

Decision for dispute CAC-UDRP-103842

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| Case number | CAC-UDRP-103842 |
| Time of filing | 2021-06-04 10:04:56 |
| Domain names | boursorama-2dp.com, boursorama-2dsp.com, boursorama-2sd.com |

Case administrator

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

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| Organization | BOURSORAMA SA |
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Complainant representative

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| Organization | Nameshield (Enora Millocheau) |
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Respondent

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| Name | zack levy |
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OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other pending or decided legal proceedings relating to the disputed domain names.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of European trademark n° 1758614, registered since October 19, 2001.

FACTUAL BACKGROUND

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

The Complainant was founded in 1995 as BOURSORAMA S.A. and has grown in Europe with the emergence of e-commerce and the continuous expansion of the range of financial products online.

In France, the Complainant is the online banking reference with over 2.8 million customers. Furthermore, the portal <www.boursorama.com> is the first national financial and economic information site and the first French online banking platform.

The Complainant also owns several domain names, including the same distinctive wording BOURSORAMA, such as the domain name <boursorama.com>, registered since 1998.

The disputed domain names were registered on May 27, 2021 and on May 28, 2021. The disputed domain names are not used; they resolve to an error page or an inactive page.

PARTIES CONTENTIONS

COMPLAINANT

1. The disputed domain names are confusingly similar to the protected mark

The Complainant states that the disputed domain names are confusingly similar to its trademark "BOURSORAMA". The trademark is included in its entirety.

The addition of misspelling versions of the term "PSD2" (meaning "Payments Service Directive 2", referring to a Directive of the European Parliament on payment services within the internal market), and a hyphen is not sufficient to escape the finding that the disputed domain names are confusingly similar to the trademark and branded goods "BOURSORAMA".

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".

Moreover, the Complainant contends that adding the generic Top-Level Domain suffix ".COM" does not change the overall impression of the designations as being connected to the trademark "BOURSORAMA" of the Complainant. Therefore, it does not prevent the likelihood of confusion between the disputed domain names and the Complainant.

Thus, the disputed domain names are confusingly similar to the Complainant's trademark "BOURSORAMA".

2. The Respondent does not have any rights or legitimate interest in the disputed domain names

The Complainant asserts that the Respondent is not identified in the Whois database as the disputed domain names. However, past panels have held that a disputed domain name did not commonly know a Respondent if the Whois information was not similar to the disputed domain name. Thus, the Respondent is not known as the disputed domain names.

The Complainant does not know the Respondent. The Complainant contends that Respondent is not affiliated with nor authorized by the Complainant in any way. The Complainant asserts that Respondent has no rights or legitimate interests in respect of the disputed domain names. 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 names.

Finally, the disputed domain names are not actively used. Since their registration, the Respondent did not use disputed domain names and confirmed that Respondent has no demonstrable plan to use the disputed domain names. Past panels have held that the lack of use of a domain name is considered an important indicator of the absence of legitimate interests by the Respondent.

3. The disputed domain names have been registered and are being used in bad faith.

The disputed domain names are confusingly similar to the Complainant's well-known trademark "BOURSORAMA".

Moreover, the addition of misspelling versions of the term "PSD2" (meaning "Payments Service Directive 2", referring to a

Directive of the European Parliament on payment services within the internal market) cannot be coincidental as it relates to secured payment, which is related to the Complainant's banking activities.

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

Moreover, the disputed domain names are not actively used. The Complainant contends that the Respondent has not demonstrated any activity in respect of the disputed domain names. It is not possible to conceive of any plausible actual or contemplated active use of the domain names 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. As prior WIPO UDRP panels have held, incorporating a famous mark into a domain name, coupled with an inactive website, may be evidence of bad faith registration and use.

On these bases, the Complainant concludes that the Respondent has registered and is using the disputed domain names in bad faith.

RESPONDENT

No administratively compliant Response has been filed.

RIGHTS

The Complainant has shown that the disputed domain names are identical or confusingly similar to the trademark in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

To the satisfaction of the Panel, the Complainant has shown the Respondent to have no rights or legitimate interests in respect of the disputed domain names (within the meaning of paragraph 4(a)(ii) of the Policy).

BAD FAITH

To the satisfaction of the Panel, the Complainant has shown the disputed domain names have been registered and are 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 the Policy were met, and there is no other reason why it would be inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

A. Identical or Confusingly Similar

The Panel is satisfied that the Complainant has shown it owns rights in the "BOURSORAMA" trademark since 2001.

The Panel now turns to analyze the potential confusing similarity between the disputed domain names and the trademark. As per the evidence on record, all the disputed domain names reproduce the trademark in its totality, namely, "BOURSORAMA".

In the case of the first disputed domain name, <boursorama-2dp.com>, the trademark is reproduced verbatim with the addition of a hyphen and the term "2dp". Similarly, the second disputed domain name <boursorama-2dsp.com> includes the verbatim reproduction of the trademark, a hyphen, and the term "2dsp". Lastly, the third disputed domain name <boursorama-2sd.com> consists of the verbatim reproduction of the trademark, a hyphen, and the term "2sd".

The addition of these terms, namely "2dp", "2dsp", and "2sd" is immaterial, and therefore not substantive enough to dispel the confusing similarity between the disputed domain names and the Complainant's trademarks. This addition may enhance the confusing similarity with the Complainant's trademarks, as the terms appear to refer to e-payment services, which is an area of business of the Complainant. However, further analysis will be discussed under the following elements.

Based on this, the Panel finds the disputed domain names confusingly similar to the Complainant's trademarks. As a result, the Panel determines that the Complaint has satisfied the first element under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

As per the evidence on record, and noting that the Respondent failed to produce allegations or evidence necessary to demonstrate its rights or legitimate interests in the disputed domain names, the uncontested facts indicate that:

1. The Respondent is not commonly known by the disputed domain names.
2. The Respondent is not known or affiliated with the Complainant.
3. It is not authorized to carry out any activity for the Complainant.
4. Has no business dealings with the Complainant.

In failing to respond to the Complainant's contentions, the Respondent has not rebutted the prima facie case.

Additionally, the disputed domain names are not actively used as they redirect to an error page as per evidence on record. The Respondent does not appear to have used the disputed domain names since their registration. There is no evidence suggesting that Respondent has demonstrable plans to use the disputed domain names. Past panels have held that the lack of use of a domain name is considered an essential indicator of the absence of legitimate interests by the Respondent. In this case, in particular, the Respondent's reproduction of the trademark with terms commonly associated with e-payment services appears to fall under an attempt for commercial gain to divert consumers misleadingly or tarnish the trademark or service mark at issue; further analysis will be discussed under the last element. But for the purposes of this element, this cannot be considered to confer rights or legitimate interests to the Respondent.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain names.

Therefore, the Complainant has fulfilled the second requirement set under paragraph 4(a) of the Policy.

C. Registered and Used in Bad Faith

The Panel finds, as per the evidence on record, that the Respondent was likely aware of the Complainant and targeted the Complainant's trademark when registering the disputed domain names. This conclusion is reinforced by the fact that the Respondent appears to be located in France, the principal place of business of the Complainant, and reproduced the trademark in all the disputed domain names. Additionally, the disputed domain names include three terms, namely "2dp", "2dsp", and "2sd", which appear to refer to e-payment services; an area of business of the Complainant, in an apparent effort to divert consumers and obtain a financial gain misleadingly.

All this leads the Panel to conclude that that the most likely intention of the Respondent about the disputed domain names was to intentionally attempted to attract, for commercial gain, Internet users to its website/Domain Name, by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of the

Respondent's website and/or Domain Name (see paragraph 3.1 of WIPO 3.0 Overview).

Accordingly, the Panel finds that the Complainant has satisfied the requirements set forth under paragraph 4(a)(iii) of the Policy.

D. Decision

For the preceding reasons and in conformity with the provisions contained under Paragraph 4(i) of the Policy and Paragraph 15 of the Rules, the Panel orders the transfer of the disputed domain names to the Complainant.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **BOURSORAMA-2DP.COM**: Transferred
2. **BOURSORAMA-2DSP.COM**: Transferred
3. **BOURSORAMA-2SD.COM**: Transferred

PANELLISTS

| | |
|------|--------------------------|
| Name | Rodolfo Carlos Rivas Rea |
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DATE OF PANEL DECISION 2021-06-30

Publish the Decision
