

Decision for dispute CAC-UDRP-104876

Case number	CAC-UDRP-104876
Time of filing	2022-09-30 09:33:59
Domain names	boursorama-portail.com

Case administrator

Organization	Denisa Bilík (CAC) (Case admin)
--------------	---------------------------------

Complainant

Organization	BOURSORAMA SA
--------------	---------------

Complainant representative

Organization	NAMESHIELD S.A.S.
--------------	-------------------

Respondent

Organization	boursorama
--------------	------------

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 trademark BOURSORAMA, European registration No. 001758614, registered on 19 October 2001, for goods and services in classes 9, 16, 35, 36, 38, 41 and 42.

The Complainant also owns a number of domain names containing the trademark BOURSORAMA, such as <boursorama.com>, registered on 1 March 1998, and <boursoramabanque.com>, registered on 26 May 2005.

FACTUAL BACKGROUND

The Complainant is Boursorama S.A., a French company operating in the field of online brokerage, financial information and banking. The Complainant operates through its website at www.boursorama.com, which is the first national financial and economic information site and the first French online banking platform.

The disputed domain name <boursorma-portail.com> was registered on 23 September 2022 and resolves to an index page.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

The Complainant's contentions are the following:

The disputed domain name is confusingly similar to the Complainant's earlier trademark BOURSORAMA, as it wholly incorporates the Complainant's trademark followed by the generic term "portail", which is not sufficient to escape a finding of confusing similarity.

The Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent is not identified in the Whois database as the disputed domain name, and is therefore not commonly known by it. The Complainant does not know the Respondent and the Respondent is not affiliated with the Complainant. The Respondent does not carry out any activity for, nor has any business with the Respondent. The Complainant has not granted a license or authorization to use the trademark BOURSORAMA, or to apply for the registration of the disputed domain name. Moreover, the Complainant argues that the Respondent uses the disputed domain name to falsely impersonate the Complainant. Said use does not amount to a bona fide offering of goods or services, nor to a legitimate noncommercial or fair use of the disputed domain name.

The BOURSORAMA trademark is well-known and distinctive. Thus, the Respondent has registered the disputed domain name with full knowledge of the Complainant's trademark and in bad faith. The Respondent uses the disputed domain name to fraudulently phish for valuable personal information from users to perform fraudulent financial services. This is clear evidence of the fact that the disputed domain name is being used in bad faith.

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

I. Confusing Similarity

The Panel agrees with the Complainant that the disputed domain name is confusingly similar to the Complainant's BOURSORAMA trademark. The Complainant has shown that it owns earlier rights over the trademark BOURSORAMA. The disputed domain name reproduces this trademark entirely, followed by the generic word "portail". According to Section 1.8 of the WIPO Jurisprudential Overview 3.0, "[w]here the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element". In the instant case, the trademark BOURSORAMA is clearly recognizable in the disputed domain name and the addition of the word "portail" cannot prevent a finding of confusing similarity.

Thus, the first condition under the Policy is met.

II. No Rights or Legitimate Interests

As also confirmed in the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0"), a

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 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.

Based on the available evidence, the Respondent does not appear to be known by the disputed domain name. The relevant Whois does not contain any information showing that there is a correspondence between the name of the registrant of the disputed domain name and the trademark BOURSORAMA. The Respondent's name, disclosed after the filing of the Complaint, does not coincide with this trademark either. The fact that the website to which the disputed domain name leads contains the trademark BOURSORAMA is not per se sufficient to establish that the Respondent is commonly known by this trademark, especially because the Complainant maintains that it has never authorised the Respondent to make use of its trademark and the Respondent has not challenged this statement.

Furthermore, the Complainant maintains that the Respondent is not affiliated with the Complainant, is not a Complainant's licensee, and has not been authorised to include the BOURSORAMA trademark in a domain name. The Respondent has not filed a Response and therefore has not objected to the Complainant's arguments.

The disputed domain name leads to a webpage depicting the BOURSORAMA trademark, placed above the French word "Banque" (bank, in English). The logo accompanying the Complainant's trademark is identical to the logo appearing on the Complainant's official website. On this page, users are asked to insert a login to proceed further. On the top left side of the page is the following wording: "Client space: access your accounts - Boursorama Banque". In view of the fact that the Respondent is not linked to the Complainant and does not work for the Complainant, nor is a Complainant's licensee, and absent any other suitable explanation from the Respondent, the Panel concludes that the use of the disputed domain name cannot amount to a bona fide offering of goods or services or to a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

In light of the foregoing, the Panel finds that the Respondent lacks rights or legitimate interests in the disputed domain name.

Thus, the second condition under the Policy is met.

III. Bad faith

Regarding bad faith, the Complainant maintains that its trademark is highly distinctive and enjoys reputation. Previous Panels have held that BOURSORAMA is a well-known trademark (see, by way of example, CAC Case No. 101131, BOURSORAMA v. PD Host Inc - Ken Thomas, in relation to the domain name <www.boursorama.com>). The Respondent is located in France and uses the disputed domain name in connection with an alleged platform providing access to bank accounts opened with a so-called "Boursorama Banq". The logo depicted next to the trademark BOURSORAMA on the relevant webpage is the same logo appearing on the Client's official website at www.boursorama.com. The colors used are also the same. The addition of the term "portail" (in English "portal") is strictly connected to the Complainant's activity, as the Complainant mainly operates online. It is therefore clear that the Respondent targeted the Complainant's trademark at the time of the registration of the disputed domain name as it was fully aware of it and of the Complainant's activity at that time.

With respect to use in bad faith, as mentioned above, the disputed domain name is used in connection with a webpage requesting holders of bank accounts opened with the Boursorama banq to insert their username to access their bank account details. The webpage contains the Complainant's trademark and the same logo depicted on the Complainant's official website, with the same colors. Through the disputed domain name, the Respondent is therefore impersonating the Complainant, most likely in a phishing attempt to improperly obtain users' personal and financial information for some illegitimate purpose. This use of the disputed domain name cannot be considered in good faith.

The Panel further notes that the Respondent concealed his personal information by using a privacy service most probably to prevent the Complainant to immediately understand who was hiding behind the illegitimate activities perpetrated through the disputed domain name, thus making the defense of the Complainant's rights more difficult. This way of behaving is also evidence of bad faith.

The Panel therefore concludes that the Respondent has registered and is using the disputed domain name in bad faith, to intentionally attempt to attract, for commercial gain, Internet users to its web site or other on-line location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's web site or location.

In light of foregoing, the Panel is satisfied that also the third and last condition under the Policy is met.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **boursorama-portail.com**: Transferred

PANELLISTS

Name **Angelica Lodigiani**

DATE OF PANEL DECISION **2022-11-09**

Publish the Decision
