

Decision for dispute CAC-UDRP-104490

Case number	CAC-UDRP-104490
Time of filing	2022-04-12 10:14:18
Domain names	banqueboursorama.info

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	Jeremy Zenon - Boursorama Banque
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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 has provided evidence of ownership of the following trademark:

Trademark of the European Union BOURSORAMA No. 1758614 registered on 19 October 2001, duly renewed, and covering goods and services in international classes 09, 16, 35, 36, 38, 41 and 42.

French trademark BOURSO No. 3009973 registered on 22 February 2022, duly renewed and covering goods and services in international classes 09, 35, 36, 38, 41 and 42.

FACTUAL BACKGROUND

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

The disputed domain name is confusingly similar to the Complainant's well-known trademark BOURSORAMA. It is reasonable to infer that the Respondent has registered the domain name with full knowledge of the Complainant's trademark. The Complainant quotes different UDRP cases:

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.")

The disputed domain name is inactive. The Complainant contends that the Respondent has not demonstrated any activity in respect of the disputed domain name, 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.

As prior WIPO UDRP panels have held, the incorporation of a famous mark into a domain name, coupled with an inactive website, may be evidence of bad faith registration and use. The Complainant quotes:

WIPO Case No. D2000-0003, Telstra Corporation Limited v. Nuclear Marshmallows;
WIPO Case No. D2000-0400, CBS Broadcasting, Inc. v. Dennis Toeppen.

MX servers are configured, which indicates the domain name may be used for email services. Previous panels have considered that the setting up of MX servers may be found to be further evidence of use of the disputed domain name in bad faith. (Decathlon v. Registration Private, Domains By Proxy, WIPO Case No. D2021-2228).

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).

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

Language of Proceedings:

Under 11 of the UDRP Rules, the default language of the proceedings is the language of the registration agreement, subject to the authority of the Panel to determine otherwise. The language of the registration agreement is French, but Complainant requests the Panel to accept Amended Complaint in English.

The Complainant asserts that the Respondent is using a false name and address. However, the Panel does not accept such claim, which the Complainant moreover failed to evidence, as weighting on the choice of language of the proceedings.

Paragraph 10(c) of the Rules nevertheless dictates that the Panel shall ensure that the administrative proceeding takes place with due expedition. Pursuant to Paragraph 10(b) of the Rules, all Parties should be treated with equality and given a fair opportunity to present their case. The Panel notes that no Response was received from the Respondent as to the

language of the proceedings or merits of the Complaint. The Complainant having filed the Complaint in English, and in keeping with the Policy aim of facilitating a relatively time and cost-efficient procedure for the resolution of domain name disputes, the Panel determines that it would be appropriate for English to be the language of the proceedings in accordance with Paragraph 11 (a) of the UDRP Rules.

The Panel is therefore 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

Notwithstanding the fact that no Response has been filed, the Panel shall consider the issues present in the case based on the statements and documents submitted by the Complainant.

Paragraph 4(a) of the Policy directs that the Complainant must prove each of the following elements:

- (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 was registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant must establish that it has a trademark or service mark and that the disputed domain name is identical or confusingly similar to that trademark or service mark to succeed.

The Complainant, Boursorama, is a French banking and financial services company. The Complainant has provided evidence of ownership of a trademark of the European Union in the term "BOURSORAMA" for more than 20 years.

The disputed domain name is <banqueboursorama.info>.

As regards the question of identity or confusing similarity for the purpose of the Policy, it requires a comparison of the disputed domain name with the trademarks in which the Complainant holds rights. According to section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0"), "this test typically involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name".

Also, according to section 1.7 of the 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".

The disputed domain name wholly incorporates the Complainant's trademark "BOURSORAMA", preceded by the French term "banque". This addition does not prevent a finding of confusing similarity with the Complainant's trademarks. On the contrary, this Panel finds that the addition of the generic term "banque" to the trademark of the Complainant, active in banking services, increases the confusing similarity between the disputed domain name and the Complainant's trademarks.

The fact that a domain name wholly incorporates the Complainant's trademark is sufficient for this Panel to establish identity or confusing similarity for the purpose of the Policy, despite the addition of other words to such marks.

It is well accepted by UDRP panels that a generic Top-Level Domain ("gTLD"), such as ".info", is typically ignored when assessing whether a domain name is identical or confusingly similar to a trademark.

This Panel concludes that the disputed domain name is confusingly similar to the Complainant's trademark and therefore finds that the requirement of paragraph 4(a)(i) of the Policy is satisfied.

B. Rights or Legitimate Interests

Under paragraph 4(c) of the Policy, any of the following circumstances, if found by the Panel, may demonstrate the Respondent's rights or legitimate interests in the disputed domain name:

(i) before any notice to it of the dispute, the Respondent's use of, or demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a bona fide offering of goods or services; or

(ii) the Respondent has been commonly known by the disputed domain name, even if it has acquired no trademark or service mark rights; or

(iii) the Respondent is making a legitimate non-commercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The consensus view of UDRP panels on the burden of proof under paragraph 4(a)(ii) of the Policy is summarized in section 2.1 of the WIPO Overview 3.0, which states: "[...] where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element."

The Panel accepts that, in the absence of rebuttal from the Respondent, the Complainant has not at any time authorised or licensed the Respondent to use "BOURSORAMA" as a domain name, business or trading name, trade mark or in any other way. In addition, nothing in the record shows any bona fide offering of goods or services from the disputed domain name on the part on the Respondent before the submission of the Complaint.

While the Complainant elected not to discuss the Respondent's contact information, the Panel thinks this is worth addressing, in line with its general powers under the Rules and the Policy. The Respondent's name contains the Complainant's name and trademark BOURSORAMA which could have, in certain circumstances, granted the Respondent rights or legitimate interests under the Policy. However the Panel understands that the Complainant never authorized the use of the BOURSORAMA term, and finding otherwise would result in allowing the Respondent to rely on an initial intentional infringement to demonstrate rights or legitimate interests in the disputed domain name.

On the contrary, the Panel finds that the Respondent's contact details are fanciful at best, and do not demonstrate a legitimate interest in the domain name.

The Panel concludes that the Respondent has no right or legitimate interests in the disputed domain name and therefore finds that the requirement of paragraph 4(a)(ii) of the Policy is satisfied.

C. Registration and Use in Bad faith

For the purpose of Paragraph 4(a) (iii) of the Policy, the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of the disputed domain name in bad faith:

(i) circumstances indicating that the holder has registered or has acquired the disputed domain name primarily for the purpose of selling, renting, or otherwise transferring the disputed domain name registration to the Complainant who is the owner of the trademark or service mark or to a competitor of that Complainant, for valuable consideration in excess of the holders documented out-of-pocket costs directly related to the disputed domain name; or

(ii) the holder has registered the disputed domain name in order to prevent the owner of the trademark or service mark from

reflecting the mark in a corresponding domain name, provided that the holder has engaged in a pattern of such conduct; or

(iii) the holder has registered the disputed domain name primarily for the purpose of disrupting the business of a competitor;
or

(iv) by using the domain name, the holder has intentionally attempted to attract, for commercial gain, Internet users to the holder's website or other online location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product or service on the holder's website or location.

The evidence on the record shows that the Respondent was certainly aware of the existence of the Complainant and of the rights of the Complainant. This is particularly evidenced by the fact that the Respondent's name include the Complainant's trademark, and the Respondent is located in France, where the Complainant and its trademark are extremely well-known to the general population.

The addition of the term French term "banque" ("bank") also demonstrates the knowledge of the Complainant by the Respondent.

Although the disputed domain name is not actively used in connection to a website, the Panel notes that it is linked to MX records allowing the sending and reception of e-mails, which strongly demonstrates that the Respondent knowingly and willingly linked the disputed domain name to an e-mail hosting service.

As seeking customer services' help in the banking sector is ordinary, unfortunately so are phishing and fraud attempts. Moreover, by using the Complainant's name and trademark in the Whois details of the disputed domain name, the Respondent intended to create a false affiliation with the Complainant. The Panel concludes that the Respondent purposely registered the disputed domain name in an attempt to defraud the Complainant's consumers, thereby disrupting the Complainant's business.

In light of all the elements above, the Panel concludes that the Respondent has registered and is using the disputed domain name in bad faith, and finds that the requirement of paragraph 4(a)(iii) of the Policy is satisfied.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **BANQUEBOURSORAMA.INFO**: Transferred

PANELLISTS

Name	Arthur Fouré
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DATE OF PANEL DECISION 2022-05-05

Publish the Decision
