

Decision for dispute CAC-UDRP-104479

Case number	CAC-UDRP-104479
Time of filing	2022-04-07 08:34:03
Domain names	valnevboursorama.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	Milen Radumilo
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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

EU Trademark No. 1758614 BOURSORAMA registered since 19 October 2001 in relation to numerous goods and services, including various financial services.

FACTUAL BACKGROUND

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

The Complainant has traded under the name BOURSORAMA since 1995 in relation to a range of financial services. It conducts three main activities being online banking, online brokerage and the provision of financial information online. In France, it has over 3.3 million customers. It is the owner of numerous trade marks and domain names containing or consisting of BOURSORAMA. This includes <boursorama.com> and the EU trademark referred to above.

The Complainant's online portal is well known in France, being the 17th most visited piece of digital media. The Complainant asserts that BOURSORAMA is distinctive and through such use it has become a well-known mark among consumers.

The Respondent first registered the disputed domain name on 31 March 2022. The Respondent's name according to registrant records is Milen Radumilo. The Respondent's address is listed as being in Romania.

A screen capture taken on 4 April 2022 showed the disputed domain name directing to a website containing sponsored links. Those links were titled with French terms referring to financial information and services, such as investments and online trading platforms.

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

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 lists three elements that the Complainant must prove to merit a finding that the disputed domain name registered by the Respondent be transferred to the Complainant:

- 1) the disputed domain name is identical or confusingly similar to a trademark or service mark ("mark") in which the Complainant has rights; and
- 2) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- 3) the disputed domain name has been registered and is being used in bad faith.

The Panel is satisfied the Complainant has satisfied all three elements for the principal reasons set out below.

RIGHTS IN AN IDENTICAL OR CONFUSINGLY SIMILAR TRADEMARK

The Complainant has claimed registered rights over a number of trade marks containing or consisting of the word BOURSORAMA. This includes EU Trademark No. 1758614 BOURSORAMA registered since 19 October 2001 in relation to numerous goods and services, including various financial services.

To satisfy paragraph 4(a)(i) of the Policy it is enough that the Panel is satisfied that the Complainant has registered rights in a single trademark in a single jurisdiction that predates the registration of the disputed domain name (even if that single jurisdiction is not one in which the Respondent resides or operates) (Koninklijke KPN N.V. v. Telepathy, Inc D2001-0217 (WIPO 7 May 2001); see also WIPO Case Nos. D2012-0141 and D2011-1436).

Hence here registered rights in BOURSORAMA are established.

The next question is whether the disputed domain name is confusingly similar to this trademark.

The disputed domain name would be understood by an internet user to consist of both the word VALNEVA followed by the word BOURSORAMA and ending in the very common and non-distinctive gTLD .COM. The Panel was not assisted by any submissions as to any possible meaning for the term VALNEVA. However, equally, the Panel was not assisted by any submission as to that term possibly being distinctive in itself. The Panel does suspect that VALNEVA may be the trademark of another French company that is not a party to these proceedings. However, without submissions or evidence, it makes no finding as to such. In any event, if VALNEVA was the trade mark of another French company that would not change the Panel's decision in this case. In fact, it would likely only strengthen the Complainant's arguments on bad faith given the connection with France (being the jurisdiction in which the trademark is most well-known). Even if VALNEVA was a distinctive trade mark in itself the formulation of <[TRADEMARK A][TRADEMARK B].COM> in almost all foreseeable cases will likely be confusingly similar to [TRADEMARK B]. The fact that two trademarks appear before the gTLD instead of one is likely to infer to the internet user that the disputed domain name refers to two traders. In such circumstances, and assuming the trademarks are distinctive, internet users are likely to be confused by a reference to either trademark. Whether or not the remaining elements of the Policy are made out by a complainant will turn on the facts of each case, however the Panel regards the above proposition of confusing similarity as relatively uncontroversial.

However, in the present matter VALNEVA is assumed to have no apparent meaning and BOURSORAMA is a distinctive trademark. The complete reproduction of the distinctive BOURSORAMA trademark is likely to have a significant effect on an internet user.

The Panel is therefore satisfied that <VALNEVABOURSORAMA.COM> is confusingly similar to a trademark in which the Complainant has rights.

NO RIGHTS OR LEGITIMATE INTERESTS

The Respondent's name bears no resemblance to the disputed domain name. Further, the disputed domain name resolves to a website containing sponsored links that do not indicate any rights or legitimate interests that the Respondent may have.

There is simply no basis to conclude that the Respondent has rights or interests in the disputed domain name.

BAD FAITH

The following undisputed facts are of particular concern to the Panel:

- (a). BOURSORAMA is a well-known and distinctive trademark, particularly in France.
- (b). BOURSORAMA is well known in relation to financial services.
- (b). The Respondent has used the disputed domain name to redirect internet users to a website that is written in French and contains sponsored links referring to various financial services.

These facts indicate that the Respondent knew of the said trademark before seeking to register the disputed domain name and its subsequent use of the disputed domain name only further confirms its lack of bona fides. Further, there is no response from the Respondent to contradict this inference that the Panel draws under Rule 14(b) and (5)(a) of the UDRP Rules.

As the Panel has found the Respondent had such prior knowledge of the BOURSORAMA trademark at the time of registering the disputed domain name it can only follow that its purpose in registering the disputed domain name was to opportunistically profit from such confusing similarity. The Respondent targeted the Complainant's well-known name for this purpose. Such opportunism has been recognised as bad faith by numerous panels, the Panel refers to the commentary of the learned Gerald M Levine, Domain Name Arbitration, Legal Corner Press, 2nd ed. 2019, pp. 432 to 434.

Therefore, in consideration of all the circumstances the disputed domain name has been registered and is being used in bad

faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. VALNEVABOURSORAMA.COM: Transferred

PANELLISTS

Name	Mr Andrew Norman Sykes
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DATE OF PANEL DECISION 2022-05-09

Publish the Decision
