

Decision for dispute CAC-UDRP-104837

Case number	CAC-UDRP-104837
Time of filing	2022-09-13 09:44:54
Domain names	bourso-support.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	Gerard Bastien
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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 <bourso-support.com>.

IDENTIFICATION OF RIGHTS

Founded in 1995, BOURSORAMA (the Complainant) is one of Europe's very first online financial platforms. It became a pioneer and market leader in its three core businesses: online brokerage, financial information on the Internet, and online banking.

The Complainant states and provides evidence to support that it is the owner of the French trademark n° 3009973 BOURSO, registered on 22 February 2000, predating the registration date of the disputed domain name <bourso-support.com>.

The Complainant also owns multiple domain names, including the same distinctive wording BOURSORAMA, such as the domain name <boursorama.com>, registered since 1 March 1998 or domain name <bourso.com>, registered since 11 January 2000.

The disputed domain name <bourso-support.com> was registered on 4 July 2022.

FACTUAL BACKGROUND

PARTIES' CONTENTIONS

COMPLAINANT:

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

The Complainant draws Panel attention to previous UDRP decisions:

- WIPO Case No. D2003-0888, *Dr. Ing. h.c. F. Porsche AG v. Vasiliy Terkin* (It is well-established 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. D2006-0451, *F. Hoffmann-La Roche AG v. Macalve e-dominios S.A.* (“It is also well established that the specific top level of a domain name such as “.com”, “.org” or “.net” does not affect the domain name for the purpose of determining whether it is identical or confusingly similar.”)

The prior panel has confirmed the Complainant’s rights such as:

- CAC Case No. 104310, *BOURSORAMA SA v. Boris MIVAR <bourso-client.com> <bourso-login.com>*;
- WIPO Case No. D2021-1936, *Boursorama S.A. v. Escriive Elie Togbe <bourso-finance.com>*;
- WIPO Case No. D2020-2547, *BOURSORAMA v. David Tidast <boursoclients.com>*.
- WIPO Case No. D2003-0455, *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, (the Complainant is required to make out a *prima facie* case that the Respondent lacks rights or legitimate interests. Once such *prima facie* case is made, the Respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(a) (ii) of the UDRP.)

Past panels have held that a Respondent was not commonly known by a disputed domain name if the Whois information was not similar to the disputed domain name:

- Forum Case No. FA 1781783, *Skechers U.S.A., Inc. and Skechers U.S.A., Inc. II v. Chad Moston / Elite Media Group <bobsfromsketchers.com>* (“Here, the WHOIS information of record identifies Respondent as “Chad Moston / Elite Media Group.” The Panel therefore finds under Policy ¶ 4(c)(ii) that Respondent is not commonly known by the disputed domain name under Policy ¶ 4(c)(ii).”).

Past panels have found it is not a bona fide offering of goods or services or legitimate non-commercial or fair use:

- Forum Case No. FA 970871, *Vance Int’l, Inc. v. Abend* (concluding that the operation of a pay-per-click website at a confusingly similar domain name does not represent a bona fide offering of goods or services or a legitimate non-commercial or fair use, regardless of whether or not the links resolve to competing or unrelated websites or if the respondent is itself commercially profiting from the click-through fees);
- WIPO Case No. D2007-1695, *Mayflower Transit LLC v. Domains by Proxy Inc./Yariv Moshe* (“Respondent’s use of a domain name confusingly similar to Complainant’s trademark for the purpose of offering sponsored links does not of itself qualify as a bona fide use.”).
- WIPO Case No. D2018-0497, *StudioCanal v. Registration Private, Domains By Proxy, LLC / Sudjam Admin, Sudjam LLC* (“In that circumstance, whether the commercial gain from misled Internet users is gained by the Respondent or by the Registrar (or by another third party), it remains that the Respondent controls and cannot (absent some special circumstance) disclaim responsibility for, the content appearing on the website to which the disputed domain name resolve [...] so the Panel presumes that the Respondent has allowed the disputed domain name to be used with the intent to attract Internet users for commercial gain, by creating a likelihood of confusion with the Complainant’s trademark as to the source, affiliation, or endorsement of the Respondent’s website to which the disputed domain name resolves. Accordingly, the Panel finds that the disputed domain name was registered and is being used in bad faith.”).
- *The disputed domain name is confusingly similar to the protected mark*

According to the Complainant, the disputed domain name <bourso-support.com> is confusingly similar to its trademark BOURSO. The trademark is included in its entirety. The Complainant contends that the addition of the term “SUPPORT” is not sufficient to escape the finding that the disputed domain name is confusingly similar to the trademark BOURSO.

Moreover, the Complainant contends that the addition of the generic Top-Level Domain suffix “.COM” does not change the overall impression of the designation as being connected to the Complainant’s trademark. It does not prevent the likelihood of confusion between the disputed domain name and the Complainant, its trademark, and its domain names associated.

- *Respondent does not have any rights or legitimate interest in the disputed domain name*

The Respondent is not known by the Complainant. The Complainant states that the Respondent is not affiliated with nor authorized by the Complainant in any way. The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant does not carry out any activity for, nor has any business with the Respondent.

Neither license nor authorization has been granted to the Respondent to make any use of the Complainant’s trademark or apply for registration of the disputed domain name.

The Complainant further provides that the disputed domain name resolves to a parking page with commercial links. Past panels have found it is not a bona fide offering of goods or services or legitimate non-commercial or fair use.

- *The disputed domain name has been registered and is being used in bad faith*

According to the Complainant, the Respondent has registered the disputed domain name with full knowledge of the Complainant's trademark and is using it in bad faith. The Complainant is doing business in more than 80 countries worldwide and is listed on the Euronext Paris stock exchange. Thus, the Complainant contends that the disputed domain name is confusingly similar to its well-known and distinctive trademark BOURSO.

The Complainant also asserts that the addition of the term "SUPPORT" to the trademark BOURSO cannot be coincidental, as it might refer to the Complainant's customer service. The majority of the Google results of a search of those terms are related to the Complainant.

The Complainant further states that the disputed domain name resolves to a parking page with commercial links. The Complainant contends that the Respondent has attempted to attract Internet users for commercial gain to his own website thanks to the Complainant's trademarks for its own commercial gain, which is evidence of bad faith.

PARTIES CONTENTIONS

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

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

The UNIFORM DOMAIN NAME DISPUTE RESOLUTION POLICY (UDRP) of the Internet Corporation for Assigned Names and Numbers (ICANN) (the "Policy") provides that complainant must prove each of the following to obtain transfer or cancellation of the domain name:

1. that respondent's domain name is identical or confusingly similar to a trademark or service mark in which complainant has rights; and
2. that respondent has no rights or legitimate interests in respect of the domain name; and
3. the domain name has been registered and is being used in bad faith.

1) The disputed domain name is confusingly similar to a trademark in which the Complainant has rights

The Complainant has provided evidence and proved to be the owner of the French trademark BOURSO. Essentially, the Respondent has appropriated the trademark BOURSO by adding the term "SUPPORT", which the Panel finds descriptive and does not eliminate the risk of confusion, to presumably lead consumers to believe that it is affiliated with the Complainant. In the view of the Panel, the addition of this term does not detract from the confusing similarity of the disputed domain name to the Complainant's trademark.

Moreover, the Respondent appropriated the disputed domain name by adding the new gTLD ".COM" which, according to the Panel, does not prevent the likelihood of confusion between the disputed domain name and the Complainant, its trademark and its domain names associated.

The disputed domain name is confusingly similar to the Complainant's trademark BOURSO since it fully incorporates the Complainant's trademark BOURSO despite the addition of the term "SUPPORT" and despite the addition of the new gTLD ".COM" which the Panel finds does not eliminate any confusing similarity. It is well-established that "a domain name that wholly incorporates a Complainant's registered trademark may be sufficient to establish confusing similarity for purposes of the UDRP". See WIPO Case No. D2003-0888, Dr. Ing. h.c. F. Porsche AG v. Vasily Terkin. This is especially true where, as here, the trademark is "the dominant portion of the domain name," LEGO Juris A/S v. Domain Tech Enterprises, WIPO Case No. D2011-2286, or where the trademark in the domain name represents "the most prominent part of the disputed domain name [] which will attract consumers' attention." Kabushiki Kaisha Toshiba dba Toshiba Corporation v. WUFACAI, WIPO Case No. D2006-0768., and since the term, BOURSO is fully distinguishable with respect to the additional component of the domain name, either because it is placed at the beginning of the domain name, which is where consumers mainly focus their attention, or because the additional element of the domain name is deprived of a distinctive character.

Therefore, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark BOURSO.

2) The Respondent lacks rights or legitimate interests in the disputed domain name

Under the Policy, a complainant is required to make out a prima facie case that the respondent lacks rights or legitimate interests. Once such a prima facie case is made, the burden of production shifts to the respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such appropriate allegations or evidence, a complainant is generally deemed to have satisfied paragraph 4(a)(ii) of the UDRP (see WIPO Overview 2.0, paragraph 2.1).

The Panel finds that the Respondent does not have a legal right to use the term BOURSO as part of its domain name. The Respondent is not in any way connected with the Complainant, nor is it authorized to register the disputed domain name or use its intellectual property rights for its operations. The Respondent is not known by the Complainant. The Complainant does not carry out any activity for, nor has any business with the Respondent. Neither license nor authorization has been granted to the Respondent to make any use of the Complainant's trademark BOURSO.

The Respondent has no right or legitimate interests in the disputed domain name resolving to a parking page at the time of the decision in the present case (see, e.g., Philip Morris USA Inc. v. Daniele Tornatore, WIPO Case No. D2016-1302). Past panels have held that the lack of use of a domain name is considered an important indicator of the absence of legitimate interests by the Respondent. See Forum Case No. FA 1773444, Ashley Furniture Industries, Inc. v. Joannet Macket / JM Consultants ("The Panel finds that Respondent's lack of content at the disputed domain shows the lack of a bona fide offering of goods or services or a legitimate non-commercial or fair use per Policy 4(c)(i) and (iii).").

In the present case, the Respondent failed to file a Response in which it could have provided evidence in support of its rights or legitimate interests. Therefore, all these circumstances are sufficient to establish a prima facie case that the Respondent lacks rights and legitimate interests in the disputed domain name.

The Panel thus takes the view that the Respondent lacks rights or legitimate interests in the disputed domain name.

3) The disputed domain name has been registered and is being used in bad faith

The Panel finds that the disputed domain name <boursosupport.com> is confusingly similar to the Complainant's well-known trademark BOURSO. It is reasonable to infer that the Respondent has registered the domain name with full knowledge of the Complainant's trademark. The Complainant's use and registration of the trademark BOURSO precede the registration date of the disputed domain name. The fact that the Respondent has registered a domain name that includes the trademark BOURSO entirely, with the addition of the term "SUPPORT", which is descriptive and does not eliminate the risk of confusion, and despite the addition of the new gTLD ".COM", clearly indicates that the Respondent, who like the Complainant is from France, had knowledge of the Complainant's trademark at the time of registration of the disputed domain name. It is reasonable to conclude that this is evidence of registration of the domain name in bad faith.

The disputed domain name redirects to a parking page with commercial links. The Complainant contends that the Respondent has attempted to attract Internet users for commercial gain to his own website thanks to the Complainant's trademarks for its own commercial gain, which is evidence of bad faith. According to the Panel, a passive holding of the disputed domain name may amount to bad faith when it is difficult to imagine any plausible future active use of the disputed domain name by the Respondent that would be legitimate and not infringe the Complainant's well-known mark or unfair competition and consumer protection legislation (See Inter-IKEA v Polanski, WIPO Case No. D2000 1614; Inter-IKEA Systems B.V. v. Hoon Huh, WIPO Case No. D2000 0438; Telstra Corporation

Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003). Countless UDRP decisions also confirmed that the passive holding of a domain name with the knowledge that the domain name infringes another party’s trademark rights is evidence of bad faith registration and use (see, in this regard, Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003).

The fact that a complainant’s trademark has a strong reputation and is widely used and the absence of evidence whatsoever of any actual or contemplated good faith use are further circumstances that may evidence bad faith registration and use in the event of passive use of domain names (see section 3.3, WIPO Overview 3.0).

In the present case, the Panel is of the opinion that the Complainant’s BOURSO trademark is distinctive and well-known, which makes it difficult to conceive any plausible legitimate future use of the disputed domain name by the Respondent.

For all reasons stated above, the Panel is satisfied that the Complainant has proven the third element of the Policy which is that the Respondent’s registration and use of the disputed domain name in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

- 1. **bourso-support.com**: Transferred

PANELLISTS

Name	Barbora Donathová
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DATE OF PANEL DECISION	2022-10-13
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Publish the Decision