

Decision for dispute CAC-UDRP-104420

Case number	CAC-UDRP-104420
Time of filing	2022-03-18 09:37:12
Domain names	apps-boursorama-en-ligne.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	icenow
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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 owner of the European Union trademark (hereinafter "EUTM"):

- registered EUTM "BOURSORAMA" No. 001758614 for goods and services in Classes 9, 16, 35, 36, 38, 41 and 42 of the Nice Classification, with filing date on July 13, 2000 and registration date on October 10, 2001.

The Complainant proved its ownership of the aforementioned trademark registration by the submitted extract from the EUIPO Register.

FACTUAL BACKGROUND

The Complainant is a French company founded in 1995 focused on e-commerce, brokerage, and online financial products. It is the pioneer and leader in its three core businesses, online brokerage, financial information on the Internet and online banking. In France, the Complainant is the online banking reference with over 3 million customers. Its portal <boursorama.com> was the first national financial and economic information site and the first French online banking platform.

The Complainant is the owner of the EUTM "BOURSORAMA", registered, inter alia, in connection with financial affairs or financial information provided online.

The Complainant presents its products via several websites and registered domain names consisting of its trademark wording, such as, <boursorama.com> and <boursoramabanque.com>.

According to the Registrar, the Respondent is 'icenow'. The Respondent's provided address as being at Tabuk Northwest Armed Force Hospital, Saudi Arabia. It registered the disputed domain name <apps-boursorama-en-ligne.com> on March 14, 2022. The disputed domain name is redirecting to an inactive website.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

A. The Complainant contends that the disputed domain name is confusingly similar to the Complainant's trademarks. The Complainant states that the disputed domain name is confusingly similar to the Complainant's trademark "BOURSORAMA" and its domain names associated.

According to the Complainant, the addition of the terms "APPS" and "EN LIGNE" [i. e. "ONLINE"] does not change the overall impression of the designation as being connected to the Complainant's trademark. The Complainant asserts that it is well-established that "a domain name that wholly incorporates a Complainant's registered trademark may be sufficient to establish confusing similarity for purposes of the UDRP" (WIPO Case No. D2003-0888, Dr. Ing. h.c. F. Porsche AG v. Vasilij Terkin).

The Complainant contends that the addition of the suffix ".COM" does not change the overall impression of the designation as being connected to the trademark "BOURSORAMA" of the Complainant. It does not prevent the likelihood of confusion between the disputed domain names and the Complainant, its trademark and its domain names associated (WIPO Case No. D2006-0451, F. Hoffmann-La Roche AG v. Macalve e-dominios S.A.).

The Complainant adds that its rights were confirmed by past panels decisions, such as the CAC Case No. 102278, Boursorama SA v. yvette cristofoli.

B. The Complainant states that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant states that the Respondent is not identified in the Whois database as the holder of the disputed domain name. Accordingly, the Complainant contends that past panels have held that a Respondent was not commonly known by a disputed domain name if the Whois information was not similar to the disputed domain name (Forum Case No. FA 1781783, Skechers U.S.A. Inc. v. Chad Moston / Elite Media Group).

The Complainant adds that the Respondent is not known by the Complainant and that it is not affiliated with nor authorized by the Complainant in any way. The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name. 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 trademark "BOURSORAMA" or apply for registration of the disputed domain name.

C. The Complainant contends that the domain name has been registered and is being used in bad faith.

The Complainant argues that the Respondent registered the disputed domain with full knowledge of the Complainant's trademark. The Complainant points out that past Panels have decided that the Complainant's trademark is well-known (CAC Case No. 101131, Boursorama SA v. PD Host Inc - Ken Thomas) and has distinctive nature (WIPO Case No. D2017-1463, Boursorama SA v. Estrade Nicolas).

According to the Complainant, the Respondent did not demonstrate any activity in respect of the disputed domain and it is not possible to conceive of any plausible actual or contemplated active use of the domain name 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.

The Complainant adds that past Panels have decided 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 (WIPO Case No. D2000-0003, Telstra Corporation

Limited v. Nuclear Marshmallows and WIPO Case No. D2000-0400, CBS Broadcasting, Inc. v. Dennis Toeppen).

RESPONDENT:

No administratively compliant Response has been filed.

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

In the present case, the Respondent has not submitted any Response and consequently has not contested any of the contentions made by the Complainant. The Panel proceeds therefore to decide only on the basis of the Complainant's factual statements and the documentary evidence provided in support of them (Paragraph 5(f) of The Rules).

I. CONFUSING SIMILARITY

The Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark "BOURSORAMA". The WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (hereinafter referred to as "The WIPO Overview 3.0") in Paragraph 1.2.1 states: "Where the complainant holds a nationally or regionally registered trademark or service mark, this prima facie satisfies the threshold requirement of having trademark rights for purposes of standing to file a UDRP case".

The WIPO Overview 3.0 in Paragraph 1.7 states: "[...] in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing."

The WIPO Overview 3.0 in Paragraph 1.8 state: "Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element. The nature of such additional term(s) may however bear on assessment of the second and third elements."

In the WIPO Case No. D2003-0888, Dr. Ing. h.c. F. Porsche AG v. Vasily Terkin, the Panel stated that: "In numerous cases, it has been held that a domain name that wholly incorporates a Complainant's registered mark may be sufficient to establish confusing similarity for purposes of the UDRP."

The Complainant has established that owns registered EUTM "BOURSORAMA" designated for the classes in connection with online financial products (evidenced by the submitted registration extract in Annex 2 of the Complaint).

The Complainant's trademark is incorporated in its entirety and clearly recognizable in the disputed domain name <apps-boursorama-en-ligne.com>. The Complainant's trademark is accompanied by the descriptive terms "APPS" and "EN-LIGNE" [i. e. "ONLINE"]. The addition does not change the overall impression of the disputed domain name. Moreover, it adds to the confusion by leading consumers to believe that the Complainant operates the disputed domain for its online financial

business activities.

Therefore, the disputed domain name <apps-boursorama-en-ligne.com>, as it reproduces “BOURSORAMA” trademark in its entirety, with the addition of the descriptive terms is considered to be confusingly similar to the relevant trademark.

As a result, the Panel finds that the Complainant has satisfied Paragraph 4(a)(i) of the Policy.

II. THE RESPONDENT’S LACK OF RIGHTS OR LEGITIMATE INTERESTS IN THE DOMAIN NAME

The Panel finds that the Respondent lacks rights or legitimate interests in the disputed domain name.

According to Paragraph 4(a)(ii) of the Policy, the Complainant shall make case that the Respondent lacks rights and legitimate interests in the disputed domain name. If the Complainant fulfils this demand the burden of proof shifts to the Respondent and so the Respondent shall demonstrate rights or legitimate interests in the disputed domain name. If the Respondent fails to prove its rights or legitimate interests, it is assumed that the Complainant satisfied the element of Paragraph 4(a)(ii) of the Policy (see CAC Case No. 102430, Lesaffre et Compagnie v. Tims Dozman). Moreover, past panels were of the view that it is difficult or sometimes impossible to prove negative facts, i.e., absence of rights or legitimate interest on the part of the Respondent. In this respect, past panels referred to the WIPO Case No. D2000-1769, Neusiedler Aktiengesellschaft v. Vinayak Kulkarni. Within the meaning of Paragraph 4(a)(ii) of the Policy, once the complainant has made something credible (prima facie evidence), the burden of proof shifts to the Respondent to show that he has rights or legitimate interests in the domain name at issue by providing concrete evidence.

In the CAC Case No. 102279, FileHippo s.r.o. v. whois agent, the Panel stated that “[i]n the absence of a response, the Panel accepts the Complainant’s allegations as true that the Respondent has no authorization to use the Complainant’s trademarks in the disputed domain name. Hence, as the Complainant has made out its prima facie case, and as the Respondent has not demonstrated any rights or legitimate interests as illustrated under Paragraph 4(c) of the Policy, nor has the Panel found any other basis for finding any rights or legitimate interests of the Respondent in the disputed domain name, the Panel concludes that the Complainant has satisfied the requirements of Paragraph 4(a)(ii) of the Policy.”

In the Forum Case No. FA 1781783, Skechers U.S.A. Inc. v. Chad Moston / Elite Media Group, the Panel stated that: “where a response is lacking, WHOIS information can support a finding that the respondent is not commonly known by the disputed domain name”.

In the present case, the identification data about the registrant (Respondent) is not shown in the Whois database, because it is hidden and protected by the ‘Privacy service provided by Witheld for Privacy ehf’ seated in Reykjavik, Iceland. Therefore, the Respondent is not identified in the Whois database as the disputed domain name holder (proved by the submitted extract from the Whois database). However, according to the Registrar Verification, the registrant and the disputed domain name holder is the Respondent. Thus, because of lack of information about the identification of the registrant of the Whois database, the Respondent could not be known by the disputed domain name.

In addition, the Respondent is not related in any way with the Complainant and the Complainant has never granted any license nor authorization to the Respondent to use the Complainant’s trademark or apply for registration of the disputed domain name.

Furthermore, the disputed domain name refers to an inactive website (proved by the submitted screenshot of the website from March 15, 2022). Therefore, this Panel agrees with the Complainant that the Respondent has no demonstrable plan to use the disputed domain name.

The Respondent did not reply to the Complaint and so failed to demonstrate its rights or legitimate interests in the disputed domain.

Therefore, the Panel finds that the Complainant has satisfied Paragraph 4(a)(ii) of the Policy.

III. THE REGISTRATION AND USE OF THE DISPUTED DOMAIN NAME IN BAD FAITH

The Panel finds that the Respondent registered and used the disputed domain in bad faith.

The WIPO Overview 3.0 in Paragraph 3.1.4 states: “Panels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith.”

The WIPO Overview 3.0 in Paragraph 3.3 states: "From the inception of the UDRP, panelists have found that the non-use of a domain name (including a blank or "coming soon" page) would not prevent a finding of bad faith under the doctrine of passive holding.

While panelists will look at the entirety of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put."

In the WIPO Case No. D2006-1440, National Football League v. Thomas Trainer, the Panel stated: "when a registrant, such as the Respondent here, obtains a domain name that is confusingly similar to a famous mark, with no apparent rights or legitimate interests in the name, and then fails to respond to infringement claims and a UDRP Complaint, an inference of bad faith is warranted."

In the WIPO Case No. D2015-1167, Valero Energy Corporation and Valero Marketing and Supply Company v. Sharad Bhat, the Panel stated that: "In accordance with previous UDRP decisions, inactive or passive holding of a domain name, under the circumstances does not prevent a finding of bad faith use."

In the present case, the Complainant owns registered EUTM "BOURSORAMA" (evidenced by the submitted registration extract). Past panels have decided that the Complainant's mark is well-known (see the CAC Case No. 101131, Boursorama SA v. PD Host Inc - Ken Thomas) and has distinctive nature (see the WIPO Case No. D2017-1463, Boursorama SA v. Estrade Nicolas).

Moreover, the Complainant was founded in 1995. It is the pioneer and leader in its three core businesses, online brokerage, financial information on the Internet and online banking. In France, the Complainant is the online banking reference with over 3 million customers and its portal <boursorama.com> was the first national financial and economic information site and the first French online banking platform (supported by the "Who are we?" information from the Complainant's website).

Therefore, this Panel states that the Respondent must have been aware of the Complainant's trademark and its reputation before the registration of the disputed domain on March 14, 2022.

Additionally, the disputed domain leads to an inactive website (proved by the submitted screenshot of the website from March 15, 2022). It is apparent that the Respondent is passively holding the disputed domain.

This Panel comes to a conclusion that the Complainant: (i) owns well-known trademark, (ii) the Respondent failed to submit its response to the Complaint, (iii) the Respondent is not identified in the Whois database properly and (iv) there is no evidence of any use of the disputed domain in good faith by the Respondent. Therefore, factors considered while applying the passive holding doctrine were fulfilled.

Following the above mentioned, the Panel finds that the Complainant has satisfied 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. APPS-BOURSORAMA-EN-LIGNE.COM: Transferred

PANELLISTS

Name	JUDr. Radim Charvát, Ph.D., LL.M.
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DATE OF PANEL DECISION 2022-04-22

Publish the Decision
