

Decision for dispute CAC-UDRP-104857

Case number CAC-UDRP-104857

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Domain names bourseama.com

Case administrator

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

Complainant

Organization BOURSORAMA SA

Complainant representative

Organization NAMESHIELD S.A.S.

Respondent

Organization Fundacion Comercio Electronico

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 Union trademark BOURSORAMA with registration No.1758614, registered on 19 October 2001 for goods and services in International Classes 9, 16, 35, 36, 38, 41 and 42 (the "BOURSORAMA trademark").

FACTUAL BACKGROUND

The Complainant was founded in 1995. It is active in online brokerage, financial information on the Internet and online banking. In France, the Complainant has over 4 million customers.

The Complainant owns the domain name <boursorama.com>, registered on 1 March 1998, which resolves to the website at www.boursorama.com, a French national financial and economic information website and online banking platform.

The disputed domain name was registered on 13 September 2022, and resolves to a parking webpage with commercial links.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant states that the disputed domain name is confusingly similar to its BOURSORAMA trademark. According to the Complainant, the substitution of the letters "or" by the letter "e" in the disputed domain name is not sufficient to preclude the finding that it is confusingly similar to the Complainant's trademark, but represents a case of "typosquatting", where the disputed domain name contains an obvious misspelling of the Complainant's BOURSORAMA trademark.

The Complainant contends that Respondent has no rights or legitimate interests in respect of the disputed domain name, because it is not commonly known by the disputed domain name and is not affiliated with or authorized by the Complainant to use the Complainant's BOURSORAMA trademark or to apply for registration of the disputed domain name. The Complainant points out that the disputed domain name resolves to a parking webpage with commercial links, which according to it is not a bona fide offering of goods or services or legitimate non-commercial or fair use.

The Complainant contends that the Respondent has registered and used the disputed domain name with knowledge of the Complainant's well-known BOURSORAMA trademark, because the disputed domain name is confusingly similar to it. The misspelling of this trademark in the disputed domain name was intentionally designed to make it confusingly similar with the trademark. The disputed domain name resolves to a parking webpage with commercial links, which according to the Complainant shows that the Respondent attempts to attract Internet users for commercial gain to its own website using the popularity of the Complainant's trademark.

RESPONDENT:

The Respondent did not submit a Response in this proceeding.

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

Pursuant to the Policy, paragraph 4(a), a complainant must prove each of the following to justify the transfer of a domain name:

- (i) the domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights;
- (ii) the respondent has no rights or legitimate interests in respect of the domain name; and
- (iii) the respondent has registered and is using the domain name in bad faith.

In this case, the Provider has employed the required measures to achieve actual notice of the Complaint to the Respondent, and the Respondent was given a fair opportunity to present its case.

By the Rules, paragraph 5(c)(i), it is expected of a respondent to: "[r]espond specifically to the statements and allegations contained

in the complaint and include any and all bases for the Respondent (domain name holder) to retain registration and use of the disputed domain name ...”

In this proceeding, the Respondent has not used the opportunity provided to it under the Rules and has not submitted a substantive Response addressing the contentions of the Complainant and the evidence submitted by it.

Identical or confusingly similar

The Complainant has provided evidence and has thus established its rights in the BOURSORAMA trademark.

The Panel notes that a common practice has emerged under the Policy to disregard in appropriate circumstances the general Top-Level Domain (“gTLD”) section of domain names for the purposes of the comparison under the Policy, paragraph 4(a)(i). The Panel sees no reason not to follow the same approach here, so it will disregard the “.com” gTLD section of the disputed domain name.

The relevant part of the disputed domain name is therefore the sequence “bourseama”. In the lack of any contrary statement by the Respondent, this sequence appears as a misspelled version of the Complainant’s BOURSORAMA trademark, in which the letters “or” have been replaced by “e”. This difference has a low effect on the overall impression made by the disputed domain name, because there are only two different letters and they are in the middle of the sequence, and even with this replacement of letters, the disputed domain name contains sufficiently recognizable aspects of the BOURSORAMA trademark. As discussed in section 1.9 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (the “WIPO Overview 3.0”), a domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element.

Taking all the above into account, the Panel finds that the disputed domain name is confusingly similar to the BOURSORAMA trademark in which the Complainant has rights.

Rights and legitimate interests

While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often-impossible task of “proving a negative”, requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.

The Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name, because there is no relationship between the Parties and the Respondent is not commonly known under the disputed domain name. The Complainant points out that the disputed domain name resolves to a parking webpage containing commercial links. Thus, the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name.

The Respondent has not submitted a Response and has not provided a plausible explanation of its registration and use of the disputed domain name.

In the Panel’s view, the circumstances of this case do not contradict the prima facie case made by the Complainant and do not support a finding that the Respondent has rights and legitimate interests in the disputed domain name. It is confusingly similar to the Complainant’s BOURSORAMA trademark and represents a typosquatted version of it, and the evidence in the case shows that the associated website contains commercial links to third party websites.

All the above, in the lack of any allegation or evidence to the contrary, leads the Panel to the conclusion that it is more likely than not that the Respondent, being aware of the goodwill of the BOURSORAMA trademark, has registered and used the disputed domain name targeting this trademark in an attempt to exploit its goodwill by confusing Internet users that the disputed domain name is affiliated to the Complainant, and attracting them to its website where it has placed commercial links to third party websites, likely in attempt to make profit from them. The Panel does note regard such conduct as legitimate and giving rise to rights or legitimate interests of the Respondent in the disputed domain name.

Therefore, the Panel finds that the Respondent does not have rights or legitimate interests in the disputed domain name.

Bad faith

Paragraph 4(b) of the Policy lists four illustrative alternative circumstances that shall be evidence of the registration and use of a domain name in bad faith by a respondent, namely:

“(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or

(ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product or service on your website or location."

The registration of the Complainant's BOURSORAMA trademark predates with more than twenty years the registration date of the disputed domain name, which represents a typosquatted version of this trademark. Internet users may not notice the difference and may regard the disputed domain name and the website to which it resolves as an online location affiliated to the Complainant. The Respondent's website contains links to third party websites, and it is likely that these links are intended to generate profit for the Respondent. The Panel is therefore of the view that the Respondent is more likely to have registered and used the disputed domain name with knowledge of the Complainant's BOURSORAMA trademark and with the intention of taking advantage of its goodwill by attracting Internet users to its website and expose them to commercial links to third parties, likely for financial gain.

This satisfies the Panel that the disputed domain name has been registered and 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. **bourseama.com**: Transferred

PANELLISTS

Name	Assen Alexiev
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DATE OF PANEL DECISION **2022-10-27**

Publish the Decision
