

Decision for dispute CAC-UDRP-104456

Case number	CAC-UDRP-104456
Time of filing	2022-03-31 09:37:12
Domain names	secure-boursorama.com

Case administrator

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

Complainant

Organization	BOURSORAMA SA
--------------	---------------

Complainant representative

Organization	NAMESHIELD S.A.S.
--------------	-------------------

Respondent

Organization	121 Av. Paul Vaillant Couturier
--------------	---------------------------------

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 various trademarks consisting of the term BOURSORAMA, among which EUTM registration No. 1758614, registered on 19 October 2001 in connection with goods and services of the classes 9, 16, 35, 36, 38, 41 and 42.

FACTUAL BACKGROUND

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

The Complainant is a French company founded in 1995 and operating in the field of online brokerage, financial information and online banking. In France, the Complainant has over 3.3 million customers. The Complainant operates through its domain name <boursorama.com>, registered in 1998, which leads to a portal that is the first national financial and economic information site in France and the first French online banking platform.

The disputed domain name was registered on 25 March 2022 and resolves to a parking page.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

The Complainant maintains that the disputed domain name is confusingly similar to the Complainant's trademark because it fully incorporates it.

The Complainant further maintains that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent is not known to the Complainant and the Complainant is not linked to it through any kind of relationship. The Respondent does not carry out any activity for the Complainant and the latter never granted to the Respondent a license or authorisation to make use of the BOURSORAMA trademark. In addition, the Respondent does not appear to be commonly known by the disputed domain name. The disputed domain name resolves to a parking page; therefore, the Respondent is not using the disputed domain name, nor is there any evidence that the Respondent has made plans to make use of it in connection with a bona fide offering of goods or services.

Lastly, the Complainant contends that the disputed domain name has been registered and is being used in bad faith. The trademark BOURSORAMA is well known and it is reasonable to infer that the Respondent, who is French, registered the disputed domain name with full knowledge of the Complainant's trademark. Moreover, according to the Complainant, it is not possible to conceive any plausible actual or contemplated active use of the disputed domain name by the Respondent that would be legitimate. The Complainant further points out that the Respondent configured MX records for the disputed domain name, which entails that the disputed domain name could be used in connection with an email address. Any such use would infringe the Complainant's rights in its BOURSORAMA trademark and would not be in good faith.

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

I. The disputed domain name is confusingly similar to the Complainant's trademark.

The Complainant is the owner of the European trademark BOURSORAMA. The disputed domain name fully incorporates this trademark preceded by the dictionary term "secure" followed by a hyphen. It is a generally recognised principle that where the Complainant's trademark is recognisable within the disputed domain name, the addition of other terms, including descriptive terms, would not prevent a finding of confusing similarity under the first element of the Policy (see section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Jurisprudential Overview 3.0")). Among the several definitions of the word "secure" is the following: "to protect something so that it is safe and difficult to attack or damage" (see the online Oxford Learner's Dictionary). As the Complainant operates in the financial field, Internet users facing the disputed domain name will understand the word "secure" as an indicator of the Complainant's reliability deriving from the fact that the money invested through the Complainant is safe from any loss. Thus, the addition of the word "secure" to the Complainant's trademark in the disputed domain name, enhances the confusing similarity of the disputed domain name with the Complainant's trademark rather than preventing it.

In view of the above, the Panel finds that the first condition under the Policy is met.

II. The Respondent does not own rights or legitimate interests in the disputed domain name.

As also confirmed by the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0"), a 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 burden of production shifts to the respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such appropriate allegations or evidence, a complainant is generally deemed to have satisfied paragraph 4(a)(ii) of the Policy.

Based on the available evidence, the Respondent does not appear to be known by the disputed domain name. The Respondent is not affiliated with, nor authorized by, the Complainant. The Respondent is not a licensee of the BOURSORAMA trademark, nor was ever authorised to include this trademark as part of a domain name. At the time of the filing of the Complaint, the Respondent was passively holding the disputed domain name. Such passive holding is not in connection with a bona fide offering of goods or services, nor is a legitimate non-commercial or fair use of the disputed domain name. The disputed domain name reflects the trademark BOURSORAMA, preceded by the dictionary word "secure" that can be associated with the Complainant's activity. Therefore, the disputed domain name carries on a high risk of implied affiliation with the Complainant and its trademark as it suggests sponsorship or endorsement by the Complainant.

For all the reasons mentioned above, the Panel finds that the Complainant has at least established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent did not rebut the Complainant's arguments by filing a Response. Hence, the Panel is satisfied that also the second condition of the Policy is met.

III. Registration and use of the disputed domain name in bad faith

The Complainant's trademark is highly distinctive and uniquely associated to the Complainant. Prior panels have held that the BOURSORAMA trademark enjoys reputation in France (see, among others, WIPO UDRP Case No. D2020-1265, Boursorama S.A. vs. Plumier Alain; WIPO UDRP Case No. D2021-0462, Boursorama S.A. contre Contact Privacy Inc. Customer 1249403156 / Gauthier; WIPO UDRP Case No. D2021-1198, Boursorama S.A. v. Pencreach Jacques; CAC Case No. 104409, BOURSORAMA SA vs. Town and Country Convenience Stores; CAC Case No. 103915, BOURSORAMA SA vs. zack levy; CAC Case No. 103823, BOURSORAMA SA vs. gazi dulal).

It is therefore not conceivable that the Respondent, who is French like the Complainant, registered the disputed domain name without having in mind the Complainant and its trademark. This is also confirmed by the addition of the word "secure" in the disputed domain name. This word makes direct reference to a potential quality of the Complainant's services offered under the BOURSORAMA trademark.

The registration of a domain name similar to a third party's well-known trademark without rights or legitimate interests supports an inference of registration in bad faith.

As far as use in bad faith is concerned, it is generally recognised that passive holding of a domain name cannot prevent a finding of bad faith in the presence of certain circumstances among which are the following: (i) the high distinctive character and/or reputation of the Complainant's trademark, (ii) the lack of the Respondent's reply, (iii) the absence of any actual or contemplated good-faith use, (iv) the implausibility of any good faith use to which the domain name may be put.

In the instant case, as mentioned above, the BOURSORAMA trademark has been found to be highly distinctive and even renown in France, which the same country of the Respondent. Furthermore, there is no actual or contemplated good-faith use of the disputed domain name that the Respondent could make, as through the disputed domain name, the Respondent is impersonating the Complainant and inducing Internet users to believe that there is some kind of affiliation with, or endorsement

by the Complainant, which in fact does not exist. Furthermore, the Respondent configured MX records for the disputed domain name and could send e-mails from an e-mail address including the Complainant's BOURSORAMA trademark. In consideration of the fact that the Complainant operates in the financial field, there is a tangible risk that the disputed domain name be used in connection with some kind of fraudulent activity, including to obtain sensitive data from the Complainant's customers regarding their bank accounts or other financial information.

For all the reasons set forth above, the Panel concludes that the Respondent has registered and is being using the disputed domain name to intentionally attempt to attract Internet users to its web site or other on-line location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of this web site or location for some kind of illegitimate activity. Therefore, the Panel is satisfied that the third and last condition under the Policy is met.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **SECURE-BOURSORAMA.COM**: Transferred

PANELLISTS

Name	Angelica Lodigiani
------	---------------------------

DATE OF PANEL DECISION	2022-05-01
------------------------	------------

Publish the Decision
