

Decision for dispute CAC-UDRP-104987

Case number	CAC-UDRP-104987
Time of filing	2022-11-14 09:50:19
Domain names	boursoramclients.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

Organization	marivieguinto@yahoo.com
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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

The Complainant is the owner of the European trademark BOURSORAMA n°001758614 registered since October 19, 2001.

The Complainant also owns a number of domain names comprising the distinctive wording BOURSORAMA, such as the domain name <boursorama.com>, registered since March 1, 1998.

FACTUAL BACKGROUND

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, Complainant based its growth on innovation, commitment and transparency.

In France, Complainant is the online banking reference with over 4.3 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 also owns a number of domain names comprising the

wording BOURSORAMA, such as the domain name <boursorama.com>, registered since March 1, 1998.

The disputed domain name was registered on November 9, 2022 and resolves to a login page copying the Complainant's official customer access <https://clients.boursorama.com/connexion/>.

The Complainant states that the disputed domain name is confusingly similar to its trademark BOURSORAMA and its domain names associated.

The addition of the generic term "CLIENTS" and the deletion of the ending "A" are not sufficient to escape the finding that the domain name is confusingly similar to the trademark BOURSORAMA. It does not change the overall impression of the designation as being connected to the Complainant's trademark BOURSORAMA. It does not prevent the likelihood of confusion between the disputed domain name and the Complainant and its trademark.

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.

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.

The Complainant contends that Respondent is not affiliated with nor authorized by the Complainant in any way. The Complainant further 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.

Moreover, the disputed domain name resolves to a login page copying the Complainant's official customer access <https://clients.boursorama.com/connexion/>. This page could be used in the view of Complainant in order to collect personal information of the Complainant's clients.

Thus, the Respondent's website cannot be considered as a bona fide offering of services or fair use, since the website can mislead the consumers into believing that they are accessing the Complainant's website.

The disputed domain name includes in the view of Complainant the well-known and distinctive trademark BOURSORAMA.

Besides, the disputed domain name resolves to a login page copying the Complainant's official customer access <https://clients.boursorama.com/connexion/>.

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

The website does not contain any information about the Respondent. Therefore, the Complainant argues that by using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to his website, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of his websites (par. 4(b) (iv) of the Policy). Besides, the Respondent can collect personal information through this website, namely passwords.

On these bases, the Complainant concludes that the Respondent has registered and is using the disputed domain name 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

Identical or Confusingly Similar

First, the Panel finds that the Complainant has evidenced that it has rights in and to the BOURSORAMA trademark, which was registered under European Union Trade Mark No. 001758614 on October 19, 2001, before the registration of the disputed domain name.

Second, the Panel finds that the disputed domain name incorporates almost entirely the Complainant's distinctive BOURSORAMA trademark. The difference between the disputed domain name and the BOURSORAMA trademark is the addition of the term "clients" and the deletion of the ending "A".

In this regard, the Panel finds that the said difference does not prevent a finding of confusing similarity between the Complainant's trademark and disputed domain name. It does not change the overall impression of the designation as being connected to the Complainant's trademark BOURSORAMA. It does not prevent the likelihood of confusion between the disputed domain name and the Complainant and its trademark.

The Panel finds, similarly to the other UDRP panels, that the addition of the gTLD ".com" to the disputed domain name does not constitute an element as to avoid confusing similarity for the purposes of the Policy.

On the basis of the foregoing findings, and according to paragraph 4(a)(i) of the Policy, the Panel finds that the disputed domain name is confusingly similar to the Complainant's BOURSORAMA trademark, and the first element of the Policy is established.

C. Rights or Legitimate Interests

Paragraph 4(c) of the Policy lists circumstances, in particular but without limitation, which, if found by the Panel to be proved, demonstrate the Respondent's rights or legitimate interests in the disputed domain name for the purposes of paragraph 4(a)(ii) of the Policy, including:

- "(i) before any notice to you of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or
- (ii) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or
- (iii) you are making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue."

Noting the facts and arguments set out above, the Panel finds that the Complainant has made out a prima facie case that the Respondent has no rights or legitimate interests in the disputed domain name. The Respondent did not reply to the Complainant's contentions and, therefore, did not refute the Complainant's contentions. The consensus of previous UDRP panels is that while the overall burden of proof in UDRP proceedings is on the complainant, once a prima facie case is made, the burden of production shifts to the respondent to come forward with relevant evidence demonstrating his rights or legitimate interests in the disputed domain name. In this instant case, the Panel finds that the Respondent has failed to meet that burden since no response was submitted with evidence to the contrary.

Regarding paragraph 4(c)(i) of the Policy, the Panel finds, in light of the Complainant's asserted facts, that no license, permission, or authorization of any kind to use the Complainant's trademark has been granted to the Respondent. There is no evidence available that the Respondent holds any registered or unregistered trademark rights in any jurisdiction. Thus, the Panel finds that the Respondent has no rights in the BOURSORAMA trademark.

Regarding paragraphs 4(c)(ii) and 4(c)(iii) of the Policy, the Panel finds that there is no evidence that would suggest that the Respondent, as an individual, business, or other organization, has been commonly known by the disputed domain name, or that the Respondent is making a legitimate noncommercial or fair use of the disputed domain name. In fact, as it appears following the Complainant's assertions and evidence with regard to the Respondent's registration of the disputed domain name, the Respondent had

full knowledge of the BOURSORAMA trademark and had an intention to gain profit by riding on the goodwill and reputation of the Complainant.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name, and the second element, paragraph 4(a)(ii) of the Policy is established.

Registered and Used in Bad Faith

Paragraph 4(b) of the Policy identifies, in particular but without limitation, four circumstances which, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith, including:

“(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 above four circumstances are not exhaustive and bad faith may be found by the Panel alternatively in other circumstances. The Panel finds that the Complainant has put forth evidence that the Respondent has registered and used the disputed domain name in bad faith. The Respondent did not reply to the Complainant’s contentions and therefore, did not refute the Complainant’s contentions.

The Panel finds that the Complainant’s BOURSORAMA trademark is inherently distinctive that it is most unlikely the Respondent might have registered the disputed domain name without full knowledge of it.

Moreover, the Panel also finds that the Respondent intentionally chose to register the disputed domain name incorporating the Complainant’s BOURSORAMA trademark and the word “clients”, which are confusingly similar to the Complainant’s subdomain <clients.boursorama.com>.

Therefore, the Panel is convinced that the Respondent was fully aware of the Complainant when registering the disputed domain name.

Furthermore, it is proven and evidenced by the Complainant that the disputed domain name used to resolve to a login page mimicking the Complainant’s official customer access.

The use of the said disputed domain name is calculated to attract Internet users to the site in the mistaken belief that they are visiting a site of or associated with the Complainant. When Internet users type in their login details on the website in the erroneous assumption that this is an official website of the Complainant, there is a strong likelihood that the Respondent or any third parties will use this information for illegitimate activity like phishing and identity theft. Such misleading behavior is indicative of bad faith within the meaning of paragraph 4(b)(iv) of the Policy, on the part of the Respondent.

Taking into account all of the above, the Panel finds that the disputed domain name was registered and used by the Respondent in bad faith and the third element under paragraph 4(a)(iii) of the Policy is established.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **boursoramclients.com**: Transferred

PANELLISTS

Name	Jan Schnedler
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DATE OF PANEL DECISION 2022-12-08

Publish the Decision
