

## Decision for dispute CAC-UDRP-105066

Case number	CAC-UDRP-105066
Time of filing	2022-12-20 08:46:22
Domain names	monespace-bourso.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

Name	Ameli Fabrice
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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 submitted evidence that it is the owner of the French word trademark "BOURSO", registration no. 3009973, registered on July 28, 2000, valid in France, for a list of goods and services in classes 9, 35, 36, 38, 41 and 42 (Nice) (hereinafter the "Trademark").

#### FACTUAL BACKGROUND

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

The Complainant claims to be a pioneer and leader in its three core businesses: online brokerage, financial information on the internet and online banking. The Complainant declares it has over 4,3 million customers. It also states that its portal [www.boursorama.com](http://www.boursorama.com) was the first national financial and economic information website and the first online banking platform in France.

The Complainant provided evidence that it is the owner of the Trademark and of several domain names, including <boursorama.com> since March 1, 1998, and <bourso.com> since January 11, 2000.

The disputed domain name <monespace-bourso.com> was registered on December 12, 2022. The Complainant claims that the

disputed domain name redirects to a website copying the Complainant's official customer access <clients.boursorama.com/connexion/>.

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#### PARTIES CONTENTIONS

The Complainant submits that the requirements of the Policy have been met and that the disputed domain name should be transferred to it.

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

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#### 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).

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#### 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).

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#### 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).

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#### 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.

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#### PRINCIPAL REASONS FOR THE DECISION

##### 1. Confusing similarity

The disputed domain name consists of the Complainant's Trademark "BOURSO" with the addition of the French words "mon espace".

According to the Complainant, the addition of the words "mon espace", which is French for "my area", is not sufficient to avoid a likelihood of confusion with the Complainant's registered Trademark. The Complainant states 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". Furthermore, the Complainant argues that the gTLD ".com" does not change the overall impression of the designation as being connected to the Trademark.

The Panel notes that the disputed domain name incorporates the entirety of the Complainant's "BOURSO" Trademark, with the addition of the French words "mon espace".

The Panel remarks that Section 1.7 of WIPO Overview 3.0, clearly states that, "in cases where a domain name contains the whole of a trademark, or where at least one dominant feature of the relevant trademark is recognisable in the domain name, the domain name shall normally be considered confusingly similar to that trademark for the purposes of UDRP status".

The Panel is of the opinion that the addition of the French words "mon espace" does not prevent a finding of confusing similarity under the first element of paragraph 4(a) of the Policy, since the words "mon espace" (French for "my area") are purely descriptive.

This is supported by section 1.8 of WIPO Overview 3.0, which clearly states: "Where the relevant mark is recognisable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless or otherwise) would not preclude a finding of confusing similarity under the first element".

It is well-established that the gTLD ".com" may be disregarded when it comes to considering whether a domain name is confusingly similar to a trademark in which the Complainant has rights. Moreover, section 1.11.1 of WIPO Overview 3.0 clearly states: "The applicable Top Level Domain ("TLD") in a domain name (e.g., ".com", ".club", ".nyc") is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test."

For these reasons, the Panel concludes that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights within the meaning of paragraph 4(a)(i) of the Policy.

## 2. Rights or legitimate interests

As regards paragraph 4(a)(ii) of the Policy, while the overall burden of proof rests with the Complainant, it is commonly accepted that this should not result in an often-impossible task of proving a negative. Therefore, numerous previous panels have found that 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 burden of production shifts to the Respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the disputed domain name. If the Respondent fails to come forward with such appropriate allegations or evidence, the Complainant is generally deemed to have satisfied paragraph 4(a)(ii) of the Policy. If the Respondent does come forward with some allegations or evidence of relevant rights or legitimate interests, the panel then must weigh all the evidence, with the burden of proof always remaining on the Complainant.

The Complainant argues that:

- The Respondent is not identified in the WHOIS database as the disputed domain name. The Respondent is not commonly known by the disputed domain name (because the WHOIS information is not similar to the disputed domain name).
- The Respondent is not known by the Complainant. The Respondent is not affiliated nor authorized by the Complainant. The Respondent does not carry out any activity for nor has any business with the Complainant.
- No license or authorisation was granted to the Respondent to make use of the Complainant's Trademark or to apply for registration of the disputed domain name.
- The disputed domain name resolves to a website copying the Complainant's official customer access <clients.boursorama.com/connexion/> asking the Complainant's customers to enter their credentials. Thus, The Respondent uses the domain name 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 non-commercial or fair use.

The Respondent did not file an administratively compliant (or any) response. The Respondent did not provide evidence that it has rights or legitimate interests in the disputed domain name (the Respondent could, inter alia, have provided evidence of the factors mentioned in paragraph 4(c) of the Policy, but failed to do so).

The Panel finds that the Respondent does not appear to have any rights or legitimate interests associated with the Trademark from the following facts:

- There is no evidence that the Respondent is or has been commonly known, by the disputed domain name or by the term "BOURSO". The WHOIS information does not provide any information that might indicate any rights to use of the term "BOURSO".
- The Complainant's Trademark has been used well before the registration date of the disputed domain name. The disputed domain name was registered on December 12, 2022, whereas the trademark of the Complainant was registered March 22, 2000.
- There is no evidence to show that the Respondent is making a legitimate non-commercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers. On the contrary, it appears that the Respondent is taking advantage (or at least intends to take advantage) of the Complainant's name and registered Trademark to obtain the personal data of people looking for their personal access page at the Complainant's platform.
- The Respondent did not show to have any trademark rights or other rights regarding the term "BOURSO".
- The Respondent does not seem to have any consent or authorisation to use the Trademarks or variations thereof and does not

seem to be related in any way to the Complainant.

In sum, on the balance of probabilities, and in the absence of any evidence to the contrary or any administratively compliant response being put forward by the Respondent, the Panel finds that the Complainant has made a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name.

The Panel concludes that the Respondent does not have rights or legitimate interests in the disputed domain name.

### 3. Bad faith

The Complainant argues that the Respondent has registered the domain name with full knowledge of the Complainant and its Trademark, given the distinctiveness and reputation of the Trademark and given the fact that the Complainant is doing business in more than 80 countries in the world and is listed at the Euronext Paris stock exchange.

The Complainant emphasises that the disputed domain name resolves to a copy of the Complainant's official customer access, asking the Complainant's customers to enter their credentials. Thus, the Complainant contends that the Respondent attempts to pass off the Complainant in order to phish for personal banking information, which is a hallmark of bad faith.

The Panel weighs these arguments and facts as follows:

First, as mentioned already, the disputed domain name reproduces the Complainant's Trademark "BOURSO" entirely, with the addition of the generic words "mon espace".

Second, the Complainant's Trademark predates the registration of the disputed domain name with more than 20 years and the Trademark covers the territory of France, i.e., the Respondent's home country.

Thirdly, the Respondent uses the disputed domain name for a website that copies the Complainant's official online customer access <clients.boursorama.com/connexion/>. The Respondent copied, inter alia, the wording, layout, logo, colours, etc. of the Complainant's online portal.

It is therefore inconceivable that the Respondent would have come up with a domain name consisting of the term "BOURSO" in combination with the words "mon espace" without having prior knowledge of the Complainant and its Trademark and activities. On the balance of probabilities, it is evident that the Respondent had knowledge of the existence of the Complainant and its activities, and of the existence of the Complainant's Trademark and the scope of the Trademark at the time of registration and use of the disputed domain name.

The Respondent did not contest any of the Complainant's arguments and did not provide any explanation concerning its choice for registering and/or using a domain name that includes the Complainant's registered Trademark in combination with the generic words "mon espace".

Given the above, the Panel finds that the disputed domain name is not being used for any bona fide offering of goods or services. The disputed domain name is rather used to attract internet users and to ask customers for their personal data while copying the Complainant's website (phishing). It is clear from the content on the website available via the disputed domain name that the Respondent seeks to impersonate the Complainant (passing off). The Respondent even mentions the name "Boursorama Banque" on the website available via the disputed domain name.

The Panel is convinced that the Respondent had the Trademark of the Complainant in mind when registering and subsequently using the disputed domain name. The Panel concludes that the disputed domain name is being used for the purpose of misleading Internet users. There is no evidence whatsoever of a bona fide offering of goods.

For all the reasons set out above, the Panel concludes that the disputed domain name was registered and is being used in bad faith within the meaning of paragraph 4(a)(iii) of the Policy.

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FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. monespace-bourso.com: Transferred

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### PANELLISTS

Name	Bart Van Besien
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DATE OF PANEL DECISION 2023-01-14

