

Decision for dispute CAC-UDRP-104906

Case number	CAC-UDRP-104906
Time of filing	2022-10-11 09:15:38
Domain names	bienvenue-boursorama.com

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	Myriad
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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

BOURSORAMA S.A. (the Complainant) grows in Europe with the emergence of e-commerce and the continuous expansion of the range of financial products online. 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 Complainant is the owner of the European trademark BOURSORAMA® n° 1758614 registered since 19 October 2001 for various goods and services in classes 9, 16, 35, 36, 38, 41, and 42.

The Complainant also owns a number of domain names, including the same distinctive wording BOURSORAMA®, such as the domain names <boursorama.com>, registered since 1 March 1998, and <boursoramabanque.com>, registered since 26 May 2005.

FACTUAL BACKGROUND

The disputed domain name <bienvenue-boursorama.com> was registered on 21 November 2020 and resolves to an error page.

The Complainant has been founded in 1995 and since the time it grows in Europe with the emergence of e-commerce and the continuous expansion of the range of financial products online.

The Complainant is a pioneer and leader in its three core businesses, online brokerage, financial information on the Internet and online banking, BOURSORAMA S.A. based its growth on innovation, commitment and transparency.

In France, it is the online banking reference with over 2.37 million customers. The portal www.boursorama.com is the first national financial and economic information site and first French online banking platform.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

COMPLAINANT'S CONTENTIONS:

A. The disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights

The Complainant states that the disputed domain name <bienvenue-boursorama.com> is confusingly similar to its trademark BOURSORAMA® and its domain names associated.

The Complainant asserts that the addition of the French generic term "BIENVENUE" is not sufficient to escape the finding that the disputed domain name is confusingly similar to the trademark BOURSORAMA®. 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. D2003-0888, Dr. Ing. h.c. F. Porsche AG v. Vasiliy Terkin).

Moreover, the Complainant contends that the addition of the suffix ".COM" does not change the overall impression of the designation as being connected to the trademark BOURSORAMA®. It does not prevent the likelihood of confusion between the disputed domain name and the Complainant, its trademark and its domain names associated. 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.").

Finally, many UDRP decisions have also confirmed the Complainant's rights such as:

- CAC Case No. 104433, *BOURSORAMA SA v. 1337 Services LLC <fr-boursorama.com>*;
- CAC Case No. 102278, *BOURSORAMA v. yvette cristofoli, <boursorama-ecopret.com>*;
- CAC Case No. 101844, *BOURSORAMA SA likid french, <client-boursorama.net>*.

B. The Respondent has no rights or legitimate interests in respect of the disputed domain name

According to the 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 Policy.

The Complainant asserts that the Respondent is not identified in the Whois database as the disputed domain name. 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. Thus, the Respondent is not known as the disputed domain name. For instance 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).").

The Respondent is not known by the Complainant. The Complainant contends that Respondent is not affiliated with nor authorized by the Complainant in any way. The Complainant contends that 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 BOURSORAMA®, or apply for registration of the disputed domain name.

Furthermore, the disputed domain name resolves to a page entitled "Espace Client: accédez à vos comptes - Boursorama Banque" (which mean "Customer area: "access your accounts - Boursorama Banque" in French) and asking the Complainant's customers their credentials. This page copies the Complainant's official customer access.

Therefore, the Complainant contends that Respondent registered the disputed domain name in order to create a likelihood of confusion and phish for personal banking information, which is not a bona fide offering of goods and services nor a legitimate noncommercial or fair use.

CAC Case No. 103849, BOURSORAMA SA v. zack levy (“Use of a domain name for fraudulent purposes self-evidently does not comprise use in connection with a bona fide offering of goods and services.”).

C. The disputed domain name was registered and is being used in bad faith

The disputed domain name includes the well-known and distinctive trademark BOURSORAMA®.

Besides, the disputed domain resolves to a copy of the Complainant’s official customer access.

Thus, the Complainant contends that the Respondent has registered and used the disputed domain name with full knowledge of the Complainant's trademark.

Furthermore, the disputed domain name resolves to a page entitled “Espace Client: accédez à vos comptes - Boursorama Banque” (which mean “Customer area: “access your accounts - Boursorama Banque” in French) and asking the Complainant’s customers their credentials. This page is a copy of the Complainant’s official customer access.

Thus, the Complainant contends that the Respondent attempts to pass of the Complainant in order to phish for personal banking information, which is a hallmark of bad faith.

CAC Case No. 103186, BOURSORAMA SA v. ROSAURA SAGESE (“The circumstances of this case, in particular the Respondent’s approach to ask customers for their ID and password on a website using the same color scheme as the Complainant indicates that the Respondent registered and used the disputed domain name primarily with the intention of attempting to attract, for commercial gain, Internet users to its website or other online locations, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of such website or location, or of a product or service on such website or location.”).

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

In order to succeed the claim, the Complainant has to prove that all of the elements embedded in paragraph 4(a) of the Policy have been satisfied:

(i) The disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and

(ii) The Respondent has no rights or legitimate interests with respect to the disputed domain name; and

(iii) The disputed domain name has been registered and is being used in bad faith.

The Panel reviewed carefully the Complaint and the evidence provided by the Complainant. The Respondent filed neither administratively compliant Response nor provided the Panel with any evidence. The Panel based its finding and the Decision on the evidence presented by the Complainant and available websites and public information concerning the disputed domain name, namely the WHOIS databases.

It was established that the Complainant is the proprietor of the worldwide trademark BOURSORAMA®.

The Panel therefore came to the conclusions as follows:

A. THE DISPUTED DOMAIN NAME IS CONFUSINGLY SIMILAR

The Complainant states that the disputed domain name <bienvenue-boursorama.com> is confusingly similar to its trademark BOURSORAMA® and its domain names associated.

The Panel finds that the addition of the French generic term "BIENVENUE" is not sufficient to escape the finding that the disputed domain name is confusingly similar to the trademark BOURSORAMA®. 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 and the addition of the suffix ".COM" does not change the overall impression of the designation as being connected to the trademark BOURSORAMA®. It does not prevent the likelihood of confusion between the disputed domain name and the Complainant, its trademark and its domain names associated while 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 Panel therefore considers the disputed domain name to be confusingly similar to the trademark BOURSORAMA® in which the Complainant has rights in accordance with paragraph 4(a)(i) of the Policy.

B. RESPONDENT HAS NO RIGHTS OR LEGITIMATE INTEREST IN RESPECT OF THE DISPUTED DOMAIN NAME

The Panel concludes that the Complainant makes 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 disputed domain name. The Complainant proves that the Respondent is not identified in the Whois database as the disputed domain name and it was not commonly known by a disputed domain name while the Whois information was not similar to the disputed domain name. The Respondent is known like "Myriad". Thus, the Respondent is not known as the disputed domain name. It is obvious that the Respondent has registered the disputed domain name only in order to create a likelihood of confusion with the Complainant's trademark. The Respondent could have easily performed a simple search before registering the disputed domain name and would have quickly learnt that the trademarks are owned by the Complainant and that the Complainant has been using its trademarks worldwide. The Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name <bienvenue-boursorama.com> and it is not related in any way with the Complainant. Complainant proves that Respondent does not carry out any activity for, nor has any business with the Respondent. Neither licence 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 by the Complainant. The Panel finds that the Respondent's disputed domain name resolves to a page entitled "Espace Client: accédez à vos comptes - Boursorama Banque" (which mean "Customer area: "access your accounts - Boursorama Banque" in French) and asking the Complainant's customers their credentials. The Panel concludes that Respondent registered the disputed domain name in order to create a likelihood of confusion and phish for personal banking information, which is not a bona fide offering of goods and services nor a legitimate noncommercial or fair use.

The Panel therefore finds that the Respondent does not have rights or legitimate interests in the disputed domain name in accordance with paragraph 4(a)(ii) of the Policy).

C. THE DISPUTED DOMAIN NAME WAS REGISTERED AND IS BEING USED IN BAD FAITH

i. THE DISPUTED DOMAIN NAME WAS REGISTERED IN BAD FAITH

The Complainant's trademark rights pre-date the registration of the disputed domain name and the Respondent has never been authorized by the Complainant to use these trademarks nor to register the disputed domain name. It is inconceivable that using the well-known trademark BOURSORAMA® in the disputed domain name is a deliberate and calculated attempt to improperly benefit from the Complainant's rights. Moreover, the Respondent has used the disputed domain name in a phishing scheme, attempting to pass off as one of the Complainant's employees. Thus, the Panel concludes that it is reasonable to infer that the Respondent has registered the disputed domain name with full knowledge of the Complainant's trademarks, which evidences bad faith.

ii. THE DISPUTED DOMAIN NAME IS BEING USED IN BAD FAITH

The Panel's finding that the mere registration of the disputed domain name that is identical or confusingly similar (particularly domain names comprising a misspelling of a famous or widely-known trademark BOURSORAMA® by an unaffiliated entity) was intentionally designed to be confusingly similar with the Complainant's trademark that can by itself create a presumption of bad faith. The Panel finds that the disputed domain name resolves to a page entitled "Espace Client: accédez à vos comptes - Boursorama Banque" asking the Complainant's customers their credentials by copying it of the Complainant's official customer access. This Respondent's attempt to phish for personal banking information is a hallmark of bad faith. The Panel finds that such actions is evidence of bad faith.

The Panel therefore finds that the Respondent registered and is using the disputed domain name in bad faith in accordance with 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. **bienvenue-boursorama.com**: Transferred

PANELLISTS

Name	Vojtěch Trapl
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DATE OF PANEL DECISION	2022-11-04
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Publish the Decision