Decision for dispute CAC-UDRP-101308

Case number	CAC-UDRP-101308
Time of filing	2016-10-12 09:25:13
Domain names	credit-boursoramabanque.com

Case administrator

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

Complainant

Organization	BOURSORAMA SA

Complainant representative

Organization	Nameshield (Maxime Benoist)

Respondent

Name	Ansbert ABALOT

OTHER LEGAL PROCEEDINGS

N/A

IDENTIFICATION OF RIGHTS

The Complainant is the holder of trademark registrations consisting of or including the sign BOURSORAMA in multiple countries, including EU trademark registration 001758614 for the word mark “BOURSORAMA”, registered with the EUIPO on October 19, 2001 in classes 9, 16, 35, 36, 38, 41 and 42, and French trademark registration 4138952 for the figurative mark including the signs BOURSORAMA BANQUE, registered with the INPI on December 3, 2014 in classes 9, 16, 35, 36 and 38 (hereinafter, the “BOURSORAMA trademarks”).

FACTUAL BACKGROUND

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

The Complainant, BOURSORAMA S.A., is a French company founded in 1995 and is active in online brokerage, the provision of financial information on the Internet and online banking.

The Domain Name <credit-boursoramabanque.com> was registered on October 4, 2016. The Domain Name currently does not resolve to any content. For an undefined period of time, the Domain Name has been used to link to a website which was similar to the official website of the Complainant.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant considers the Domain Name to be confusingly similar to trademarks in which it has rights. The Complainant claims that the Respondent has no rights or legitimate interests in respect of the Domain Name. According to the Complainant, the Respondent does not use the Domain Name in connection with any legitimate use. Also, according to the Complainant, the Respondent has not been commonly known by the Domain Name. Finally, the Complainant considers that the Domain Name was registered and used in bad faith.

RESPONDENT:

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

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the 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 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 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 civil, 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 names are identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
2. The Respondent has no rights or legitimate interests in respect of the domain names; and
3. The domain names have been registered and are being used in bad faith.

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

Confusing similarity of the Domain Name with existing rights

The Complainant must first establish that there is a trademark or service mark in which it has rights. Since Complainant is the holder of the BOURSORAMA trademarks, which are used in connection with its business, it is established that there is a trademark in which Complainant has rights.

The Domain Name <credit-boursoramabanque.com> incorporates the Complainant's BOURSORAMA trademark in its entirety and merely adds a hyphen and the generic terms "credit" and "banque". Moreover, the panel notes that the term "banque", which is the French translation for "bank", is also incorporated in the abovementioned figurative trademark of the Complainant. The Panel is of the opinion that the mere addition of non-distinctive text to a complainant's trademark constitutes confusing similarity, as set out in paragraph 4(a)(i) of the Policy (See Karen Millen Fashions Limited v. Akili Heidi, WIPO Case No. D2012-1395, where the domain name <karenmillenoutlet-australia.com> was held to be confusingly similar to the KAREN MILLEN trademark; Belstaff S.R.L. v. Jason Lau, Sharing, WIPO Case No. D2012 0783, where the domain name <belstaffjacken-outlet.info> was held to be confusingly similar to the BELSTAFF trademark; Lime Wire LLC v. David Da Silva/Contactprivacy.com, WIPO Case No. D2007 1168, where the domain name <downloadlimewirenow.com> was held to be confusingly similar to the LIME WIRE trademark, especially with addition of the word "download" because users typically download complainant's software).

Accordingly, the Complainant has made out the first of the three elements that it must establish.

No legitimate rights

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

It is established case law that it is sufficient for the Complainant to make a prima facie showing that Respondent has no right or legitimate interest in the Domain Name in order to shift the burden of proof to the Respondent (See: Champion Innovations, Ltd. V. Udo Dussling (45FHH), WIPO case No. D2005-1094 <championinnovation.com>; Croatia Airlines d.d. v. Modern Empire Internet Ltd., WIPO case No. D2003-0455 <croatiaairlines.com>; Belupo d.d. v. WACHEM d.o.o., WIPO case No. 2004-0110 <belupo.com>).

The Panel notes that the Respondent has not been commonly known by the domain name and that the Respondent has not acquired trademark or service mark rights. Respondent's use and registration of the Domain Name was not authorized by the Complainant. There are no indications that a connection between Complainant and Respondent existed.
Based on the available record, the Panel finds that the Complainant has established a prima facie case, which was not refuted, and that the Respondent lacks rights or legitimate interests in the Domain Name. Therefore, the Complainant has satisfied the second requirement that the Respondent has no rights or legitimate interests in the Domain Name, under paragraph 4(a)(ii) of the Policy.

Bad faith

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

Policy Paragraph 4(b) provides a non-exclusive list of factors, any one of which may demonstrate bad faith registration and use, namely:

(i) circumstances indicating that the domain name is registered or acquired primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant or to a competitor of the Complainant, for valuable

consideration in excess of documented out-of-pocket costs directly related to the domain name (Policy Paragraph 4(b)(i));
(ii) the registration of a domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that Respondent has engaged in a pattern of such conduct (Policy Paragraph 4(b)(ii));
(iii) the registration of a domain name primarily for the purpose of disrupting the business of a competitor (Policy Paragraph 4(b)(iii)); and
(iv) the use of a domain name for intentionally attempting to attract, for commercial gain, Internet users to a web site or other on-line location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of Respondent's web site or location or of a product or service on Respondent's web site or location (Policy Paragraph 4(b)(iv)).

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, supra; Nintendo of America Inc v. Marco Beijen, Beijen Consulting, Pokemon Fan Clubs Org., and Pokemon Fans Unite, supra, where POKÉMON was held to be a well-known mark of which the use by someone without any connection or legal relationship with the complainant suggested opportunistic bad faith; BellSouth Intellectual Property Corporation v. Serena, Axel, WIPO Case No. D2006-0007, where it was held that the respondent acted in bad faith when registering the Domain Name, because widespread and long-standing advertising and marketing of goods and services under the trademarks in question, the inclusion of the entire trademark in the domain name, and the similarity of products implied by addition of telecommunications services suffix ("voip") suggested knowledge of the complainant's rights in the trademarks).

In the instant case, the Panel notes that the Domain Name used to refer to a website which was highly similar to the Complainant's website, even including the Complainant's BOURSORAMA trademarks. Therefore, the Panel finds that the Respondent was unquestionably aware of the Complainant's trademarks when registering the Domain Name.
Moreover, the website linked to the Domain Name used to include a false account service connection page. In view of these circumstances, the Panel finds that the Domain Name was registered and used to intentionally attempting to attract, for commercial gain, Internet users by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of Respondent's web site or location or of a product or service on Respondent's web site.

The Complainant states that it notified the Domain Name on the phishing database on October 7, 2010, which is the reason why the website is currently inactive. In any event, the Panel is of the opinion that the passive holding of the Disputed Domain Name may amount to bad faith when it is difficult to imagine any plausible future active use of the Disputed Domain Name by Respondent that would be legitimate and not infringing Complainant's well-known mark or unfair competition and consumer protection legislation (See Inter-IKEA v Polanski, WIPO Case No. D2000 1614; Inter-IKEA Systems B.V. v. Hoon Huh, WIPO Case No. D2000 0438; Telstra Corporation Limited v. Nuclear Marshmallows, supra). The fact that a complainant's trademark has a strong reputation and is widely used and the absence of evidence whatsoever of any actual or contemplated good faith use are further circumstances that may evidence bad faith registration and use in the event of passive use of domain names (Telstra Corporation Limited v. Nuclear Marshmallows, supra).

In the present case, the Panel is of the opinion that Complainant's trademark is sufficiently distinctive, which makes it difficult to conceive any plausible legitimate future use of the Domain Name by Respondent.

Considering the above, the Panel finds that the Complainant has made out the three elements that it must establish.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **CREDIT-BOURSORAMABANQUE.COM**: Transferred

PANELLISTS

Name	**Flip Petillion**

DATE OF PANEL DECISION 2016-11-29

Publish the Decision