

Decision for dispute CAC-UDRP-103870

Case number CAC-UDRP-103870

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Domain names Boerse-Frankfurt.org

Case administrator

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

Complainant

Organization Deutsche Börse AG

Complainant representative

Organization Grünecker Patent und Rechtsanwälte PartG mbB

Respondent

Name Sonia Howard

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 proprietor of a number of trade marks in respect of the string 'BÖRSE FRANKFURT', including EUTM 5228408 and Swiss mark 552765; these marks were first registered in 2006 (e.g. the EUTM filed 28 July 2006) and have been duly renewed, and subsist in various classes in respect of financial affairs and services.

FACTUAL BACKGROUND

The Complainant, a corporation with its seat in Eschborn, Frankfurt am Main, in Germany, is active in the financial services sector. It is well known for operating the Frankfurt Stock Exchange ("Börse Frankfurt" in German) and a range of related and other activities. It operates various websites of its own at domain names including <BOERSE-FRANKFURT.DE> and <BOERSE-FRANKFURT.COM>.

The Respondent, an individual who has supplied an address in Miami, Florida, in the United States of America, registered the disputed domain name on 21 February 2021.

PARTIES CONTENTIONS

No administratively compliant Response has been filed. Written notice of the Complaint was returned to the CAC as undelivered (as the postal address provided does not exist), and the Respondent never accessed the online platform. One e-mail sent to the Respondent was successfully relayed.

The Complainant contends that the Respondent registered and is using the disputed domain name to operate a 'cloned' version of the Complainant's website, seeking the personal data of users and relying upon the close similarity between the disputed domain name and the mark (and website) of the Complainant. Evidence is supplied including a detailed 'side by side' analysis the Respondent's website and its own website. It asks for the disputed domain name to be transferred to the Complainant.

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).

Disregarding the generic TLD '.org' in accordance with established UDRP practice, and the hyphen commonly used in domain names on account of the inability to represent spaces, the only difference between the Complainant's mark and the disputed domain name is the reference to BOERSE instead of BÖRSE. This is confusingly similar, in particular because of the well-established practice – long predating the partial introduction of internationalised domain names – of representing German-language vowels with diacriticals (such as Ö) with the phonetically similar or (English-Roman) transliterated OE, due to the initial use of the 37-character 'LDH' (26 letters in the English alphabet, 10 numerical digits, and the hyphen) subset of Roman characters in the domain name system. This finding is consistent not just with the treatment of the similarity between Ö and OE in previous decisions (e.g. WIPO Case No. D2010-0464 Klöckner & Co SE v. Klocke of America, Inc) but also with previous cases involving this Complainant (e.g. WIPO Case No. D2006-0786 Deutsche Börse AG v. Pertshire Marketing, WIPO Case No. D2015-0605 Deutsche Börse AG v. Jerry Amuno, J.Skylimit Publishing / WhoisGuard Protected, WhoisGuard, Inc), and the Complainant's ongoing use of domain names using OE.

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).

The Respondent is known as 'Sonia Howard' which has no relationship with the text of the disputed domain name. Moreover, the Complainant declares that has not authorised the Respondent to use its mark, and has no connection with it.

The Panel has not been able to identify any plausible rights or legitimate interests in the present case. The Respondent has not assisted the Panel in any way, due to their failure to participate. The Complaint has included screenshots of the website operated by the Respondent at the disputed domain name at the time of the Complainant, which provides uncontradicted evidence that the Respondent intentionally copied the design and structure of the Complainant's website, and included some material purporting to be supplied by the Complainant (e.g. contact details). Moreover, the Respondent's website appeared to encourage visitors to supply their details, to the Respondent but plausibly in the belief that they were in communication with the Complainant. This is quite some distance from the type of activity that would suggest the presence of rights or legitimate interests. The Complainant has therefore made out a prima facie case of the absence of rights and legitimate interests, which the Panel has been able to accept.

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).

The Panel accepts, taking the Complaint and the Respondent's failure to respond into account, that it is more likely than not that the Respondent registered and was using the disputed domain name for the purpose of impersonating the Complainant (see further the discussion under rights and legitimate interests, above). Particular weight is placed upon the Complainant's uncontradicted 'side by side' analysis of its website and the Respondent's website. The Panel also notes that the Respondent

initially used a privacy / proxy service for the registration of the disputed domain name, and appears to have supplied a false mailing address.

This is therefore a clear case where one of the non-exhaustive examples of bad faith set out at para 4(b)(iv) of Policy is accepted by the Panel: 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 the Respondent's website or of a product or service offered on the Respondent's website.

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

In the absence of any Response from the Respondent, or any other information indicating the contrary, the Panel concludes that the Respondent has no rights or legitimate interests in respect of the disputed domain name. On the other hand, it is clear that the Complainant has rights in respect of the trade mark BÖRSE FRANKFURT, and that the replacement of a space with a hyphen and the letter Ö with the transliterated OE does not prevent a finding of confusing similarity with the Complainant's mark. It is likely, in light of the use of the disputed domain name by the Respondent (especially the copying of material from the Complainant's website) that the Respondent would have been aware of the Complainant, and intended to confuse Internet users as to its authenticity (and collect personal data from those thinking they were dealing with the Complainant). The Panel can find for these reasons that the disputed domain name was registered and is being operated in bad faith. The requirements for the acceptance of a Complaint under paragraph 4 of the Policy have therefore been met, and the Panel ordered that the disputed domain name be transferred to the Complainant.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **BOERSE-FRANKFURT.ORG**: Transferred

PANELLISTS

Name	Dr Daithi Mac Sithigh
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DATE OF PANEL DECISION 2021-07-18

Publish the Decision
