

Decision for dispute CAC-UDRP-104409

Case number	CAC-UDRP-104409
Time of filing	2022-03-14 09:24:39
Domain names	boursoramakl.net, boursoramapo.com

Case administrator

Organization	Iveta Špiclová (Czech Arbitration Court) (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

Organization	Town and Country Convenience Stores
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OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other proceedings, pending or decided, which relate to the disputed domain names.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of the EU registered trademark "BOURSORAMA" no. 1758614 registered since October 19, 2001, which is registered in Nice Classes 9, 16, 35, 36, 38, 41, and 42.

According to the WHOIS Record adduced by the Complainant, it is also the owner of the domain name <boursorama.com> created on February 28, 1998, and <boursoramabanque.com> created on May 26, 2005.

FACTUAL BACKGROUND

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

The Complainant, BOURSORAMA S.A., was founded in 1995.

It is a pioneer and leader in its three core businesses: online brokerage; financial information on the Internet; and online banking.

The Complainant based its growth on innovation, commitment, and transparency.

In France, the Complainant is the online banking reference with over 3 million customers. The portal <www.boursorama.com> is the first national financial and economic information site and first French online banking platform.

The Respondent registered the disputed domain names <boursoramakl.net> and <boursoramapo.com> both on March 6, 2022, which are resolved to webpages without any substantial content.

PARTIES CONTENTIONS

No administratively compliant Response has been filed.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown that the disputed domain names are 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.

The Complainant contends that the disputed domain names are confusingly similar to its trademark “BOURSORAMA”, to which trademark the Respondent has included in the disputed domain names in its entirety.

When part of a domain name is identical to a well-known trademark, it increases the likelihood of confusion or association between the domain name holder and the trademark owner. It is, therefore, sufficient to establish identity or confusing similarity for the purposes of the Policy. See *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. D2001-0902; *Dr. Ing. h.c. F. Porsche AG v. Vasiliy Terkin*, WIPO Case No D2003-003-0888.

The Complainant contends that the letters “KL” or “PO” does not change the overall impression of the designations as being connected to the Complainant’s trademark BOURSORAMA. It does not prevent the likelihood of confusion between the disputed domain names and the Complainant, its trademark and domain names associated.

The Panel accepts the Complainant’s undisputed contentions. There are 10 letters in the BOURSORAMA mark. The Panel finds the two letters “KL” or “PO” appended at the end of a well-known trademark increases the likelihood of confusion or association with the true owner of the trademark. Consumers who use or are aware of the Complainant’s services are likely to recognise the BOURSORAMA mark which increases the likelihood of confusion or association with the BOURSORAMA.

The Complainant further contends that the addition of the suffix “.NET” or “.COM” does not change the overall impression of the designations as being connected to the trademark BOURSORAMA of the Complainant.

It is now a well-established principle in the domain name space that specific top-level domains such as “.com”, “.org” or “.net” do not affect the domain name for the purpose of determining whether it is identical or confusingly similar. See, for example, *WIPO Case No. D2006-0451*, *F. Hoffmann-La Roche AG v. Macalve e-dominios S.A.*

The Panel finds that the addition of the generic top-Level domain suffix “.NET” and “.COM” do not change the overall impression of the designation of the disputed domain names as being connected to the BOURSORAMA trademark. It does not prevent the likelihood of confusion between the disputed domain names and the Complainant as the true owner of the trademark, and the domain name associated with the Complainant.

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 names within the meaning of paragraph 4(a)(ii) of the Policy.

A complainant is required to make out a prima facie case that the respondent lacks rights or legitimate interests. Once such a prima facie case is made, the respondent carries the burden of demonstrating rights or legitimate interests in the disputed domain name. If the respondent fails to do so, the complainant is deemed to have satisfied paragraph 4(a)(ii) of the UDRP. See *WIPO Case No. D2003-0455*, *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*

In support of this ground, the Complainant makes three contentions:

First, the Respondent is not identified in the WHOIS database as the disputed domain names.

Where information in the WHOIS database is not similar to the disputed domain name, a respondent is not commonly known by the disputed domain name. See, for example, Forum Case No. FA 1781783, Skechers U.S.A., Inc. and Skechers U.S.A., Inc. II v. Chad Moston / Elite Media Group <bobsfromsketchers.com>.

The Panel accepts this contention, which is supported by the evidence from the WHOIS database adduced by the Complainant.

Secondly, the Complainant asserts that the Respondent is not known by the Complainant. Specifically, the Complainant contends as follows:

(a) the Respondent is not affiliated with nor authorized by the Complainant in any way;

(b) the Complainant does not carry out any activity for nor has any business with the Respondent;

(c) the Complainant has not licensed nor authorized the Respondent to make use of its trademark “BOURSORAMA” or apply for registration of the disputed domain names.

The Panel accepts this contention.

Thirdly, the Complainant contends that the disputed domain names resolve to webpages without any substantial content which confirms that the Respondent did not use the disputed domain names and as such would demonstrate it has no plan to use the disputed domain names.

The Respondent has not filed any administrative compliant response to the Amended Complaint. As such, the Complainant’s evidence is uncontradicted.

The Panel is prepared to accept the inference that the Respondent has not used nor intends to use the disputed domain names.

Accordingly, the Panel is prepared find the Respondent has no right or legitimate interests in the disputed domain names.

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown the disputed domain names have been registered and is being used in bad faith within the meaning of paragraph 4(a)(iii) of the Policy.

There are two elements that must be satisfied – registration and use in bad faith.

Registration in bad faith

The evidence shows that the Complainant’s trademark “BOURSORAMA” is a well-known trademark. The Complainant’s address and business are located in France. The Respondent appears to be located in the United States of America.

The Complainant contends that it is reasonable to infer that the Respondent registered the disputed domain names with full knowledge of the Complainant’s trademark.

The Panel notes that other past panel decisions referred to the well-known nature of the Complainant's trademark. See CAC Case No. 101131, BOURSORAMA v. PD Host Inc - Ken Thomas; WIPO Case No. D2017-1463, Boursorama SA v. Estrade Nicolas.

The Panel accepts the Complainant's trademark "BOURSORAMA" is well-known; it has a longstanding use of its trademark in relation to the services it offers; evidence adduced by the Complainant of a search of the term "BOURSORAMA" refers to the Complainant.

Accordingly, the Panel finds it is inconceivable that the Respondent would have registered the disputed domain names without being aware of the Complainant's legal rights.

Use in bad faith

The Panel has already referred to the uncontradicted facts set out in the Amended Complaint and accepts the evidence and contention that the disputed domain names resolve to webpages without any substantial content.

The Complainant contends that the Respondent has not demonstrated any activity in respect of the disputed domain names, and it is not possible to conceive of any plausible actual or contemplated active use of the disputed domain names by the Respondent that would not be illegitimate, such as by being a passing off, an infringement of consumer protection legislation, or an infringement of the Complainant's rights under trademark law.

As prior WIPO UDRP panels have held, 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 Czech Arbitration Court has also provided written notice of the Complaint to the Respondent with no administratively compliant responses made in respect to any good faith use of the disputed domain names.

This conduct, the bona fides of which are clearly left unexplained by the Respondent, is in the Panel's view evidence of bad faith. See WIPO Case No. D2018-0497, StudioCanal v. Registration Private, Domains By Proxy, LLC / Sudjam Admin, Sudjam LLC; Forum Case No. FA 1623939, Citigroup Inc. v. Kevin Goodman.

In the circumstances, the Panel finds it is not possible to conceive of any plausible actual or contemplated active use of the disputed domain names by the Respondent that would be legitimate.

The Panel, therefore, concludes that the Respondent's holding of the disputed domain names in this particular case satisfies the requirement that the disputed domain names are being used in bad faith by the Respondent.

Accordingly, the Panel finds that the registration of the disputed domain names and its use were in bad faith.

PROCEDURAL FACTORS

Notification of proceedings to the Respondent

When forwarding a Complaint, including any annexes, electronically to the Respondent, paragraph 2 of the Rules states that CAC shall employ reasonably available means calculated to achieved actual notice to the Respondent.

Paragraphs 2(a)(i) to (iii) set out the sort of measures to be employed to discharge CAC's responsibility to achieve actual notice to the Respondent.

On April 5, 2022 the CAC by its Nonstandard Communication stated as follows (omitting irrelevant parts):

- That the written notice of the Complaint was returned back to the Czech Arbitration Court as undelivered;
- As far as the e-mail notice is concerned, the CAC received a confirmation that the e-mail sent to postmaster@boursoramakl.net and postmaster@boursoramapo.com were returned back undelivered as the e-mail addresses had permanent fatal error;
- The e-mail notice was also sent to dengsunao10@163.com, but CAC never received any proof of delivery or notification of undelivery.

No further e-mail address could be found on the disputed site. The Respondent never accessed the online platform.

Given the reasonable measures employed by CAC as set out in the above Nonstandard Communication, the Panel is satisfied that CAC has discharged this responsibility.

PRINCIPAL REASONS FOR THE DECISION

The Complainant owns the registered trademark “BOURSORAMA” and the domain name <boursorama.com> which is used in connection with its goods or services for a considerable time. It is a well-known trademark.

The Respondent registered the disputed domain names on March 6, 2022. Each of the disputed domain names has the addition of two letters at the end of the Complainant’s trademarks which is incorporated in its entirety.

The Complainant challenges the Respondent’s registration of the disputed domain names under paragraph 4(a)(i) of the Uniform Dispute Resolution Policy (“Policy”) and seeks relief that the disputed domain names be transferred to the Complainant.

The Respondent has failed to file any administratively compliant response.

For the reasons articulated in the Panel’s reasons above, the Complainant has satisfied the Panel of the following:

- (a) The disputed domain names are confusingly similar to the Complainant’s well-known trademark “BOURSORAMA”;
- (b) The Respondent has no rights or legitimate interests in respect of the disputed domain names;
- (c) The disputed domain names have been registered and are being used in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **BOURSORAMAKL.NET**: Transferred
2. **BOURSORAMAPO.COM**: Transferred

PANELLISTS

Name	Adjunct Prof William Lye, OAM QC
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DATE OF PANEL DECISION	2022-04-17
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Publish the Decision
