

Decision for dispute CAC-UDRP-104185

Case number	CAC-UDRP-104185
Time of filing	2021-11-25 09:24:46
Domain names	check-boursorama.online

Case administrator

Organization	Denisa Bilík (CAC) (Case admin)
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Complainant

Organization	BOURSORAMA SA
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Complainant representative

Organization	NAMESHIELD S.A.S.
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Respondent

Name	AMZATH LOUKMANE
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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 holder of trademark rights for the word mark BOURSORAMA (e.g. European word mark registered with the European Union Intellectual Property Office (EUIPO) under registration No. 001758614 since October 19, 2001, duly renewed, and covering goods and services in classes 9, 16, 35, 36, 38, 41 and 42).

FACTUAL BACKGROUND

The Complainant, Boursorama S.A., is a French company and operator of a leading online information portal providing stock market, political and general financial information since 1995. The Complainant is also a provider of online banking and brokerage services.

The Complainant is the owner of the registered EU word mark BOURSORAMA in several classes since 2001, and it owns the domain name <boursorama.com> since 1998.

The disputed domain name <check-boursorama.online> has been registered on November 19, 2020 by the Respondent using a privacy service. The disputed domain name resolves to a parking page displaying sponsored links including terms related

to the Complainant's stock market information business.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant considers the disputed domain name to be confusingly similar to a trademark in which it has rights. The Complainant claims that the Respondent has no rights or legitimate interests in respect of the disputed domain name. According to the Complainant, the Respondent does not use the disputed domain name in connection with any legitimate use. Also, according to the Complainant, the Respondent is not affiliated with the Complainant and has not been authorized to register or use the disputed domain name. Finally, the Complainant considers that the disputed domain name was registered and is being used in bad faith. The Complainant contends that the Respondent knew, or at least should have known, of the existence of the Complainant's trademark when registering the disputed domain name. The Complainant further claims that the Respondent has used the disputed domain name to intentionally attempt to attract, for commercial gain, Internet users to his 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.

RESPONDENT:

The Respondent did not reply to the Complainant's contentions.

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

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

The onus is on the Complainant to make out its case and it is apparent, both from the terms of the Policy and the decisions of past UDRP panels, that the Complainant must show that all three elements set out in Paragraph 4 (a) of the Policy have been established before any order can be made to transfer a domain name. As the proceedings are administrative, the standard of proof is the balance of probabilities.

Thus, for the Complainant to succeed it must prove, within the meaning of Paragraph 4(a) of the Policy and on the balance of probabilities that:

1. The domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
2. The Respondent has no rights or legitimate interests in respect of the domain name; and
3. The domain name has been registered and is being used in bad faith.

The Panel has therefore dealt with each of these requirements in turn.

1. Identity or confusing similarity

The Complainant must first establish that there is a trademark or service mark in which it has rights. Since the Complainant is the holder of the registered BOURSORAMA trademark, which is used in connection with the Complainant's financial information and online banking business, it is established that there is a trademark in which the Complainant has rights.

The disputed domain name <check-boursorama.online> incorporates the Complainant's BOURSORAMA trademark in its entirety, merely adding the descriptive term "check" and a hyphen. In these circumstances, the Panel finds that the confusing similarity is obvious.

Additionally, it is well established that the Top Level Domains ("TLDs") such as ".online" may be disregarded when considering whether the disputed domain name is identical or confusingly similar to the trademark in which the Complainant has rights (see section 1.11 WIPO Overview 3.0).

Therefore, the Panel finds that the disputed domain name <check-boursorama.online> is confusingly similar to the Complainant's trademark. Accordingly, the Complainant have made out the first of the three elements that they must establish.

2. No rights or legitimate interests

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

It is established case law that it is sufficient for the Complainant to make a prima facie showing that the Respondent has no right or legitimate interest in the disputed domain name in order to shift the burden of proof to the Respondent (see section 2.1 WIPO Overview 3.0 and *Champion Innovations, Ltd. V. Udo Dussling (45FHH)*, WIPO case No. D2005-1094; *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO case No. D2003-0455; *Belupo d.d. v. WACHEM d.o.o.*, WIPO case No. 2004-0110).

The Panel notes that the Respondent has not been commonly known by the disputed domain name and that the Respondent has not acquired trademark or service mark rights. The Whois records relating to the disputed domain name indicate that the Respondent is known as "Amzath Loukmane". The Respondent's use and registration of the disputed domain name was not authorized by the Complainant. There are no indications that a connection between the Complainant and the Respondent existed.

Fundamentally, a respondent's use of a domain name will not be considered "fair" if it falsely suggests affiliation with the trademark owner. The correlation between a domain name and the complainant's mark is often central to this inquiry. Generally speaking, UDRP panels have found that where a domain name consists of a trademark plus an additional term, such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner (see section 2.5.1 WIPO Overview 3.0). The disputed domain name incorporates the Complainant's BOURSORAMA trademark in its entirety, merely adding the descriptive term "check" and a hyphen. In the Panel's view, the term "check" and the ".online" TLD increase the risk of confusion with the Complainant's products and services as it may refer to checking the Complainant's online financial information portal. Therefore, the Panel finds that the disputed domain name carries a high risk of implied affiliation with the Complainant and cannot constitute fair use.

Moreover, it appears that the Respondent has been using the disputed domain name to refer to a standard parking page with sponsored links including terms such as “Bourse”, which is the French word for “stock market”. These links may thus relate to the Complainant’s stock market information services. According to the Panel, this cannot be considered as fair use of the disputed domain name.

The Respondent had the opportunity to demonstrate its rights or legitimate interests but did not do so. In the absence of a Response from the Respondent, the prima facie case established by the Complainant has not been rebutted.

Therefore, the Panel finds that the Complainant has established that the Respondent has no rights or legitimate interests in the disputed domain name. In light of the above, the Complainant succeeds on the second element of the Policy.

3. Bad faith

Complainant must prove on the balance of probabilities that the disputed domain name was registered in bad faith and that it is being used in bad faith (See section 4.2 WIPO Overview 3.0 and e.g. Telstra Corporation Limited v. Nuclear Marshmallow, WIPO Case No. D2000-0003; Control Techniques Limited v. Lektronix Ltd, WIPO Case No. D2006-1052).

According to the Panel, the awareness of a respondent of the complainant and/or the complainant’s trademark rights at the time of registration can evidence bad faith (see Red Bull GmbH v. Credit du Léman SA, Jean-Denis Deletraz, WIPO Case No. D2011-2209; Nintendo of America Inc v. Marco Beijen, Beijen Consulting, Pokemon Fan Clubs Org., and Pokemon Fans Unite, WIPO Case No. D2001-1070).

In the instant case, the Panel finds that the Respondent must have had knowledge of the Complainant’s rights in the BOURSORAMA trademark at the moment it registered the disputed domain name, since the disputed domain name incorporates the Complainant’s distinctive BOURSORAMA trademark in its entirety and only adds a generic word. Moreover, the well-known and distinctive character of the Complainant’s BOURSORAMA trademark has been confirmed by previous UDRP Panels, such as the following:

- CAC Case No. 101131, BOURSORAMA v. PD Host Inc - Ken Thomas (“In the case at hand, the Respondent acted in bad faith especially because the Respondent, who has no connection with the well-known "BOURSORAMA" trademark, registered a domain name, which incorporates the well-known "BOURSORAMA" trademark and it is totally unrealistic to believe that the Respondent did not know the Complainant's trademark when registered the domain name <wwwboursorama.com>.”)
- WIPO Case No. D2017-1463, Boursorama SA v. Estrade Nicolas (“Given the circumstances of the case including the evidence on record of the longstanding of use of the Complainant's trademark, and the distinctive nature of the mark BOURSORAMA, it is inconceivable to the Panel in the current circumstances that the Respondent registered the disputed domain name without prior knowledge of the Complainant and the Complainant's mark.”)

The Respondent has been using the disputed domain name in relation to a standard parking page displaying sponsored PPC links. While the intention to earn click through-revenue is not in itself illegitimate, the Panel finds that the use of a domain name that is deceptively similar to a trademark to obtain click-through-revenue is found to be bad faith use (see Mpire Corporation v. Michael Frey, WIPO Case No. D2009-0258; L'Oréal, Biotherm, Lancôme Parfums et Beauté & Cie v. Unasi, Inc, WIPO Case No. D2005-0623). The Panel finds that by using the disputed domain name incorporating the Complainant's trademark in connection with a parking page containing links referring to the Complainant’s business, the Respondent has intentionally attempted to attract Internet users to its website for commercial gain by creating a likelihood of confusion with the Complainant's trademark.

Finally, the Respondent did not formally take part in the administrative proceedings. According to the Panel, this serves as an additional indication of the Respondent’s bad faith.

Therefore, the Panel finds that, on the balance of probabilities, it is sufficiently shown that the disputed domain name was registered and is being used in bad faith.

Accepted

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

1. CHECK-BOURSORAMA.ONLINE: Transferred
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PANELLISTS

Name	Flip Petillion
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DATE OF PANEL DECISION 2022-01-03

Publish the Decision
