

Decision for dispute CAC-UDRP-104437

Case number	CAC-UDRP-104437
Time of filing	2022-03-24 09:44:02
Domain names	id-boursorama.com, user-boursorama.com, users-boursorama.com

Case administrator

Organization	Denisa Bilík (CAC) (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	monstercookies
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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 names.

IDENTIFICATION OF RIGHTS

The Complainant is the registered owner of the European trademark registration no. 001758614 "BOURSORAMA", registered on October 19, 2001, for various goods and services in classes 09, 16, 35, 36, 38, 41, and 42 (hereinafter referred to as the "Trademark").

FACTUAL BACKGROUND

The Complainant is a French financial service provider, which was founded in 1995 and today has 3.3 million customers in France. It provides its services and information online at <boursorama.com>.

The disputed domain names were all registered on March 17, 2022. The disputed domain name <id-boursorama.com> redirects to a website featuring the Complainant's logo as well as a form in which customers of the Complainant are to enter their personal information. The disputed domain names <user-boursorama.com> and <users-boursorama.com> are not used in connection with an active website.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant contends that the disputed domain names are confusingly similar to the Trademark as they include the Trademark in its entirety and as the additional terms "id", "user", and "users" do not prevent the likelihood of confusion between the disputed domain names and the Trademark.

The Complainant also states that the Respondent does not have any rights or legitimate interest with regard to the disputed domain names. The Complainant argues that the Respondent is not commonly known by the disputed domain names, that the Respondent is not known to the Complainant and is not affiliated or authorized by the Complainant in any way, that the Complainant has not granted any license or authorization to the Respondent to make any use of the Trademark or to register the disputed domain names, and that the (non-)use of the disputed domain names does not constitute any rights or legitimate interest in favor of the Respondent.

With regard to bad faith, the Complainant states that the disputed domain names were registered and are being used in bad faith. With regard to bad faith registration, it argues that the disputed domain names are confusingly similar to the well-known Trademark and that it is, therefore, reasonable to infer that the Respondent has registered the domain names with full knowledge of the Trademark. With regard to bad faith use, the Complainant contends that the disputed domain name <id-boursorama.com> is used in connection with a website which mimics the Complainant's own website and therefore in bad faith under paragraph 4(b)(iv) of the Policy. With regard to the disputed domain names <user-boursorama.com> and <users-boursorama.com>, the Complainant argues that the lack of use of these domain names is to be considered as an important indicator of the absence of legitimate interests by the Respondent.

RESPONDENT:

No administratively compliant Response has been filed.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain names are 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 names (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 names have been registered and are 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

Under paragraph 4(a) of the Policy, the Complainant must prove that each of the following three elements is present:

- (i) the disputed domain names are identical or confusingly similar to the Complainant's trademark; and
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain names; and
- (iii) the disputed domain names have been registered and are being used in bad faith.

1. The Panel accepts that the disputed domain names are confusingly similar to the Trademark. It is well established that a domain name that wholly incorporates a trademark may be confusingly similar to such a trademark for purposes of the Policy despite the addition of generic terms, such as "is", "user", or "users".

2. The Complainant has substantiated that the Respondent has no rights or legitimate interests in the disputed domain names. The Panel finds that the Complainant has fulfilled its obligations under paragraph 4(a)(ii) of the Policy. The Respondent did not deny these assertions in any way and therefore failed to prove any rights or legitimate interests in the disputed domain names. Based on the evidence on file, the Panel cannot find any rights or legitimate interests of the Respondent either. In particular, it is categorically proven that the use of a domain name for illegal activity, i.e. for "phishing" can never confer rights or legitimate interests on a respondent. Accordingly, the Panel finds that the Complainant has proven that the Respondent has no rights or legitimate interests in respect of the disputed domain names under paragraphs 4(a)(ii) and 4(c) of the Policy.

3. The Panel is satisfied that the Respondent registered the disputed domain names with full knowledge of the Complainant and its rights in the Trademark as the Respondent's website at the disputed domain name <id-boursorama.com> features the Complainant's logo.

As to bad faith use, a differentiation must be made between two types of use.

With regard to <id-boursorama.com>, the Respondent has deliberately used the disputed domain name in bad faith as it targeted the Complainant's business by trying to access the Complainant's clients' user and account information through its phishing website. It is consensus view, that the use of a domain name for illegitimate activity such as "phishing" is to be considered strong evidence of bad faith use.

With regard to the disputed domain names <user-boursorama.com> and <users-boursorama.com>, the Panel notes that the disputed domain names do not resolve to an active website. The Respondent's non-use of the disputed domain names could equal to bad faith use under the passive holding doctrine, first set out in Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003, and confirmed ever since. Based on the overall circumstances of the present proceeding, the Panel finds that the Respondent in all likelihood registered the disputed domain names <user-boursorama.com> and <users-boursorama.com> to take commercial advantage of the Trademark and therefore used it in bad faith. This assumption is not least supported by the fact that the Respondent has already used one of its three domain names in an obviously illegal manner. With that in mind, the registration of the disputed domain names <user-boursorama.com> and <users-boursorama.com> by the Respondent constitute an abusive threat hanging over the head of the Complainant, which also supports a finding of bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **ID-BOURSORAMA.COM**: Transferred
2. **USER-BOURSORAMA.COM**: Transferred
3. **USERS-BOURSORAMA.COM**: Transferred

PANELLISTS

Name	Peter Müller
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DATE OF PANEL DECISION	2022-04-29
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Publish the Decision
