

Decision for dispute CAC-UDRP-104457

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| Case number | CAC-UDRP-104457 |
| Time of filing | 2022-03-31 09:38:28 |
| Domain names | boursomama-banque.com |

Case administrator

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| Organization | Denisa Bilík (CAC) (Case admin) |
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Complainant

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| Organization | BOURSORAMA SA |
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Complainant representative

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| Organization | NAMESHIELD S.A.S. |
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Respondent

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| Organization | Transure Enterprise Ltd |
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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 several trademarks BOURSORAMA®, such as the European trademark n° 1758614 registered since October 19, 2001.

The Complainant also owns a number of domain names, including the same distinctive wording BOURSORAMA®, such as the domain names <boursorama.com>, registered since March 1, 1998, and <boursoramabanque.com>, registered since May 26, 2005.

FACTUAL BACKGROUND

Founded in 1995, BOURSORAMA S.A. (the Complainant) grows in Europe with the emergence of e-commerce and the continuous expansion of the range of financial products online.

Pioneer and leader in its three core businesses, online brokerage, financial information on the Internet and online banking, BOURSORAMA S.A. based its growth on innovation, commitment and transparency.

In France, BOURSORAMA is the online banking reference with over 3,3 million customers. The portal www.boursorama.com

is the first national financial and economic information site and first French online banking platform.

The disputed domain name was registered on March 26, 2022 and resolves to a parking page with commercial links.

PARTIES CONTENTIONS

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).

The disputed domain name <boursomama-banque.com> is confusingly similar to its trademark BOURSORAMA® and its domain names associated. The substitution of the letter “R” by the letter “M” and the addition of the term “BANQUE” is not sufficient to escape the finding that the domain name is confusingly similar to the trademark BOURSORAMA®. Therefore, it does not change the overall impression of the designation as being connected to the Complainant’s trademark BOURSORAMA®. It does not prevent the likelihood of confusion between the disputed domain name and the Complainant, its trademarks and domain names associated.

Past Panels have confirmed the confusing similarity in similar cases. For instance, WIPO Case No. D2021-4037, Alstom v. Victor Marin (“The Panel notes that the disputed domain name substitutes the letter “m” in the trademark ALSTOM with the letter “n”, which is a very similar-appearing character in the sense of the above doctrine and adjacent keyboard letter. In the Panel’s view, this single-letter difference in the element “alston” does not avoid a finding of confusing similarity between this element and the Complainant’s trademark, in particular regarding its appearance and pronunciation (see, e.g., Accenture Global Services Limited v. Tulip Trading Company, WIPO Case No. D2015-1520 for a similar case where a “t” had been substituted by an “r”). Furthermore, the addition of the term “group” to the confusingly similar element “alston” does not prevent a finding of confusing similarity (see WIPO Overview 3.0, section 1.9). In the light of the above, the Panel concludes that the relevant mark ALSTOM remains clearly recognizable within the disputed domain name which contains sufficiently recognizable aspects of that trademark.”).

Moreover, the addition of the suffix “.COM” does not change the overall impression of the designation as being connected to the trademark BOURSORAMA®. It does not prevent the likelihood of confusion between the disputed domain name and the Complainant, its trademark and its domain names associated. See WIPO Case No. D2006-0451, F. Hoffmann-La Roche AG v. Macalve e-dominios S.A. (“It is also well established that the specific top level of a domain name such as “.com”, “.org” or “.net” does not affect the domain name for the purpose of determining whether it is identical or confusingly similar.”).

Finally, many UDRP decisions have also confirmed the Complainant’s rights such as:

- CAC Case No. 102278, BOURSORAMA v. yvette cristofoli, <boursorama-ecopret.com>;
- CAC Case No. 101844, BOURSORAMA SA v. likid french, <client-boursorama.net>; and
- CAC Case No. 101629, BOURSORAMA SA v. MOHAMED le petit, <m-clients-boursorama.com>.

Thus, the disputed domain name is confusingly similar to the Complainant's trademark.

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).

According to the WIPO Case No. D2003-0455, Croatia Airlines d.d. v. Modern Empire Internet Ltd., 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.

The Respondent is not identified in the Whois database as the disputed domain name. 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. Thus, the Respondent is not known as the disputed domain name.

See for instance 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> ("Here, the WHOIS information of record identifies Respondent as "Chad Moston / Elite Media Group." The Panel therefore finds under Policy paragraph 4(c)(ii) that Respondent is not commonly known by the disputed domain name under Policy paragraph 4(c)(ii).")

The Respondent is not known by the Complainant. The Respondent is not affiliated with nor authorized by the Complainant in any way. 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.

Furthermore, the disputed domain name resolves to a parking page with commercial links. Past panels have found it is not a bona fide offering of goods or services or legitimate non-commercial or fair use. See for instance:

- Forum Case No. FA 970871, Vance Int'l, Inc. v. Abend (concluding that the operation of a pay-per-click website at a confusingly similar domain name does not represent a bona fide offering of goods or services or a legitimate non-commercial or fair use, regardless of whether or not the links resolve to competing or unrelated websites or if the respondent is itself commercially profiting from the click-through fees);

- WIPO Case No. D2007-1695, Mayflower Transit LLC v. Domains by Proxy Inc./Yariv Moshe ("Respondent's use of a domain name confusingly similar to Complainant's trademark for the purpose of offering sponsored links does not of itself qualify as a bona fide use.").

Accordingly, Respondent has no rights or legitimate interests on the disputed domain name.

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).

According to the WIPO Case No. D2003-0455, Croatia Airlines d.d. v. Modern Empire Internet Ltd., 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.

The Respondent is not identified in the Whois database as the disputed domain name. 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. Thus, the Respondent is not known as the disputed domain name.

See for instance 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> ("Here, the WHOIS information of record identifies Respondent as "Chad Moston / Elite Media Group." The Panel therefore finds under Policy paragraph 4(c)(ii) that Respondent is not commonly known by the disputed domain name under Policy paragraph 4(c)(ii).")

The Respondent is not known by the Complainant. The Respondent is not affiliated with nor authorized by the Complainant in any way. 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.

Furthermore, the disputed domain name resolves to a parking page with commercial links. Past panels have found it is not a

bona fide offering of goods or services or legitimate non-commercial or fair use. See for instance:

- Forum Case No. FA 970871, Vance Int'l, Inc. v. Abend (concluding that the operation of a pay-per-click website at a confusingly similar domain name does not represent a bona fide offering of goods or services or a legitimate non-commercial or fair use, regardless of whether or not the links resolve to competing or unrelated websites or if the respondent is itself commercially profiting from the click-through fees);
- WIPO Case No. D2007-1695, Mayflower Transit LLC v. Domains by Proxy Inc./Yariv Moshe ("Respondent's use of a domain name confusingly similar to Complainant's trademark for the purpose of offering sponsored links does not of itself qualify as a bona fide use.").

Accordingly, Respondent has no rights or legitimate interests on the disputed domain name.

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).

The disputed domain name is confusingly similar to the Complainant's well-known trademark BOURSORAMA®.

Therefore, it is reasonable to infer that the Respondent has registered the domain name with full knowledge of the Complainant's trademark. See:

- 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.")

Besides, the association of the term "BANQUE" to the trademark "BOURSORAMA" cannot be coincidental, as this term, meaning "BANK" in French, refers to the Complainant's activities. All the results of a Google search of the terms "BOURSORAMAMA BANQUE" refers to the Complainant.

Thus, the Respondent has registered and used the disputed domain name with full knowledge of the Complainant's trademark.

Furthermore, the disputed domain name resolves to a parking page with commercial links. The Respondent has attempted to attract Internet users for commercial gain to his own website thanks to the Complainant's trademark for its own commercial gain, which is an evidence of bad faith.

See for instance WIPO Case No. D2018-0497, StudioCanal v. Registration Private, Domains By Proxy, LLC / Sudjam Admin, Sudjam LLC ("In that circumstance, whether the commercial gain from misled Internet users is gained by the Respondent or by the Registrar (or by another third party), it remains that the Respondent controls and cannot (absent some special circumstance) disclaim responsibility for, the content appearing on the website to which the disputed domain name resolve [...] so the Panel presumes that the Respondent has allowed the disputed domain name to be used with the intent to attract Internet users for commercial gain, by creating a likelihood of confusion with the Complainant's trademark as to the source, affiliation, or endorsement of the Respondent's website to which the disputed domain name resolves. Accordingly, the Panel finds that the disputed domain name was registered and is being used in bad faith.").

On these bases, the Respondent has registered and is using the disputed domain name in bad faith.

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

The Respondent is not identified in the Whois database as the disputed domain name. The Respondent has attempted to attract Internet users for commercial gain to his own website thanks to the Complainant's trademark for its own commercial gain, which is an evidence of bad faith. The disputed domain name resolves to a parking page with commercial links.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **BOURSOMAMA-BANQUE.COM**: Transferred
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PANELLISTS

| | |
|------|---------------|
| Name | Thomas Hoeren |
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DATE OF PANEL DECISION 2022-04-29

Publish the Decision
