

## Decision for dispute CAC-UDRP-103849

Case number	CAC-UDRP-103849
Time of filing	2021-06-07 09:26:59
Domain names	boursorama-2pd.com, boursorama-2ps.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 names.

#### IDENTIFICATION OF RIGHTS

The Complainant is the owner of a number of trade marks for BOURSORAMA including, by way of example only, European Trade Mark, registration number 001758614, for BOURSORAMA, in classes 9, 16, 35, 36, 38, 41 and 42, registered on October 19, 2001.

#### FACTUAL BACKGROUND

The Complainant is a business based in France which provides services in online broking, online banking and the supply of financial information. It was founded in 1995 and has over 2.8 million banking customers in France.

The Complainant owns several trade marks for BOURSORAMA, including the mark referenced above. In addition, it owns and operates the domain name <boursorama.com>; this resolves to the Complainant's primary website, which includes an online banking portal for its customers.

The disputed domain names <boursorama-2pd.com> ("the first disputed domain name") and <boursorama-2ps.com> ("the second disputed domain name") were registered on May 31, 2021. Neither of the disputed domain names presently resolve

to an active website. However, the second disputed domain name has previously been used as part of a phishing scheme in that it resolved to a login webpage, the appearance of which was the same as that one used by the Complainant for its online banking customers.

The disputed domain names are confusingly similar to the Complainant's BOURSORAMA trade mark, which is included in its entirety in each domain name. Each disputed domain name adds a hyphen and a misspelt version of "PSD2", which is an abbreviation for the European Directive known as "Payments Service Directive 2". Neither the additional number and letters, nor the hyphen, prevents the disputed domain names from being found confusingly similar to the Complainant's BOURSORAMA mark.

The Respondent has no rights or legitimate interests in respect of the disputed domain names. The Respondent is not commonly known by the disputed domain names, nor is it affiliated with, nor authorised by, the Complainant in any way. The Respondent does not carry out any activity for, nor does it have any business with, the Complainant, nor has it been licensed to use the Complainant's mark. Although both disputed domain names are now inactive, the second disputed domain name has previously been used as part of a phishing scheme and it is clear that both disputed domain names were created in order to phish Internet users for personal banking information.

The Respondent has registered and is using the disputed domain names in bad faith. The fact that the disputed domain names combine the Complainant's BOURSORAMA trade mark in full with misspellings of the acronym for the Payments Service Directive 2, strongly indicates that the Respondent was aware of the Complainant and its BOURSARAMA trade mark at the time of registration. This is confirmed by the Respondent's creation of a web page which purported to be that of the Complainant's customer login page.

The Complainant accordingly has used the second disputed domain name primarily for the purpose of attempting to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's mark as the source or affiliation of its website. Whilst both disputed domain names are now inactive, it is not possible to conceive of any plausible actual or contemplated use of them that would not be illegitimate.

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#### PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

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#### 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).

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#### 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).

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#### 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).

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#### 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.

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#### PRINCIPAL REASONS FOR THE DECISION

Paragraph 4(a) of the Policy requires that the Complainant proves each of the following three elements in order to succeed

in its Complaint:

- (i) the disputed domain names are identical or confusingly similar to a trade mark or service mark in which the Complainant has rights; and
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain names; and
- (iii) the disputed domain names have been registered and are being used in bad faith.

#### Rights

The Complainant's trade mark registrations for BOURSORAMA, including the trade mark in respect of which full details are provided above, establish its rights in this mark.

For the purpose of comparing the disputed domain names with the Complainant's mark, it is established practice to disregard the generic Top Level Domain, that is ".com" in the case of each of the disputed domain names, as this is a technical requirement of registration. The remaining element of each of the disputed domain names comprises the Complainant's trade mark, in full followed, in the case of the first disputed domain name, by a hyphen and the number and letters "2pd" and, in the case of the second disputed domain name, by a hyphen and the number and letters "2ps".

The Complainant's mark is clearly recognizable within each of the disputed domain names and the additional elements do not serve to prevent the disputed domain names from being found confusingly similar to it. See, by way of example, CAC Case No. 103016, Novartis AG v unlocking guru; "An addition of common, dictionary, generic, or other descriptive terms is typically insufficient to prevent threshold Internet user confusion". The same principle applies even if the additional content is meaningless and the Panel accordingly finds that the disputed domain names are confusingly similar to a trade mark in which the Complainant has rights.

#### Rights and legitimate interests

Paragraph 4(c) of the Policy sets out circumstances, without limitation, by which a respondent might demonstrate that it has rights or a legitimate interest in a domain name. These are, summarised briefly: (i) if the respondent has been using the domain name in connection with a bona fide offering of goods and services; (ii) if the respondent has been commonly known by the domain name; or (iii) if the respondent has been making a legitimate noncommercial or fair use of the domain name.

The first disputed domain name has never resolved to an active website. The second disputed domain name was used for a period of time as part of a phishing scheme. Use of a domain name for fraudulent purposes self-evidently does not comprise use in connection with a bona fide offering of goods and services. Similarly, the currently inactive status of both domain names does not amount to use in connection with a bona fide offering of goods and services; see, by way of example, CAC Case No. 103361, Bouygues v Alloud Franck Jean-Claude.

There is no evidence that the Respondent has been commonly known by the disputed domain names, nor does the Respondent's holding of the disputed domain names amount to making a legitimate noncommercial or fair use of them. Furthermore, as both disputed domain names, are confusingly similar to the Complainant's BOURSORAMA mark, they carry with them a risk of implied affiliation.

The Complainant having made out a prima facie case in relation to the second element, the burden of proof shifts to the Respondent to rebut it; see, for example, CAC Case No. 102333, Amedei S.r.l. v sun xin. In the absence of any response by it to the Complaint, the Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain names.

#### Bad faith

The Panel accepts the Complainant's submission that, given the distinctive nature of the Complainant's BOURSORAMA trade mark and the fact that the second disputed domain name previously resolved to a replica of the Complainant's customer login page, it is evident that the Respondent registered the disputed domain names with full knowledge of the Complainant's trade mark.

The previous use of the second disputed domain name as part of a phishing scheme self-evidently comprises bad faith registration and use. Moreover, it is reasonable to assume that the Respondent has had similar dishonest intentions in terms of its use of the first disputed domain name. Such use and intended use fall within the circumstance of bad faith registration and use set out of paragraph 4(b)(iv) of the Policy, namely that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of its website.

Additionally, the currently inactive status of both disputed domain names falls within the doctrine of passive holding and the principles set out initially in the decision of Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003. See also Intesa Sanpaolo S.p.A. v Leone Toscano, CAC Case No. 103819. Factors which are typically considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the Complainant's mark, (ii) the failure of the Respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the Respondent's concealing its identity or use of false contact details and (iv) the implausibility of any good faith use to which the domain name may be put.

All of these factors are applicable to the current circumstances. First, the Complainant's mark is distinctive and well-known. Second, the Respondent has not submitted a response or provided any evidence of good faith use. Third, the Respondent has sought to conceal its identity through use of a privacy service. Finally, having regard to the characteristics of each of the disputed domain names, as outlined above, it is not possible to conceive of any good faith use to which either of them could be put. Accordingly, in the circumstances of this case, the inactive status of the disputed domain names comprises bad faith use under the doctrine of passive holding.

For these reasons the Panel finds that the disputed domain names were both 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-2PD.COM: Transferred
2. BOURSORAMA-2PS.COM: Transferred

## PANELLISTS

Name	Antony Gold
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DATE OF PANEL DECISION 2021-07-12

Publish the Decision