

Decision for dispute CAC-UDRP-103962

Case number	CAC-UDRP-103962
-------------	------------------------

Time of filing	2021-08-05 09:51:16
----------------	----------------------------

Domain names	bourso-rama.online
--------------	---------------------------

Case administrator

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

Complainant

Organization	BOURSORAMA SA
--------------	----------------------

Complainant representative

Organization	NAMESHIELD S.A.S.
--------------	--------------------------

Respondent

Name	BOURSO
------	---------------

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 owner of the following registered trademark (among others):

- European Union registered trademark BOURSORAMA, word mark, registered October 19, 2001 under number 1758614, for goods and services in Nice classes 9, 16, 35, 36, 38, 41 and 42.

FACTUAL BACKGROUND

The Complainant was founded in 1995. It is the owner of several BOURSORAMA trademarks which it uses in connection with its three core businesses of online brokerage, delivery of financial information on the Internet and online banking. The Complainant is also the owner of a variety of domain names incorporating the BOURSORAMA mark, including <boursorama.com>, registered since March 1, 1998.

The disputed domain name was registered on July 28, 2021, resolves to a registrar parking page, and has MX servers configured. The disputed domain name is identical or confusingly similar to the Complainant's trademark, which is included in its entirety. The addition of a dash coupled with the gTLD ".com" [sic] does not change the overall impression made by the

Complainant's said trademark, nor does it prevent the likelihood of confusion between the disputed domain name and said trademark. Plus, many UDRP decisions have also confirmed the Complainant's rights.

The disputed domain name has been registered by the Respondent without rights or legitimate interests. 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 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 BOURSORAMA trademark, or apply for registration of the disputed domain name.

The disputed domain name resolves to a registrar parking page. The Respondent has not made any use of disputed domain name since its registration, and this confirms that the Respondent has had 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 as an important indicator of the absence of the Respondent's legitimate interests.

The disputed domain name has been registered and is being used in bad faith. It is confusingly similar to the Complainant's well-known BOURSORAMA trademark and it is reasonable to infer that it was registered in full knowledge of such trademark. Besides, the Complainant operates an online banking reference with over 2.8 million customers, and the portal at "www.boursorama.com" is the first national financial and economic information site and the first French online banking platform.

The disputed domain name resolves to a registrar parking page and 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 disputed domain name by the Respondent that would not be illegitimate, such as by constituting passing off, an infringement of consumer protection legislation, or an infringement of the Complainant's rights under trademark law. Prior panels have held that the incorporation of a famous mark into a domain name, coupled with an inactive website, may be evidence of bad faith registration and use.

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

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown that 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 that 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 the UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

The Complainant has demonstrated that it has UDRP-relevant rights in its BOURSORAMA registered trademark. It has also demonstrated that the second level of the disputed domain name contains the Complainant's said trademark in exactly the same alphabetic order, split only by dash or hyphen to create "bourso-rama". The presence of such hyphen does nothing to lessen the recognizability of the Complainant's said mark in the disputed domain name. The generic Top Level Domain, in this case ".online" (and not ".com" as the Complaint states) is typically disregarded for the purposes of the comparison under the first element analysis of the Policy. Accordingly, the Panel finds that the disputed domain name is confusingly similar to the Complainant's BOURSORAMA registered trademark.

The Panel is satisfied that the Complainant has established a prima facie case that the Respondent does not have rights or legitimate interests in the disputed domain name by reference to its submissions that (i) the Respondent is not known by the Complainant, (ii) the Respondent is not affiliated with nor authorized by the Complainant in any way, (iii) the Respondent does not carry out any activity for, nor has any business with the Complainant, and (iv) the Respondent has not been granted any license or authorization to make any use of the Complainant's BOURSORAMA trademark, or to apply for registration of the disputed domain name.

The disputed domain name has not been configured for use with an active website but remains pointed to a registrar parking page. However, MX records have been configured for the disputed domain name, suggesting that it may be being used or intended by the Respondent for use in sending and receiving e-mail. Given that the disputed domain name consists entirely of the Complainant's well-known trademark merely with a hyphen separator, any such e-mail use would not be likely on the balance of probabilities to constitute a bona fide offering of goods or services.

The Respondent has failed to rebut the Complainant's prima facie case in that it has not filed a Response. There are no surrounding facts or circumstances tending to show that the Respondent may otherwise have rights or legitimate interests in the disputed domain name. It is therefore reasonable in the circumstances for the Panel to find that the Respondent has no such rights or legitimate interests therein.

The Panel also finds that the Complainant has successfully made out a case of registration and use in bad faith in respect of the disputed domain name. The presence of the Complainant's distinctive trademark in the disputed domain name demonstrates to the Panel's satisfaction that the Respondent more probably than not had knowledge of the Complainant and its BOURSORAMA trademark at the point of registration.

The Complainant has demonstrated that the disputed domain name is configured for sending and receiving e-mail. If, for example, the disputed domain name was to be used by the Respondent at any point for the sending of e-mail, such use would give rise to an appearance that any such communications originated genuinely from the Complainant when they do not.

The website at the disputed domain name consists merely of a registrar's parking page and, in these circumstances, the disputed domain name may be considered to be "passively held". Such passive holding does not allow the Respondent to escape a finding of registration and use in bad faith in circumstances where, as here, the disputed domain name is confusingly similar to the Complainant's mark, which is well-known, the Respondent has failed to submit a Response or otherwise to provide any evidence of actual or contemplated good faith use, and it is implausible that the disputed domain name could be put to any such good faith use if its website were to become active or, for that matter, if it were used to send e-mail (see, on this topic generally, *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. D2000-0003).

The Respondent has failed to address the Complainant's contentions by way of any Response and did not advance any alternative motivation for its registration and use of the disputed domain name which might have indicated that its actions were in good faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **BOURSO-RAMA.ONLINE:** Transferred

PANELLISTS

Name	Andrew Lothian
------	-----------------------

DATE OF PANEL DECISION	2021-09-01
------------------------	------------

Publish the Decision
