in the Amended Complaint and accepts the evidence and contention that the disputed domain name resolves to a parking page that has some words in the Russian language.

The Complainant contends that the disputed domain name is not used but the DNS Zone is configured which suggests that it may be actively used for email purposes. The Complainant further contends that this is indicative of not only bad faith registration but also use in bad faith because any email emanating from the disputed domain name could not be used for any good faith purposes. In support of this contention, the Complainant cites the CAC Case No. 102827, JCDECAUX SA v. Handi Hariyono where in that case there was no present use of the disputed domain name but there were several active MX records connected to the disputed domain name. It was concluded by the panel that it was inconceivable that the respondent would be able to make any good faith use of the disputed domain name as part of an e-mail address.

This conduct, the bona fides of which are clearly left unexplained by the Respondent, is in the Panel's view evidence of bad faith. See WIPO Case No. D2018-0497, StudioCanal v. Registration Private, Domains By Proxy, LLC / Sudjam Admin, Sudjam LLC; Forum Case No. FA 1623939, Citigroup Inc. v. Kevin Goodman.

The Czech Arbitration Court has also provided written notice of the Complaint to the Respondent with no administratively compliant responses made in respect to any good faith use of the disputed domain name.

In the circumstances, 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.

The Panel, therefore, concludes that the Respondent's holding of the disputed domain name in this particular case satisfies the requirement that the disputed domain name is being used in bad faith by the Respondent.

Accordingly, the Panel finds that the registration of the disputed domain name and its use were in bad faith.

PROCEDURAL FACTORS

Notification of proceedings to the Respondent

When forwarding a Complaint, including any annexes, electronically to the Respondent, paragraph 2 of the Rules states that CAC shall employ reasonably available means calculated to achieved actual notice to the Respondent.

Paragraphs 2(a)(i) to (iii) set out the sort of measures to be employed to discharge CAC's responsibility to achieve actual notice to the Respondent.

On 2021-05-26 the CAC by its non-standard communication stated as follows (omitting irrelevant parts):

- That the written notice of the Complaint was returned back to the Czech Arbitration Court as undelivered;
- As far as the e-mail notice is concerned, the CAC received a confirmation that the e-mail sent to tadourinadia@gmail.com was successfully relayed;
- The e-mail notice sent to postmaster@boursoramaconnexion.digital was returned back undelivered as the e-mail address had permanent fatal errors.

No further e-mail address could be found on the disputed site. The Respondent never accessed the online platform.

Given the reasonable measures employed by CAC as set out in the above non-standard communication, the Panel is satisfied that CAC has discharged this responsibility.

PRINCIPAL REASONS FOR THE DECISION

The ".digital" is a new generic top-level domain name offered to the world. It comes as no surprise that would-be registrants would want to register domain names in this new gTLD.

The Complainant owns the registered trademark "BOURSORAMA" and the domain name <boursorama.com> which are used in connection with its goods or services for a considerable time. It is a well-known trademark.

The Respondent registered the disputed domain name on 2021-04-28.

Two days later, on 2021-04-30 the Complainant commenced the dispute against the Respondent in the CAC.

The Complainant challenges the Respondent's registration of the disputed domain name under paragraph 4(a)(i) of the Uniform Dispute Resolution Policy ("Policy") and seeks relief that the disputed domain name be transferred to the Complainant.

Like so many of these types of disputes, the Respondent has failed to file any administratively compliant response.

For the reasons articulated in the Panel's reasons above, the Complainant has satisfied the Panel of the following:

- (a) The disputed domain name is confusingly similar to the Complainant's well-known trademark "BOURSORAMA".
- (b) The Respondent has no rights or legitimate interests in respect of the disputed domain name.
- (c) The disputed domain name has been registered and is being used in bad faith.

Complainants, who have adduced sufficient evidence to support their dispute in the CAC, can be assured that the Panel will do its best to make a prompt decision in order to ensure due administration of justice under the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. BOURSORAMACONNEXION.DIGITAL: Transferred

PANELLISTS

Name	Adjunct Prof William Lye, OAM QC
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DATE OF PANEL DECISION 2021-05-26

Publish the Decision
