

Decision for dispute CAC-UDRP-104436

Case number CAC-UDRP-104436

Time of filing 2022-03-24 09:36:02

Domain names boursorama-allianz.com

Case administrator

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

Complainant

Organization BOURSORAMA SA

Complainant representative

Organization NAMESHIELD S.A.S.

Respondent

Name Alice Bordereaux

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 been running its business under the company name BOURSORAMA since 1995.

It is owner of several trademarks, including the term "BOURSORAMA", among which the European Union trade mark no. 1758614, registered since 19 October 2001 in classes 9, 16, 35, 36, 38, 41, 42.

The Complainant is also owner of numerous domain names, among which <boursorama.com>, registered since 1 March 1998, and resolving to its main website.

The Complainant's rights are hereinafter referred to as the BOURSORAMA Trademark.

FACTUAL BACKGROUND

Founded in 1995, the Complainant is a French company and has three core businesses: online brokerage, financial information on the Internet and online banking.

In France, the Complainant is the online banking reference with over 2.8 million customers. The Complainant's portal is the first national financial and economic information site and first French online banking platform.

The disputed domain name was registered on 15 March 2022 and it does not resolve to any active website. MX servers have been configured for the domain name.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant contends that the disputed domain name is confusingly similar to the BOURSORAMA Trademark, because it includes such trademark its entirety. The addition of term "Allianz", the hyphen and the TLD .com is not sufficient to escape the finding that the domain name is confusingly similar to the Complainant's mark.

The Complainant also contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent is not affiliated with nor authorised by the Complainant in any way. The Complainant does not carry out any activity for, nor has any business with the Respondent. Neither license nor authorisation has been granted by the Complainant to the Respondent to make any use of the BOURSORAMA Trademark or apply for registration of the disputed domain name.

Finally, the Complainant contends that the registration of the disputed domain name that incorporates the Complainant's well-known trademark suggests bad faith and it is reasonable to infer that the Respondent has registered the domain name with full knowledge of the Complainant's trademark.

Since the disputed domain name is not used, 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.

The disputed domain name has been set up with MX servers, which suggests that it may be actively used for email purposes. This is also indicative of bad faith registration and use because any email emanating from the disputed domain name could not be used for any good faith purpose.

For the above-mentioned reasons, the Complainant has requested the transfer of the disputed domain name.

Further to the Procedural Order issued by the Panel (see in details below), the Complainant has requested the cancellation of the disputed domain name.

RESPONDENT:

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

Upon appointment of the Panel, the Panel has reviewed the case file and found that the disputed domain name consists of the Complainant's trademark (BOURSORAMA) and a third-party's mark (ALLIANZ). Since the Complainant has not submitted evidence of the third party's consent to file the case and to request that the transfer of the disputed domain name be ordered in favour of the filing Complainant only, the Panel has issued a Procedural Order, requiring the Complainant to provide the Panel with evidence of the third-party's consent and setting a deadline of 5 working days.

In response to the Panels request, the Complainant has confirmed to not have the consent from the Allianz Group. The Complainant has contended that the Complaint had been filed as part of a takeover of the BOURSORAMA brand. The Complainant also contended that the fact that the disputed domain name includes the ALLIANZ brand is fortuitous. Finally, the Complainant has contended that, taking into account the fanciful identity of the Respondent, there is a risk that the domain name is being used in bad faith. Therefore, the Complainant has requested the cancellation of the disputed domain name.

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 is required to prove each of the following three elements to succeed in the administrative proceeding:

- (i) the disputed domain name is identical or confusingly similar to a trade mark 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 by the Respondent in bad faith.

I. THE COMPLAINANT'S RIGHTS AND CONFUSING SIMILARITY OF THE DISPUTED DOMAIN NAME TO THE COMPLAINANT'S TRADEMARK

The Complainant has provided documentary evidence to prove that he owns the BOURSORAMA Trademark.

The disputed domain name consists of the mark BUORSORAMA, a hyphen, plus a third-party's mark, namely ALLIANZ.

In assessing identity or confusing similarity the Panel finds that the disputed domain name is confusingly similar to the Complainant's BOURSORAMA Trademark, because it incorporates the entirety or at least the distinctive part of such mark and differs from it by merely adding a hyphen, a third-party's mark, and the TLD .COM.

In UDRP cases where the complainant's trademark is recognizable within the disputed domain name, panels agree that the addition of other third-party marks, is insufficient in itself to avoid a finding of confusing similarity to the complainant's mark under the first element (see paragraph 1.12 of WIPO Overview 3.0).

UDRP panels also agree that the TLD is usually to be ignored for the purpose of determination of identity or confusing similarity between the disputed domain name and the Complainant's trademark, as it is a technical requirement of the registration (see paragraph 1.11.1 of WIPO Overview 3.0).

Hence, the Panel finds that the Complainant has proven the first element of the paragraph 4(a) of the Policy and the disputed domain name is confusingly similar to the Complainant's mark.

II. THE RESPONDENT'S LACK OF RIGHTS OR LEGITIMATE INTERESTS TO THE DISPUTED DOMAIN NAME

It is a consensus view of UDRP panels that a complainant shall establish a prima facie case that the respondent lacks rights or legitimate interests in the disputed domain name to shift the burden of proof to that respondent (see paragraph 2.1 of the WIPO Overview 3.0: "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 Complainant has no relationship with the Respondent whatsoever. The Respondent has never received any approval of the Complainant, expressed or implied, to use the BOURSORAMA Trademark or to register the disputed domain name. The disputed domain name was registered on 15 March 2022 by an individual, located in France. There is no evidence that the Respondent has been commonly known by the disputed domain name or has acquired any rights in a trademark or trade name corresponding to the disputed domain name.

The disputed domain name is not used in relation with any active website. The Panel is furthermore unconvinced that, before any notice 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.

While the Complainant has established its prima facie case, the Respondent has not submitted a Response to the Complaint and, thus, has failed to invoke any of the circumstances, which could demonstrate any rights or legitimate interests to the disputed domain name.

Therefore, the Panel is satisfied that the Complainant has met the second requirement of the paragraph 4(a) of the Policy and finds that the Respondent lacks rights or legitimate interests to the disputed domain name.

III. BAD FAITH REGISTRATION AND USE OF THE DISPUTED DOMAIN NAME

The Complainant has sufficiently demonstrated to be owner of the BOURSORAMA Trademark since 2001.

The Respondent registered the disputed domain name, incorporating in its entirety the dominant and distinctive element of the Complainant's prior mark (namely the wording BOURSORAMA). The addition of a hyphen, a third-party's mark (ALLIANZ), and the TLD .COM (a technical requirement of the registration) is not only insufficient to escape the finding of identity or confusing similarity between the disputed domain name and the Complainant's mark.

Given the distinctiveness of the Complainant's prior mark, the Respondent's choice to add a hyphen and a third-party's mark to the BOURSORAMA Trademark could not have been for a mere chance without actual knowledge of the Complainant's rights in such mark and the intention to exploit its reputation by diverting traffic away from the Complainant's website.

Although the disputed domain name does not resolve to any active website, the Complainant has shown that the Respondent had configured mail server (MX) records for the disputed domain name. By connecting the mail server to the disputed domain name and creating the false impression that it is the Complainant's server, it is implausible that there is any good faith use to which the disputed domain name is being used. Configuring e-mail on the disputed domain name that confuses people into thinking it belongs to the Complainant is likely part of a fraudulent scheme (phishing), such as to obtain sensitive or confidential personal information, or to solicit payment of fraudulent invoices.

Per paragraph 4(b)(iv) of the Policy, the Respondent likely registered and is using the disputed domain name to intentionally attempt to attract, for commercial gain, Internet users to an online location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation or endorsement of a location of a mail server sending and receiving e-mails likely intended for the Complainant. This is evidenced by the configuration of MX records indicating the confusingly similar disputed domain name was registered to receive e-mails that would likely be intended for the Complainant (see CAC Cases No. 102751 and 102380).

The Respondent has not submitted a Response in this administrative proceeding to provide any evidence of actual or contemplated good faith use.

Taken into account all circumstances of this case, the Panel finds that the Complainant has discharged the burden of proof to show that the disputed domain name has been registered and is being used in bad faith (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. BOURSORAMA-ALLIANZ.COM:

PANELLISTS

Name	Avv. Ivett Paulovics
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DATE OF PANEL DECISION 2022-05-05

