

Decision for dispute CAC-UDRP-104447

Case number	CAC-UDRP-104447
Time of filing	2022-03-25 09:05:46
Domain names	clientboursorama.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

Name	Christian Soulier
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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

Complainant owns rights in the "BOURSORAMA" sign and shows valid trademark rights as follows:

- The European trademark "BOURSORAMA" No. 001758614 dated July 13, 2000, a renewed.

Complainant also operates domain names including the same distinctive wording "BOURSORAMA", namely the domain names <boursorama.com>, registered since February 28, 1998 and <boursoramabanque.com>, registered since May 25, 2005.

FACTUAL BACKGROUND

Complainant is a French online banking platform; its three core businesses are online brokerage, financial information on the Internet and online banking.

The beginning of Complainant's activity dates back to 1995.

Complainant presents itself as the main online banking reference in France and the first national financial and economic information site and first French online banking platform.

Respondent is Christian Soulier, located in France.

On March 22, 2022, Respondent registered the disputed domain name <clientboursorama.com>, which is currently inactive.

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

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”. See WIPO Case No. D2003-0888, Dr. Ing. h.c. F. Porsche AG v. Vasily Terkin.

See also 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 4(c)(ii) that Respondent is not commonly known by the disputed domain name under Policy 4(c)(ii).”);
- 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
- WIPO Case No. D2000-0003, Telstra Corporation Limited v. Nuclear Marshmallows;
- WIPO Case No. D2000-0400, CBS Broadcasting, Inc. v. Dennis Toeppen.

PARTIES CONTENTIONS

Respondent did not provide any response to the complaint, and is therefore in default.

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).

Complainant considers that the disputed domain name is confusingly similar to its BOURSORAMA registered trademark.

According to case law, Complainant asserts that a domain name that wholly incorporates a Complainant’s registered trademark may be sufficient to establish confusing similarity for purposes of the UDRP, see WIPO Case No. D2003-0888, Dr. Ing. h. c. F. Porsche AG v. Vasily Terkin.

Complainant states that the addition of the generic term “CLIENT” and the suffix “.COM” does not change the overall

impression of the designation as being connected to Complainant's trademark.

Complainant considers that rather than preventing any likelihood of confusion between the disputed domain name and Complainant, its trademark and its domain names associated, the addition of the term "CLIENT" worsens the likelihood of confusion, as it directly refers to Complainant's official customer access <https://clients.boursorama.com/>.

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).

First, Complainant asserts that Respondent is not identified in the Whois database nor is commonly known by the disputed domain name.

Secondly, Complainant highlights that Respondent is not affiliated with nor authorized by Complainant, was neither granted a licence nor an authorization to make use of Complainant's trademark, or to register the disputed domain name.

Finally, in support of its claims, Complainant submits the Annex 5, a screenshot demonstrating that the disputed domain name is inactive, showing the lack of legitimate use or plan to use 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).

Complainant maintains that the disputed domain name is confusingly similar to Complainant's well-known trademark BOURSORAMA. Complainant therefore infers that Respondent registered the disputed domain name with full knowledge of Complainant's well-known trademark.

In support of its claims, Complainant brings in evidence, that all of the results of a Google search of the terms "BOURSORAMA" refers to Complainant.

Besides, Complainant contends that the fact that Respondent has incorporated a famous trademark into a domain name but has not demonstrated any activity in respect of the disputed domain name is further evidence of bad faith; moreover, Complainant states that it would be impossible 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 Complainant's rights under trademark law.

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

Paragraph 4(a) of the Policy requires the Complainant to prove three elements in order to the transfer of the domain name:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and
- (ii) the respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

(i) Rights

Complainant demonstrates it has valid trademark rights in the BOURSORAMA sign.

The Panel recognizes that Complainant's trademark rights in the BOURSORAMA sign are established.

The Panel also agrees that the disputed domain name is confusingly similar to Complainant's BOURSORAMA trademark, the addition of the generic term "CLIENT" and the suffix ".COM" do not permit to dismiss the likelihood of confusion with the BOURSORAMA trademark.

Under Policy 4(a)(i), top-level domains are indeed generally disregarded in the similarity test, see *ARCELORMITTAL (SA) v. acero*, Case n° 102399 (CAC March 20, 2019) "As stated in WIPO Overview 3.0 "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" (see par. 1.7).

In the present case the Complainant's "ArcelorMittal" trademark is clearly recognizable in the disputed domain name. The addition of the "mx" element does not change an overall impression of the disputed domain name and indicates connection with Mexico where the Complainant has business activity.

The .com domain zone shall be disregarded under the identity or the confusing similarity test as it does not add anything to the distinctiveness of the disputed domain name.

Therefore, the Panel finds that the first requirement of the Policy has been satisfied."

Thereby, the Panel concludes that Complainant has satisfied Policy 4 (a) (i).

(ii) No rights nor legitimate interests

Complainant shall provide a prima facie case that Respondent lacks rights and legitimate interests in the disputed domain name, under Policy 4(a)(ii). The burden of proof thereto shifts to Respondent.

This standard has been recognized throughout continuous case law, see *LESAFFRE ET COMPAGNIE v. Tims Dozman*, Case No. 102430 (CAC, April 2, 2019) "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 disputed domain name. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(a)(ii) of the UDRP (please see, for example, WIPO case no. D2003-0455, *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*)".

Complainant asserts that Respondent is not commonly known under the disputed domain name, and that Complainant never granted any authorization to Respondent to use Complainant's trademark nor to register the disputed domain name. Furthermore, Respondent did not provide a reply to the complaint. Previous panels have held that such mutism from the Respondent's part was proof that Complainant and Respondent had no relation and that Respondent is not commonly known under the disputed domain name (see *FILEHIPPO S.R.O. v. whois agent*, Case No. 102279 (CAC January 31, 2019), "In 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.").

The Panel concludes that Complainant has made a prima facie case that Respondent lacks rights or legitimate interests in

the disputed domain name, and has therefore satisfied Policy 4 (a)(ii).

(iii) Registration and Use in Bad Faith

Complainant argues that the registration of a domain name that wholly incorporates a Complainant's well-known registered trademark is sufficient to establish confusing similarity, see WIPO Case No. D2000-0003, Telstra Corporation Limited v. Nuclear Marshmallows ("Given the Complainant's numerous trademark registrations for, and its wide reputation in, the word <TELSTRA>, as evidenced by the facts established in paragraphs 4.2 to 4.5, it is not possible to conceive of a plausible circumstance in which the Respondent could legitimately use the domain name <telstra.org>. It is also not possible to conceive of a plausible situation in which the Respondent would have been unaware of this fact at the time of registration. These findings, together with the finding in paragraph 7.2 that the Respondent has no rights or interests in the domain name, lead the Administrative Panel to conclude that the domain name <telstra.org> has been registered by the Respondent in bad faith.").

Complainant contends that Respondent registered the domain name with full knowledge of Complainant's trademark, which shows that said registration has been done in bad faith, 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.").

In addition, all of the results of a search of the term BOURSORAMA refers to the Complainant.

Following the above, the Panel considers that Respondent has registered the disputed domain name with prior knowledge of Complainant's trademark.

The lack of use of the domain name by Respondent cannot be considered as good faith use either. Passive holding can amount to bad faith use as there is no circumstances in which the use of the disputed domain name could be legitimate, given Complainant's reputation.

The Panel thus considers that the disputed domain name has been registered and used in bad faith by Respondent within the meaning of 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. CLIENTBOURSORAMA.COM: Transferred

PANELLISTS

Name	Nathalie Dreyfus
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DATE OF PANEL DECISION 2022-05-02

Publish the Decision
