

Decision for dispute CAC-UDRP-103833

Case number	CAC-UDRP-103833
Time of filing	2021-06-01 08:35:24
Domain names	clients-boursorama-banque.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	Hassan Boghich
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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 submitted evidence that it is the registered owner of the EU trademark registration No. 1758614 for "BOURSORAMA", applied on 13 July 2000 and granted on 19 October 2001, for the classes 9, 16, 35, 36, 38, 41 and 42.

Moreover, the Complainant is also the owner of the domain name <boursorama.com> which was created on 1 March 1998.

FACTUAL BACKGROUND

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

The Complainant was founded in 1995 and has been active in Europe in connection with financial products online. The Complainant claims to be the leader in its three core businesses, online brokerage, financial information on the Internet and online banking. In France, the Complainant is the online banking reference with over 2.8 million customers. The portal at the Complainant's domain <www.boursorama.com> is the first national financial and economic information site and the first French online banking platform.

The disputed domain name <clients-boursorama-banque.com> was registered on 24 May 2021 and resolves to an inactive page.

The Registrar confirmed that the Respondent is the current registrant of the disputed domain name and that the language of the registration agreement is English.

The Respondent has not filed a Response.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

The Complainant made the following contentions:

The disputed domain name is confusingly similar to its asserted trademark "BOURSORAMA" which is included in its entirety. The addition of the French terms "CLIENTS" (which means "Customers") and "BANQUE" (which means "Bank") is not sufficient to escape the finding that the domain name is confusingly similar to the Complainant's trademark.

Moreover, the Complainant contends that the addition of the generic Top-Level Domain suffix ".COM" does not change the overall impression of the designation as being connected to the Complainant's trademark and, consequently, does not prevent the likelihood of confusion between the disputed domain name and the Complainant, its trademark and its domain names associated.

The Complainant further contends that the Respondent has no right or legitimate interest in respect of the disputed domain name. In particular, the Complainant asserts that the Respondent is not identified in the Whois database as the disputed domain name. Past panels have held that a Respondent was not commonly known by a disputed domain name if the Whois information was not similar to the disputed domain name. Thus, the Respondent is not known as the disputed domain name.

The Respondent is not known by the Complainant. The Complainant contends that Respondent is not affiliated with nor authorized by the Complainant in any way. The Complainant contends that Respondent has no rights or legitimate interests in respect of the disputed domain name. 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 or apply for registration of the disputed domain name.

Finally, the disputed domain name is not used or did not make any use of the disputed domain name since its registration and confirms that 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 an important indicator of the absence of legitimate interests by the Respondent.

Accordingly, the Complainant argues that it has made a prima facie case that the Respondent has no rights or legitimate interests on the disputed domain name.

Turning to the bad faith argument, the Complainant asserts that the disputed domain is confusingly similar to the Complainant's well-known trademark "BOURSORAMA". The Complaint considers it reasonable to infer that the Respondent has registered the domain name with full knowledge of the Complainant's trademark.

Moreover, the disputed domain name resolves to an inactive page. The Complainant contends that the Respondent has not demonstrated any activity in respect of the disputed domain name, and it is not possible to conceive of any plausible actual or contemplated active use of the 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. As prior panels 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.

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

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

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

This is a proceeding pursuant to Paragraph 4 of the Uniform Domain Name Dispute Resolution Policy (the "Policy" or "UDRP"), the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules") and the CAC Supplemental Rules.

Paragraph 15 of the Rules provides that the Panel shall decide the complaint on the basis of the statements and documents submitted and in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

According to Paragraph 4(a) of the Policy, a complainant must prove each of the following: (A) the domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; (B) the respondent has no rights or legitimate interests in respect of the domain name; (C) the domain name has been registered and is being used in bad faith.

A. Identical or confusingly similar domain name

The Complainant demonstrated that it owns the asserted EU trademark registration for the word mark "BOURSORAMA", which was registered long before the registration of the disputed domain name by the Respondent. It is well established that a nationally or regionally registered trademark confers on its owner sufficient rights to satisfy the requirement of having trademark rights for the purposes of standing to file a UDRP case. Therefore, the Panel finds that the Complainant has established such rights.

It is also well established that the generic top-level suffix .com may be disregarded when considering whether a disputed domain name is identical or confusingly similar to a trademark in which the Complainant has rights, as it is a necessary technical requirement of a domain name.

The disputed domain name incorporates the Complainant's trademark "BOURSORAMA" in its entirety. The additional words "CLIENTS" and "BANQUE" are generic words understandable not only to French speakers, which are descriptive particular in the field in which the Complainant is active, i.e. online banking and other online financial services. With that in mind, the Panel agrees with the Complainant that adding these additional words to the Complainant's trademark is not sufficient to

escape the finding that the disputed domain name is confusingly similar to the Complainant's trademark.

The Panel, therefore, finds that the disputed domain name is confusingly similar to the trademark in which the Complainant has rights.

B. Lack of rights or legitimate interests

The Respondent has not filed a Response and has neither provided any other information that would oppose the Complainant's allegations. Therefore, the Panel holds that the Complainant successfully presented its prima facie case that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

In particular, the Respondent is not in any way connected with the Complainant nor is it authorized to use the Complainant's trademark for its commercial activities. In addition, the Respondent is not commonly known by the disputed domain name pursuant to Paragraph 4(c)(ii) of the Policy. Furthermore, it was demonstrated by evidence submitted by the Complainant that the disputed domain name has not been used for a bona fide offering of goods or services or a legitimate non-commercial or fair use.

The Panel, therefore, finds that the Respondent has no rights or legitimate interest in the disputed domain name.

C. Registration and use of the disputed domain name in bad faith

With respect to the bad faith argument, the Complainant states, in summary: (a) that the disputed domain is confusingly similar to the Complainant's well-known trademark; (b) that the Respondent had actual knowledge of the Complainant's rights in its trademarks; (c) that the disputed domain name resolve to an inactive page; and (d) that the disputed domain name was set up with MX records which suggests that it may be actively used for email purposes.

The Panel has already found that the disputed domain name is confusingly similar to the Complainant's trademark "BOURSORAMA". Although the Panel does not believe the Complainant submitted sufficient evidence that its trademark is indeed well-known, it does not change the overall finding that mere registration of a domain name that is confusingly similar to a trademark by an unaffiliated entity can lead to the presumption of bad faith, especially where the disputed domain name contains additional generic words that are highly common for the Complainant's field.

In addition, the Panel believes that the Complainant submitted evidence that sufficiently demonstrates the Respondent must have (or should have) been aware of the existence of the Complainant, its trademark and its domain name.

With respect to the fact that the disputed domain name has not been put to any use, the Panel notes that the so-called passive holding of a domain name cannot prevent a finding of bad faith. In this present case the Complainant's trademark is distinctive, the Respondent failed to respond to the Complaint and there seems no plausible good faith use for the disputed domain name. Furthermore, the Complainant submitted evidence that the disputed domain name was set up with MX (mail exchange) records. Configuration of MX records for email purposes is indicative of potential fraudulent use of the disputed domain name, such as spam and phishing, and can lead to the finding of bad faith, as established by previous panels (eg. CAC Case No. 102380). In its own motion, the Panel has checked that the disputed domain name is blocked by various web browsers for being unsafe.

Consequently, the Panel finds that the disputed domain name has been registered and has been used by the Respondent in bad faith.

In conclusion, the Panel finds that all three elements required by Paragraph 4(a) of the Policy were met and makes the following decision.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. CLIENTS-BOURSORAMA-BANQUE.COM: Transferred

PANELLISTS

Name	Mgr. Vojtěch Chloupek
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DATE OF PANEL DECISION 2021-07-06

Publish the Decision
