

Decision for dispute CAC-UDRP-104880

Case number	CAC-UDRP-104880
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Time of filing	2022-09-30 13:49:35
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Domain names	aboursorama.com
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Case administrator

Organization	Iveta Špiclová (Czech Arbitration Court) (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	Transure Enterprise Ltd
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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

In this proceeding the Complainant relies on the following trademark:

- The EU word trademark “BOURSORAMA” No. 001758614, registration date is October 19, 2001.

In addition to the EU trademark cited above the Complainant mentions several trademarks “BOURSORAMA” but does not provide details of such marks.

The Complainant refers to its “BOURSORAMA” domain names, including <baboursorama.com> and <boursorama-banque.com>.

FACTUAL BACKGROUND

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

THE DISPUTED DOMAIN NAME IS IDENTICAL OR CONFUSINGLY SIMILAR TO A TRADEMARK OR SERVICE MARK IN WHICH THE COMPLAINANT HAS RIGHTS

The Complainant was founded in 1995 and is a pioneer and leader in its three core businesses: online brokerage, financial information

on the Internet and online banking.

The Complaint claims to have over 2 million customers in France.

The Complainant's site www.baboursorama.com is the first national financial and economic information site and the first French online banking platform.

In addition to "BOURSORAMA" trademarks the Complainant also owns a number of domain names with the same distinctive wording "BOURSORAMA", such as the domain name <baboursorama.com>, registered since March 1, 1998 and <boursorama-banque.com> registered since May 26, 2005.

The disputed domain name was registered on September 24, 2022.

The Complainant states that the disputed domain name is confusingly similar to its trademark. The addition of the letter "A" is not sufficient to avoid the likelihood of confusion and 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".

The addition of the generic Top-Level Domain suffix ".com" does not change the overall impression of the designation as being connected to the trademark of the Complainant. The Complainant also refers to previous UDRP decisions that confirmed the Complainant's trademark rights.

THE RESPONDENT HAS NO RIGHTS OR LEGITIMATE INTERESTS IN RESPECT OF THE DISPUTED DOMAIN NAME

The Complainant asserts that the Respondent is not identified in the Whois database at the disputed domain name and that the Respondent is not affiliated with nor authorized by the Complainant in any way.

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 in the disputed domain name.

The Complainant contends that the disputed domain name resolves to a parking page with commercial links and highlights that past UDRP 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 WAS REGISTERED AND BEING USED IN BAD FAITH

The Complainant alleges that since the disputed domain name is confusingly similar to the Complainant's well-known trademark, it is reasonable to infer that the Respondent has registered the disputed domain name with full knowledge of the Complainant's trademark and refers to some earlier UDRP decisions relating to the same Complaint's trademark.

The Complainant also states that the misspelling in the disputed domain name was intentionally designed to be confusingly similar with the Complainant's trademarks and shall be seen as evidence of bad faith.

The disputed domain name resolves to a parking page with commercial links and the Complainant contends the Respondent has attempted to attract Internet users for commercial gain to his own website, which is an evidence of bad faith.

Therefore, the Complainant claims the disputed domain name was registered and being used in bad faith.

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

A. Identical or confusingly similar with Complainant's trademark

The Complainant owns "BOURSORAMA" EU trademark referred to above. The Complainant also refers to other BOURSORAMA trademarks but provides no evidence of registration in respect of such other marks. Therefore, for the purpose of this proceeding the Panel takes into account the EU trademark of the Complainant cited above.

As confirmed by "WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition" ("WIPO Overview 3.0"), see paragraph 1.2.1: "Where the complainant holds a nationally or regionally registered trademark or service mark, this prima facie satisfies the threshold requirement of having trademark rights for purposes of standing to file a UDRP case".

The disputed domain name fully incorporates the word trademark of the Complainant with the addition of the letter "a". This represents a misspelling of the Complainant's "BOURSORAMA" mark.

As stated in 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. This stems from the fact that the domain name contains sufficiently recognizable aspects of the relevant mark" (see par. 1.9).

In the present case, the Complainant's word trademark is fully included in the disputed domain name with an obvious misspelling and the Complainant's mark is clearly recognizable within the disputed domain name.

The gTLD ".com" is to be disregarded under the confusing similarity test as it does nothing to eliminate confusion.

Therefore, the Panel finds that the first requirement of the Policy has been satisfied.

B. Rights or Legitimate Interests

The general rule is the following:

- (i) a complainant is required to make out a prima facie case that the respondent lacks rights or legitimate interests; and
- (ii) once such prima facie case is made, the burden shifts to the respondent who has to demonstrate his rights or legitimate interests in respect of the domain name under paragraph 4 (c) of the Policy.

If the respondent fails to do so, the second element of the Policy is satisfied, see *Julian Barnes v. Old Barn Studios*, WIPO Case No. D2001-0121; *Belupo d.d. v. WACHEM d.o.o.*, WIPO Case No. D2004-0110 and CAC Case No. 101284.

According to the Whois data and registrar's verification, the disputed domain name was registered on September 24, 2022. It resolves to a website that contains PPC links some of which seem to relate to Complainant's activities such as brokerage and financial information.

The Respondent did not respond.

While failure to respond does not per se demonstrate that the Respondent does not have rights or legitimate interests, it allows the Panel to draw such inferences as it considers appropriate (see paragraph 14(b) of the Rules).

The Complainant has made a prima facie case of Respondent's lack of rights or legitimate interests. The Respondent is not known at the disputed domain name and is identified as "Transure Enterprise Ltd". The Complainant has not granted any license or authorization to use its trademark to the Respondent and the Complainant is not doing any business with the Respondent.

The disputed domain name represents a misspelling of the Complainant's trademark.

Typosquatting does not create any rights or legitimate interests of the Respondent.

Previous UDRP panels in case of both misspelling and PPC links noted that in such circumstances respondent does not have rights or legitimate interests, see e.g. CAC Case No. 104298 ("The disputed domain names are typosquatted versions of its trademark which is further proof that the Respondent has no rights or legitimate interests under the Policy... The Respondent's use of the disputed domain names to host parked pages comprising PPC links which compete with the Complainant do not represent a bona fide offering of goods or services") and CAC Case No. 104715 ("These circumstances suggest to the Panel that the Respondent is seeking to capitalize deliberately on a predictable pattern of mistyping of the Complainant's mark by such users... The fact that the disputed domain name has been used in connection with pay per click advertising is also suggestive of a lack of rights and legitimate interests in the disputed domain name in this particular case").

The Panel does not see any possible rights or legitimate interests of the Respondent in such circumstances given the nature of the disputed domain name and lack of response.

Therefore, the Panel finds that the Complainant has satisfied the second element of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy lists non-exhaustive circumstances indicating registration and use in bad faith.

These circumstances are non-exhaustive and other factors can also be considered in deciding about the bad faith element.

It is well established that bad faith under the UDRP is broadly understood to occur where a respondent takes unfair advantage of or otherwise abuses a complainant's mark (see par. 3.1 of WIPO Overview 3.0). Targeting is important in establishing bad faith under UDRP.

The Panel first notes that the Complainant claims that its "BOURSORAMA" trademark is well-known. However, the Complainant provides very limited information in respect of the claimed well-known character of its trademark. It provides only a print-out of its own website and a printout of the EUIPO trademarks database.

No additional proof of well-known character of Complainant's trademark has been provided apart from statements in the complaint and references to previous UDRP decisions where Complainant's "BOURSORAMA" trademark was named "well-known".

The Panel takes notes of such references to previous UDRP decisions. However, the Panel highlights that UDRP requires proof of parties' statements and conclusory statements unsupported by evidence will normally be insufficient to prove a party's case (see par. 4.2 of WIPO Overview 3.0).

As noted by one of previous panels: "The Complainant submits that its trademark enjoys international reputation. However, no supporting evidence has been provided. In a UDRP proceeding, a Complainant is required to prove its allegations even if the Respondent fails to submit a response. Therefore, for the purpose of this decision, the Panel cannot consider the trademark as one enjoying international reputation" (see CAC Case No. 103929).

In this particular proceeding, this is not fatal to the Complainant's case.

The Panel notes though that if any complainant claims that its trademark is well-known in UDRP proceedings, it should provide relevant evidence such as references to appropriate sources (e.g. publications, articles), awards and recognitions, customers reviews, etc.

A simple statement in the complaint and screenshots of its own website is not enough to prove well-known character of a given trademark.

Despite some shortcomings in the Complainant's evidence, the Panel finds the Respondent's behavior represents both bad faith registration and use as envisaged by UDRP based on the following:

- The nature of the disputed domain name -misspelling of the "BOURSORAMA" mark and this a clear case of typosquatting. Typosquatting itself indicates targeting and bad faith as confirmed by previous UDRP decisions such as CAC Case No. 103697 ("The Panel believes that this case is an example of typosquatting which is one of the model situations of bad faith ... (paragraph 4(b)(iv) of the Policy)") and CAC Case No. 103336 ("the domain names are calculated to trade on Complainant's name by exploiting it in a practice known as typosquatting. Absent any evidence to the contrary, this supports a presumption bad faith...");
- Numerous previous UDRP decisions involving the Complainant and its "BOURSORAMA" trademark, including the ones referred to in the complaint. While the Panel acknowledges that each case is unique, the very fact that the Complainant and its "BOURSORAMA" trademark have been frequent targets of cybersquatters indicates, at least, some degree of recognition and popularity of the trademark. Some of such cases were also related to typosquatting, see e.g. CAC Case No. 102211 (<BOURSORMA.COM>): "The Panel finds that the Respondent registered and is using the disputed domain name in bad faith, as the disputed domain name is a typosquatting of the Complainant's trademark and is used to lead to a parking page containing pay-per-click links"; CAC Case No. 102199 (<BOURSURAMA.COM>) and CAC Case No. 102842 (<BOUJRSORAMA.COM>): "The Panel also agrees with Complainant that the misspelling of the trademark BOURSORAMA was intentionally designed to be confusingly similar with the Complainant's trademark. Previous UDRP Panels have seen such actions as evidence of bad faith";
- The Respondent failed to respond and provide explanations for its choice of the disputed domain name highly similar with the Complainant's trademark registered many years prior to registration date of the disputed domain name. The fact that the Complainant filed its complaint just a few days after registration of the disputed domain name does not weaken Complainant's case as it is prudent for a company providing financial services to react as fast as possible to registration of confusingly similar domain names, in particular in cases of typosquatting;
- The Panel does not see any plausible explanation for the Respondent's registration of the disputed domain name other than taking advantage of Complainant's trademark and does not see any plausible good faith use of the disputed domain name that is an obvious misspelling of the Complainant's mark. Currently the disputed domain name is used for PPC links some of which seem to be related to Complainant's business as explained above. When it comes to PPC links as noted in WIPO Overview 3.0: "panels have held that a respondent cannot disclaim responsibility for content appearing on the website associated with its domain name. Neither the fact that such links are generated by a third party such as a registrar or auction platform (or their affiliate), nor the fact that the respondent itself may not have directly profited, would by itself prevent a finding of bad faith". This is also confirmed by extensive UDRP case-law on PPC links and bad faith, see e.g. CAC Case No. 101955: "Considering the use of the disputed

domain name for a website resolving to pay per click sites promoting services competing with those of the Complainant, the Panel found that the disputed domain name was registered and is being used in bad faith” and CAC Case No.104121: “the Panel is persuaded that the Domain Name was registered and has been held and used for the purposes of using the reputation of the mark to draw internet users to a domain name parking page with a view to displaying links for commercial gain... Further the registration and use of a domain name for such a purpose is registration and use in bad faith, falling within the example of circumstances indicating bad faith set out in paragraph 4(b)(iv) of the Policy (see also section 3.5 of the WIPO Overview)”. The Panel notes that PPC links may not always indicate bad faith in the absence of other evidence of targeting and taking advantage of complainant’s mark by respondent. However, circumstances of the present case indicate awareness of the Complainant’s earlier trademark rights and targeting as the disputed domain name is an example of typosquatting and in such circumstances PPC links serve as an additional indication of bad faith (taking into account points below demonstrating Respondent’s prior involvement in UDRP proceedings);

- The Respondent has been a respondent in numerous previous UDRP proceedings, most recently in the following cases: CAC Case No. 104567 (“the Complainant has proved that the Respondent has engaged in a pattern of registering domain names that bear striking resemblance to famous marks”); “Groupe Adeo v. Host Master, Transure Enterprise Ltd”, WIPO Case No. D2022-2726; “Accenture Global Services Limited v. above_privacy / Host Master, Transure Enterprise Ltd”, WIPO Case No. D2022-3020; CAC Case No. 104667 and CAC Case No. 104457 (where the same Complainant was involved). In many of the previous UDRP proceedings the Respondent demonstrated a similar pattern of bad faith registration and use of disputed domain names: typosquatting and PPC links. This case seems to be a continuation of the Respondent’s practice of bad faith registration and use of domain names confusingly similar to third parties’ trademarks.

Based on the above, the Panel finds that Respondent’s behavior falls within, at least, within par. 4 b (iv) of UDRP and the Respondent by using the disputed domain name has intentionally attempted to attract, for commercial gain, Internet users to its web site, by creating a likelihood of confusion with the complainant’s mark as to the source, sponsorship, affiliation, or endorsement and that the Respondent takes unfair advantage of the Complainant’s mark.

The Panel holds that the third requirement of the Policy has been satisfied.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **aboursorama.com**: Transferred

PANELLISTS

Name	Igor Motsnyi
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DATE OF PANEL DECISION	2022-10-31
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Publish the Decision
