

Decision for dispute CAC-UDRP-104452

Case number	CAC-UDRP-104452
Time of filing	2022-03-30 09:25:41
Domain names	support-boursoramasecure.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	Virtual Communauty
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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 is the owner of several trademarks of BOURSORAMA, including European Trademark No. 1758614, registered on October 19, 2001.

The Complainant also holds numerous domain name registrations which contain the BOURSORAMA trademark, including, <boursorama.com>, registered since March 1, 1998, and <boursoramabanque.com>, registered since May 26, 2005.

FACTUAL BACKGROUND

The Complainant, BOURSORAMA S.A., was founded in 1995 in Europe. The Complainant states that it is a pioneer and leader in its three core businesses: online banking, online brokerage and financial information on the Internet.

In France, the Complainant is the online banking reference with over 3.3 million customers. The Complainant's website, <boursorama.com>, was the first financial and economic information website and first French online banking platform.

The disputed domain name, <support-boursoramasecure.com>, was registered on March 23, 2022 and resolves to an

inactive website with an error landing page.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

COMPLAINANT' CONTENTIONS IN BRIEF:

The Complainant contends that the disputed domain name is confusingly similar to its BOURSORAMA mark on the basis that the addition of the terms "SUPPORT" and "SECURE" are insufficient to avoid the finding that the disputed domain name is confusingly similar to its trademark.

The Complainant also argues that the Respondent does not have any rights or legitimate interests in the disputed domain name. The Respondent is not commonly known by the disputed domain name. In addition, the Respondent is not affiliated with the Complainant nor did the Complainant license or authorize the Respondent to use the BOURSORAMA mark.

The Complainant further asserts that the disputed domain name has been registered and is being used in bad faith as the Respondent should have known of the Complainant's BOURSORAMA mark at the time of registration of the disputed domain name. The Complainant also asserts 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.

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

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires a complainant to show that a domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights.

A registered trademark provides a clear indication that the rights in the mark shown on the trademark certificate belong to its respective owner. The Complainant has provided evidence that it owns the BOURSORAMA mark.

The differences between the disputed domain name and the Complainant's BOURSORAMA mark and the addition of the terms "SUPPORT" and "SECURE" and a generic Top-Level Domain ("gTLD") ".com".

It is established that where the relevant trademark is recognizable within the disputed domain name, the addition of other

terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“WIPO Overview 3.0”), section 1.8).

It is also established that gTLD is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test (WIPO Overview 3.0, section 1.11). The addition of a gTLD to a disputed domain name does not avoid confusing similarity as the use of a TLD is technically required to operate a domain name (see *Accor v. Noldc Inc.* WIPO Case No. D2005-0016; *F. Hoffmann-La Roche AG v. Macalve e-dominios S.A.*, WIPO Case No. D2006-0451; *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. D2000-0003; *L’Oréal v Tina Smith*, WIPO Case No. 2013-0820; *Titoni AG v Runxin Wang*, WIPO Case No. D2008-0820; and *Alstom v. Itete Peru S.A.* WIPO Case No. D2009-0877).

The disputed domain name consists of the Complainant’s BOURSORAMA mark and the addition of the terms “SUPPORT” and “SECURE” and a gTLD “.com” which in the Panel’s view does not avoid confusing similarity with the Complainant’s trademark (see *Schneider Electric S.A. v. Domain Whois Protect Service / Cyber Domain Services Pvt. Ltd.*, WIPO Case No. D2015-2333; WIPO Overview 3.0, section 1.9).

Therefore, the Panel finds that the disputed domain name is confusingly similar to the BOURSORAMA mark and the element under paragraph 4(a)(i) of the Policy is satisfied.

B. Rights or Legitimate Interests

Paragraph 4(a)(ii) of the Policy requires the complainant to show that the respondent has no rights or interests in respect of the domain name. Once the complainant establishes a prima facie case that the respondent lacks rights or legitimate interests in the domain name, the burden of production shifts to the respondent to show that it has rights or legitimate interests in respect to the domain name (see WIPO Overview 3.0, paragraph 2.1).

In the present case, the Complainant has demonstrated prima facie that the Respondent lacks rights or legitimate interests in respect of the disputed domain name and the Respondent has failed to assert any such rights or legitimate interests.

The Complainant submitted evidence that it did not authorize or license the Respondent to use the BOURSORAMA mark (See *OSRAM GmbH. v. Mohammed Rafi/Domain Admin, Privacy Protection Service INC d/b/a PrivacyProtect.org*, WIPO Case No. D2015-1149; *Sanofi-Aventis v. Abigail Wallace*, WIPO Case No. D2009-0735).

In addition, the evidence submitted by the Complainant shows that the Respondent is not commonly known by the disputed domain name.

The Respondent did not submit a response in the present case and did not provide any explanation or evidence to show rights or legitimate interests in the disputed domain name which is sufficient to rebut the Complainant’s prima facie case.

The Panel is therefore of the view that the Respondent has no rights or legitimate interests in respect of the disputed domain name and accordingly, paragraph 4(a)(ii) of the Policy is satisfied.

C. Registered and Used in Bad Faith

The complainant must show that the respondent registered and is using the disputed domain name in bad faith (Policy, paragraph 4(a)(iii)). Paragraph 4(b) of the Policy provides circumstances that may evidence bad faith under paragraph 4(a)(iii) of the Policy.

The Complainant has submitted evidence that the disputed domain name resolved to an inactive webpage with an error landing page. The test to apply to determine bad faith is that of the totality of circumstances. In doing so we must look to: (i) the degree of distinctiveness or reputation of the complainant’s mark, (ii) the failure of the respondent to submit a response

or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put.

In this case, the evidence shows that the Complainant's mark is distinctive and has attained significant reputation. The strong reputation and distinctive character of the Complainant's mark is evidence that the Respondent is unlikely to have registered the disputed domain name without sight and knowledge of the Complainant's mark and it is implausible that there is any good faith use to which the disputed domain name may be put to. It is also the Complainant's evidence that the Respondent could not have registered the disputed domain name without prior knowledge of the Complainant's mark as the Respondent's name has no connection with the Complainant's BOURSORAMA mark which was registered long ago. This is another indicator of bad faith on the part of the Respondent (see Boursorama SA v. Estrade Nicolas, WIPO Case No. D2017-1463).

The Panel also notes that the Respondent did not submit a Response in this proceeding which is a further indication of the Respondent's bad faith.

In addition, the Panel notes that in this particular case, given the evidence provided by the Respondent, including the fact that the Complainant's mark is used for financial services and the disputed domain name comprises the words "support" and "secure", it is highly implausible that the Respondent could make any good faith use of the domain.

Based on the evidence presented to the Panel, including the confusing similarity between the disputed domain name and the Complainant's mark, the fact that the disputed domain name resolved to an inactive website and the fact that no Response was submitted by the Respondent in response to the Complaint, the Panel draws the inference that the disputed domain name was 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. SUPPORT-BOURSORAMASECURE.COM: Transferred

PANELLISTS

Name	Mr. Jonathan Agmon
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DATE OF PANEL DECISION 2022-05-09

Publish the Decision
