

Decision for dispute CAC-UDRP-103828

Case number	CAC-UDRP-103828
Time of filing	2021-05-27 09:15:32
Domain names	boursoramadsp2d.com

Case administrator

Organization	Denisa Bilík (CAC) (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 name.

IDENTIFICATION OF RIGHTS

The Complainant is the registered European Union trademark BOURSORAMA n°001758614 registered on 19 October 2001 for goods and services in classes 9, 16, 35, 36, 38. This mark is in force.

FACTUAL BACKGROUND

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

The Complainant was founded in 1995 and is active in the field of online brokerage, online financial information and online banking with more than 2,800,000 customers in France.

The Respondent registered the disputed domain name <boursoramadsp2d.com> on 22 May 2021.

It results from the Complainant's documented allegations that the disputed domain name resolves to a website displaying the message: "Forbidden You don't have permission to access / on this server."

PARTIES CONTENTIONS

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

1.

The Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark.

The Complainant's European Union trademark BOURSORAMA n°001758614 (registered on 19 October 2001 for goods and services in classes 9, 16, 35, 36, 38) is identically included in the disputed domain name. The mere addition of the letters/figure "dsp2d" does not avoid the confusing similarity between the disputed domain name and the Complainant's trademark. All to the contrary: These letters/figure may be understood as a typo-version of the term "DPS2" (meaning "Directive on Services for Payment with 2 factors") which would be applicable as a descriptive term to the Complainant's business.

2.

In the absence of any response, or any other information from the Respondent indicating the contrary, the Panel further holds that the Complainant successfully presented its prima facie case and that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

In particular, the Respondent is not affiliated with nor authorized by the Complainant in any way, and it is not related to the Complainant's business. In addition, the Panel does not dispose of any elements that could lead the Panel to the conclusion that the Respondent is commonly known by the disputed domain name or that it has acquired trademark rights pursuant to paragraph 4(c)(ii) of the Policy. Finally, no content is displayed on the website to which the disputed domain name resolves. Such use can neither be considered a bona fide offering of goods or services nor a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue in the sense of paragraph 4(c)(i) and (iii) of the Policy. In addition, the Respondent's concealment of its identity behind a privacy service is also taken in consideration, and this Panel finds that it most likely that the Respondent selected the disputed domain name with the intention to take advantage of the Complainants' registered trademark by registering a domain name consisting of that trademark with the intent to attract Internet users for commercial gain.

3.

Finally, the Panel finds that the disputed domain name has been registered and is being used in bad faith.

According to the Complainants' undisputed allegations, the Respondent does not actively use the disputed domain name. With comparative reference to the circumstances set out in paragraph 4(b) of the UDRP deemed to establish bad faith registration

and use, prior UDRP panels have found that the apparent lack of active use (e.g., to resolve to a website) of the domain name without any active attempt to sell or to contact the trademark holder (passive holding), does not as such prevent a finding of bad faith (see *Actelion Pharmaceuticals, Ltd v. Whois Agent, Whois Privacy Protection Service, Inc / Jean-Paul Clozel*, WIPO Case No. D2016-0068; *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. D2000-0003).

In the case at hand, the Panel finds that the further circumstances surrounding the registration - listed hereinafter - suggest that the Respondent was aware that it has no rights or legitimate interests in the disputed domain name, and that the disputed domain name has been registered and is being used in bad faith (see *Actelion Pharmaceuticals, Ltd v. Whois Agent, Whois Privacy Protection Service, Inc / Jean-Paul Clozel*, supra; *America Online, Inc. v. Antonio R. Diaz*, WIPO Case No. D2000-1460):

- (1) Disputed domain name combining the Complainant's entire distinctive trademark with a typo-version of the term "DPS2" (meaning "Directive on Services for Payment with 2 factors") referring to secured payment, which is related to the Complainant's banking activities,
- (2) Respondent's failure to reply to the Complaint,
- (3) Respondent hiding its identity behind a privacy shield,
- (4) Complainant's registered trademark has existed for twenty years,
- (5) No plausible legitimate active use that the Respondent could make of the disputed domain name.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

- 1. **BOURSORAMADSP2D.COM**: Transferred

PANELLISTS

Name	Dr. Tobias Malte Müller
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DATE OF PANEL DECISION	2021-07-05
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Publish the Decision