

Decision for dispute CAC-UDRP-104486

Case number CAC-UDRP-104486

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Domain names secure-bourso.com

Case administrator

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

Complainant

Organization BOURSORAMA SA

Complainant representative

Organization NAMESHIELD S.A.S.

Respondent

Organization 121 Av. Paul Vaillant Couturier

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 proprietor of a number of trade marks in respect of strings relevant to its name, including the EU mark BOURSORAMA (1758614, registered since October 19, 2001) and the French mark BOURSO (3009973, registered since February 22, 2000). These marks subsist in a range of classes including class 41 (financial information services), 9 (software), and 36 (financial affairs).

FACTUAL BACKGROUND

The Complainant is a financial information services provider, with its seat in France. It was founded in 1995, and is now a subsidiary of the larger Societe Generale group. It operates its own website at the domain name <BOURSORAMA.COM>, which it first registered in February 1998 and has duly renewed since.

The Respondent, an individual with an address in La Courneuve, France, registered the disputed domain name on April 5, 2022.

PARTIES CONTENTIONS

No administratively compliant Response has been filed.

The Respondent never accessed the online platform. Written notice of the Complaint was returned to the Provider as undelivered, on account of the inaccessibility of the address provided by the Respondent at the point of registering the disputed domain name. It is not known whether any of the e-mails sent to the Respondent were delivered, and no further addresses could be found on the website at the disputed domain name.

The Complainant submits that all aspects of the Policy are met and that the disputed domain name should be transferred to it. It accompanies its Complaint with relevant evidence in the form of Annexes, referred to as appropriate throughout this Decision.

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).

Disregarding the TLD .com in accordance with established practice under the Policy, the Panel notes that the disputed domain name differs from the Complainant's mark 'BOURSO' in two respects. The first is the presence of a hyphen, which is often used in place of a space in domain names owing to the limitations of the domain name system, and has no bearing in most cases (including the present) upon an assessment of similarity. The second is the additional string 'SECURE'. As such, this is a dispute where a Complainant's mark has been joined with a generic or descriptive term. The Panel notes in particular that as the Complainant is active in online banking and related areas, the English-language word SECURE is one which can be associated with its activities. Notice is also taken of a number of decisions highlighted by the Complainant in its submission, where the Complainant's rights in respect of the mark BOURSORAMA have been accepted, including CAC Case No. 104310, BOURSORAMA v. Boris MIVARi, <bourso-client.com> and <bourso-login.com>, and WIPO Case No. D2021-1936, BOURSORAMA SA v. Escrire Elie Togbe, <bourso-finance.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).

In light of the Respondent's failure to participate in these proceedings, and the absence of any other relevant evidence, the Panel can accept that the Complainant's prima facie case in respect of the absence of rights or legitimate interests has been made out. The Panel places particular reliance on the unlikely nature of a legitimate interest where a Respondent would be using the name of a financial institution and the term 'SECURE', especially in the absence of any justification or anything that might emerge from the way in which it is being used. On the contrary, the Respondent has utilised a privacy protection service in registering the disputed domain name, is located in the same jurisdiction as the Complainant, and is currently utilising the disputed domain name for the configuration of mail servers but not, at this point, providing services via a website or engaged in activity that might support the Panel's identification of relevant rights or interests.

The Respondent is known as 'Sekulic Vesna' which does not suggest any rights or legitimate interests are present. Furthermore, the Complainant contends (without contradiction) that the Respondent is not affiliated with nor authorised by the Complainant, that the Complainant does not carry out any activity for, nor has any business with the Respondent, and that neither license nor authorisation has been granted to the Respondent to make any use of any of the Complainant's marks.

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).

The Panel accepts the Complainant's submission that the Respondent, who has an address in France (the same country as the Complainant), registered the domain name with full knowledge of the Complainant's marks. The Complainant also cites

a number of past decisions under the Policy where it has been held that the Complainant's marks are well known and that it is 'inconceivable' or 'unrealistic' that a Respondent would not be so aware; see CAC Case No. 101131, BOURSORAMA v. PD Host Inc - Ken Thomas <wwwboursorama.com> and WIPO Case No. D2017-1463, Boursorama SA v. Estrade Nicolas <boursorama.org>.

The Complainant cites the decision in WIPO Case No. D2000-0003, Telstra Corporation Limited v. Nuclear Marshmallows in respect of the 'passive holding' of the disputed domain name by the Respondent, and on the configuration of MX servers for the future purpose of e-mail by the Respondent (for which evidence was supplied by the Complainant), asking that the Panel consider use in bad faith in light of such authorities and facts. The Panel accepts the Complainant's contention that 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, which is one of the factors applied in the Telstra line of cases.

The Panel also applies the other aspects of the passive holding doctrine as summarised in the WIPO Jurisprudential Overview, version 3.0, para 3.3, finding that the Respondent is more likely than not to have been aware of the Complainant and its activities, that the Respondent failed to take part in the proceedings or provide any evidence of actual or contemplated good-faith use, and that it in the first instance concealed its identity (and may have provided a false postal address).

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

In the absence of any Response from the Respondent, or any other information indicating the contrary, the Panel concludes that the Respondent has no rights or legitimate interests in respect of the disputed domain name. On the other hand, it is clear that the Complainant has rights in respect of the trade mark BOURSO, and that the addition of the text SECURE and a hyphen does not prevent a finding of confusing similarity with the Complainant's mark. It is likely, in light of the nature of the Complainant's mark and activities, and the location of the Respondent, that the Respondent would have been aware of the Complainant, and that the situation is one of 'passive holding' as an established form of bad faith use under the Policy (noting further the initial steps taken by the Respondent in respect of the configuration of mail servers). The Panel can find for these reasons that the disputed domain name was registered and is being operated in bad faith. The requirements for the acceptance of a Complaint under paragraph 4 of the Policy have therefore been met, and the Panel ordered that the disputed domain name be transferred to the Complainant.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **SECURE-BOURSO.COM**: Transferred

PANELLISTS

Name	Dr Daithi Mac Sithigh
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DATE OF PANEL DECISION 2022-05-23

Publish the Decision
