

Decision for dispute CAC-UDRP-103814

Case number	CAC-UDRP-103814
Time of filing	2021-05-24 09:27:58
Domain names	boursorama-2dsps.com, boursorama-2dsps.net, boursorama-adhs.com, boursoramad2spp.com

Case administrator

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

Organization	BOURSORAMA SA
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Complainant representative

Organization	Nameshield (Enora Millocheau)
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Respondent

Name	zack levy
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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 names.

IDENTIFICATION OF RIGHTS

The Complainant is the owner, inter alia, of the following trademark registration:

- European Union trademark registration No. 001758614 for BOURSORAMA (word mark), filed on July 13, 2000 and registered on October 19, 2001, in international classes 9, 16, 35, 36, 38, 41 and 42.

FACTUAL BACKGROUND

The Complainant in the present dispute is BOURSORAMA S.A., an online brokerage, banking and financial information provider, founded in France in 1995.

The Complainant is the owner of the domain name <boursorama.com>, which was registered on March 01, 1998 and is used by the Complainant in connection with its financial and economic information site as well as its banking platform.

The disputed domain names <boursorama-2dsps.com>, <boursorama-2dsps.net>, <boursorama-adhs.com>, <boursoramad2spp.com> were all registered by the Respondent on May 17, 2021. The disputed domain names

<boursorama-2dsps.com>, <boursorama-2dsps.net> and <boursoramad2spp.com> are pointed to registrar parking pages, while <boursorama-adhs.com> is not redirected to an active website.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS

COMPLAINANT

The Complainant states that the disputed domain names are confusingly similar to its trademark BOURSORAMA as they include the trademark in its entirety with the addition of misspelling versions of the term "DPS2" (meaning "Directive on Services for Payment with 2 factors") or the term "ADHS", and a hyphen, which would not be sufficient to escape the finding of confusing similarity.

The Complainant also states that the Respondent has no rights or legitimate interests in the disputed domain names since the Respondent i) is not commonly known by the disputed domain name, ii) is not affiliated with nor authorized by the Complainant in any way, iii) has not been granted by the Complainant any license or authorization to use the Complainant's trademark BOURSORAMA or apply for registration of the disputed domain names and iv) has not made any use of disputed domain names since their registration.

The Complainant submits that the Respondent registered the disputed domain names in bad faith because the Complainant's trademark is well-known and distinctive and the Respondent chose to associate the trademark BOURSORAMA with the misspelt term "DPS2" (meaning "Directive on Services for Payment with 2 factors") which according to the Complainant cannot be coincidental as it refers to secured payment, thus being related to the Complainant's banking activities.

Also, considering the Respondent is French, according to the Complainant, it is easy to infer that the Respondent registered the disputed domain names with full knowledge of the Complainant's trademarks.

As to the use of the disputed domain names, the Complainant notes that all they point to either inactive pages or parking pages and states that 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.

RESPONDENT

No Administratively compliant response has been filed.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain names are 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 names (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 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 UDRP were met and there is no other reason why it would be

inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

1. The Panel finds that the disputed domain names <boursorama-2dsps.com>, <boursorama-2dsps.net>, <boursorama-adhs.com> are confusingly similar to the Complainant's word mark BOURSORAMA as they reproduce the trademark in its entirety with the mere addition of a hyphen followed by the term "2dsps" - which can be interpreted as misspelt versions of the terms "DPS2" (standing for "Directive on Services for Payment with 2 factors") - and "adhs" and the generic Top Level Domains ".com" and ".net". As stated in a number of prior decisions rendered under the UDRP, these minor changes are not sufficient to prevent a likelihood of confusion.

The Panel also finds that also the disputed domain name <boursoramad2spp.com> is confusingly similar to BOURSORAMA since the trademark is recognizable within the disputed domain name despite the omission of the letter "r", and the addition of the term "2spp" and of the generic Top Level Domain ".com" are insufficient to exclude confusing similarity. As found in prior similar UDRP cases, a domain name which consists of a common, obvious, or intentional misspelling of a trademark is still considered by panels to be confusingly similar to the relevant mark for purposes of the first element.

2. The Complainant stated that the Respondent is not affiliated with or authorized by the Complainant in any way. There is no evidence of the fact that the Respondent might have been commonly known by the disputed domain names or by a name corresponding to the disputed domain names. According to the evidence on records, the Respondent has simply passively held the disputed domain names and has not submitted any evidence showing that it made use of, or demonstrable preparations to use, the disputed domain names in connection with a bona fide offering of goods or services, or that it has made a legitimate non-commercial or fair use of the disputed domain names. Therefore, and in the absence of a Response, the Panel finds that the Complainant has made a prima facie case that the Respondent has no rights or legitimate interest in the disputed domain name.

3. As to bad faith at the time of the registration, the Panel finds that, in light of the distinctiveness of the Complainant's trademark, with which the disputed domain names are confusingly similar, and of the prior registration and use of the trademark by the Complainant in connection with the Complainant's services in France, where the Respondent is based, the Respondent was more likely than not aware of the Complainant's trademark at the time of the registration of the disputed domain names. Indeed, the Respondent's registration of the disputed domain names, corresponding to the Complainant's well-known trademark BOURSORAMA, suggests that the Respondent acted in opportunistic bad faith, with a deliberate intent to create an impression of an association with the Complainant.

Moreover, the disputed domain names have not been used in connection with an active web site, i.e. they have been passively held. As established in a number of prior cases, the concept of "bad faith use" in paragraph 4(b) of the Policy includes not only positive action but also passive holding, especially in cases of domain name registrations corresponding to distinctive and well-known trademarks; see i.a. the landmark case *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. D2000-0003.

In light of Internet users' presumption of trustworthiness in domain names consisting in or incorporating registered trademarks, the Panel finds that, when domain names are identical or confusingly similar to the trademarks of banks or other financial institutions, the potential risks posed by phishing must be considered an additional circumstance evidencing bad faith, since phishing emails received from email accounts based on such domain names are even more misleading to recipients.

Therefore, the Panel finds that the disputed domain names were registered and are being used in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. BOURSORAMA-2DSPS.COM: Transferred
 2. BOURSORAMA-2DSPS.NET: Transferred
 3. BOURSORAMA-ADHS.COM: Transferred
 4. BOUSORAMAD2SPP.COM: Transferred
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PANELLISTS

Name **Luca Barbero**

DATE OF PANEL DECISION **2021-07-05**

Publish the Decision
