Decision for dispute CAC-UDRP-101369

Case number	CAC-UDRP-101369
Time of filing	2016-12-01 10:05:17
Domain names	boursorama.top

Case administrator

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

Complainant

Organization	BOURSORAMA SA

Complainant representative

Organization	Nameshield (Laurent Becker)

Respondent

Name	Yolanda Singletary

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings that relate to the Disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant is the registered owner of the EU word trademark “BOURSORAMA”, reg. no. 001758614, filed on July 13, 2000, registered on 19 October, 2001, with the priority date of 13 July 2000, registered for goods and services in classes 9, 16, 35, 36, 38, 41 and 42 (“Complainant’s Trademark”).

The Disputed domain name <boursorama.top> was registered on 20 November 2016.

FACTUAL BACKGROUND

As the Respondent did not file any response to the complaint, the Panel took into account the following facts asserted by the Claimant (and supported by the documentary evidence submitted by the Claimant) and unchallenged by the Respondent:

(a) the Complainant was founded in 1995, and provides services to its clients consisting in particular of online brokerage, financial information and online banking; in late 2015 it had about 757,000 clients (Annex 1 of the complaint);

(b) the Complainant is the owner of the Complainant’s Trademark (Annex 2 of the complaint);

(c) the Complainant owns various domain names including the same distinctive wording BOURSORAMA, of which the domain name <boursorama.com> has been registered since 1 March 1998 (Annex 3 of the complaint);

(d) the Disputed domain name was registered on 20 November 2016 (Annex 4 of the complaint); and

(e) under the Disputed domain name there was a website in operation (Annex 5 of the complaint) resembling the official website of the Complainant at <www.boursorama.com> (Annex 6 of the complaint), including page purporting to be an entry to the Complainant's online banking system and prompting users to enter their login credentials to such system. Such website was subsequently inactivated and no website was operated under the Disputed domain name as of 24 November 2016 (Annex 7 of the complaint).

The Complainant seeks transfer of the Disputed domain name to the Complainant.

PARTIES CONTENTIONS

The Parties' contentions are the following:

THE COMPLAINANT:

In addition to the above factual assertions, the Complainant also contends the following:

(i) The Respondent is not known by the Complainant. The Respondent is not affiliated with the Complainant and is not related in any way to Complainant's business. The Respondent is apparently making neither a bona fide offering of goods or services, nor a legitimate noncommercial or fair use, through the Disputed domain name. Therefore, the Respondent has no right or legitimate interest to the Disputed domain name; and

(ii) The Respondent uses the Disputed domain name in an attempt to phish for Internet users' personal information. Panels have held that use of a domain for phishing activities constitutes bad faith under Policy 4(a)(iii). Please see Morgan Stanley v. Zhang Sheng Xu / Zhang Sheng Xu, FA 1600534 (Forum Feb. 16, 2015).

THE RESPONDENT:

The Respondent did not provide any response to the complaint.

RIGHTS

The Panel concluded that the Disputed domain name is identical to the Complainant's Trademark within the meaning of paragraph 4(a)(i) of the Uniform Domain Name Dispute Resolution Policy ("UDRP" or "Policy").

For details, please see "Principal Reasons for the Decision".

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.

For details, please see "Principal Reasons for the Decision".

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.

For details, please see "Principal Reasons for the Decision".

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

Principal Reasons for the Decision

Paragraph 4(a) of the Policy requires that the Complainant proves each of the following three elements to obtain an order that the Disputed domain name should be transferred or cancelled:

(i) the Disputed domain name is identical or confusingly similar to a trademark 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 name; and

(iii) the Disputed domain name has been registered and is being used in bad faith.

The Panel will proceed to analyze whether the three elements of paragraph 4(a) of the Policy are satisfied in this proceeding.

RIGHTS

The Disputed domain name is identical with the Complainant's Trademark.

For sake of completeness, the Panel asserts that the top-level suffix in the domain name (i.e. the ".top") must be disregarded under the identity / confusing similarity test as it is a necessary technical requirement of registration.

Therefore, the Panel concludes that the Complainant satisfied the requirement under paragraph 4(a)(i) of the UDRP.

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant is required to make out a prima facie case that the Respondent lacks rights or legitimate interests. Once such prima facie case is made, the Respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(a)(ii) of the UDRP (please see, for example, WIPO case no. D2003-0455, Croatia Airlines d.d. v. Modern Empire Internet Ltd.).

As asserted by the Complainant (and unchallenged by the Respondent), the Respondent is not commonly known by the Disputed domain name. Neither is the Respondent in any way related to the Complainant. The Respondent failed to provide any information and evidence that it has relevant rights or legitimate interests in respect of the Disputed domain name (within the meaning of paragraph 4(a) (ii) of the Policy).

Therefore, the Panel concludes that the Respondent did not establish any right or legitimate interest to the Disputed domain name (within the meaning of paragraph 4(a)(ii) of the Policy).

BAD FAITH

The Panel finds that the Respondent operated a website under the disputed domain name which closely resembled the official website of the Complainant and which deliberately elicited the personal details and login credentials of the users who mistakenly took such website for an official site of the Complainant, in other words, the Respondent used the website for phishing activities.

The Panel believes that phishing activities conducted using the Disputed domain name identical to the trademark of the

Complainant are clear evidence of bad faith of the Respondent. Such conclusion is consistent with previous UDRP decisions on this issue, please see for example Morgan Stanley v. Zhang Sheng Xu / Zhang Sheng Xu, FA 1600534 (Nat. Art. Forum Feb. 16, 2015) stating that Respondent's use of the disputed domain name in furtherance of a phishing scheme constitutes bad faith registration and use pursuant to Policy ¶ 4(a)(iii)) or Juno Online Servs., Inc. v. Iza, FA 245960 (Nat. Arb. Forum May 3, 2004) concluding that using a domain name that is confusingly similar to the Complainant's mark, redirects Internet users to a website that imitates the Complainant's billing website, and is used to fraudulently acquire personal information from the Complainant's clients" is evidence of bad faith registration and use..

As a result, the Panel found that the Disputed domain name has been registered and used by the Respondent in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy).

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **BOURSORAMA.TOP**: Transferred

PANELLISTS

Name	**Michal Matějka**

DATE OF PANEL DECISION 2017-01-17

Publish the Decision