

Decision for dispute CAC-UDRP-104806

Case number	CAC-UDRP-104806
Time of filing	2022-08-24 11:50:21
Domain names	boursorama-immobilier.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

Name	nique camere
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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 the European trademark BOURSORAMA® n°001758614 registered since 2001-10-19 and also owns a number of domain names, including the same distinctive wording BOURSORAMA®, such as the domain names <boursorama.com>, registered since 1998-03-01, and <boursoramabanque.com>, registered since 2005-05-26.

FACTUAL BACKGROUND

The Complainant has been experiencing growth in Europe with the emergence of e-commerce and the continuous expansion of the range of financial products online. It is a pioneer and leader in its three core businesses, online brokerage, financial information on the Internet and online banking, BOURSORAMA based its growth on innovation, commitment and transparency. In France, BOURSORAMA is the online banking reference with over 4 million customers. The portal www.boursorama.com is the first national financial and economic information site and first French online banking platform.

The disputed domain name was registered on August 17th, 2022 and resolves to a website copying the Complainant's trademark and color scheme. Besides, the Respondent uses the website to imitate a false customer access to be accessed by the Complainant's customers.

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

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According to Paragraph 4(a) of the Policy, the Complainant is required to prove each of the following three elements to obtain an order that the disputed domain name should be transferred or cancelled:

- (i) the disputed domain name is 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 has been registered and is being used in bad faith.

The Panel has examined the evidence available to it and has come to the following conclusion concerning the three elements of paragraph 4(a) of the Policy in these proceedings:

RIGHTS

The disputed domain name <boursorama-immobilier.com> is confusingly similar to the Complainant's Trademark, company name and domain. This finding is based on the settled practice in evaluating the existence of a likelihood of confusion of

- a) disregarding the top-level suffix in the domain name (i.e. ".com") in the comparison, and
- b) not finding that the addition of a generic word (such as "immobilier") would be sufficient to distinguish a domain name from a trademark. This also applies to the insertion of hyphens and other separators.

Instead, it has been held that "a domain name that wholly incorporates a Complainant's registered trademark may be sufficient to establish confusing similarity for purposes of the UDRP" (WIPO Case No. D2003-0888, Dr. Ing. h.c. F. Porsche AG v. Vasily Terkin).

Concerning the Complainant, this has also been confirmed in decisions such as CAC Case No. 102278, BOURSORAMA v. yvette cristofoli, <boursorama-ecopret.com>; CAC Case No. 101844, BOURSORAMA SA v. likid french, <client-boursorama.net>; or CAC

Case No. 101629, BOURSORAMA SA v. MOHAMED le petit, <m-clients-boursorama.com>.

Therefore, the Panel concludes that the Complainant has satisfied the requirement under paragraph 4(a)(i) of the UDRP.

NO RIGHTS OR LEGITIMATE INTERESTS

The onus to make out a prima facie case that the Respondent lacks rights or legitimate interests is placed on the Complainant. However, once such prima facie case is made, the Respondent carries the burden of demonstrating rights or legitimate interests in the disputed domain name. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(a)(ii) of the UDRP (see e.g. WIPO case no. D2003-0455, Croatia Airlines d.d. v. Modern Empire Internet Ltd.).

The Complainant has put forward that the Respondent is not commonly known by the disputed domain name. Neither is the Respondent in any way related to the Complainant. Nor has the Respondent been granted an authorization or license to use the disputed domain name by the Complainant. This has not been contested by the Respondent. Instead, the Respondent failed to provide any information and evidence whatsoever that could have shown that it has relevant rights or legitimate interests in respect of the disputed domain name (within the meaning of paragraph 4(a) (ii) of the Policy).

Therefore, the Panel concludes that the Respondent did not establish any right or legitimate interest to the disputed domain name (within the meaning of paragraph 4(a)(ii) of the Policy). The Complainant has therefore also satisfied the requirement under paragraph 4(a)(ii) of the Policy.

BAD FAITH

The Panel finds that the Complainant has established that the disputed domain name was registered by the Respondent and is being used by the Respondent in bad faith. For this purpose, the Complainant has successfully put forward prima facie evidence that the disputed domain name <boursorama-immobilier.com> resolves to a phishing website imitating the landing page of the Complainant. Using the domain name to phish for private data is not a bona fide offering of goods or services under Policy paragraph 4(c)(i) nor a non-commercial or fair use under Policy paragraph 4(c)(iii). As was held in Enterprise Holdings, Inc. v. I S / Internet Consulting Services Inc., FA 1785242 (Forum June 5, 2018): "On its face, the use of a domain name that is confusingly similar to the mark of another in order to facilitate a phishing scheme cannot be described as either a bona fide offering of goods or services under Policy paragraph 4(c)(i) or a legitimate noncommercial or fair use under Policy paragraph 4(c)(iii)". In NAF Case No. FA 156251, Am. Int'l Group, Inc. v. Busby the Panel also found that the respondent's attempts to pass itself off as the complainant online is a blatant unauthorized use of the complainant's mark and is evidence that the respondent has no rights or legitimate interests in the disputed domain name.

The Respondent is also in no way commonly known under the disputed domain name.

In the absence of a Response and given the reputation of the Complainant and its trademarks, company name and domain as supported by the Complainant's evidence, the Panel must conclude that the Respondent was fully aware of the Complainant's trademarks, domain and company name "BOURSORAMA" at the time of registering the disputed domain names <boursorama-immobilier.com>.

Previous panels have ruled on this very matter, e.g. in CAC Case No. 101131, BOURSORAMA v. PD Host Inc - Ken Thomas, in which the panel held: "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>." or in WIPO Case No. D2017-1463, Boursorama SA v. Estrade Nicolas, in which the panel decided: "Given the circumstances of the case including the evidence on record of the longstanding 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."

Therefore, it has been established to the satisfaction of the Panel that the disputed domain name was registered and is being used in bad faith, in order to prevent the Complainant from making proper use of the mark in the disputed domain name.

The Panel concludes that the Respondent has registered and is using the disputed domain name in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy).

The Complainant has therefore also satisfied the requirement under 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-immobilier.com**: Transferred

PANELLISTS

Name Udo Pflughar B.A. (Melb.)

DATE OF PANEL DECISION 2022-09-30

Publish the Decision
