

Decision for dispute CAC-UDRP-105100

Case number	CAC-UDRP-105100
Time of filing	2022-12-29 10:19:22
Domain names	contact-boursorama.com

Case administrator

Organization	Denisa Bilík (CAC) (Case admin)
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Complainant

Organization	BOURSORAMA
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Complainant representative

Organization	NAMESHIELD S.A.S.
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Respondent

Organization	1337 Services LLC
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OTHER LEGAL PROCEEDINGS

The Panel is unaware of any other pending or decided legal proceedings relating 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.

FACTUAL BACKGROUND

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

The Complainant has three core businesses: online brokerage, financial information on the Internet and online banking.

In France, the Complainant has over 4,3 million customers. The portal "www.boursorama.com" is amongst the first national financial and economic information sites and first French online banking platform.

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

The disputed domain name was registered on December 22, 2022 and is inactive.

PARTIES CONTENTIONS

COMPLAINANT:

A. The 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 is confusingly similar to its trademark "BOURSORAMA".

The Complainant asserts that the addition of French generic term "CONTACT" 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.

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.

Thus, the disputed domain name is confusingly similar to the Complainant's trademark.

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

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 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.

Moreover, the disputed domain name is inactive. The Complainant contends that Respondent did not make any use of disputed domain name since its registration, and it confirms that Respondent has no demonstrable plan to use the disputed domain name. It demonstrates a lack of legitimate interests in respect of the disputed domain name except in order to create a likelihood of confusion with the Complainant and its trademark.

Accordingly, Respondent has no rights or legitimate interests on the disputed domain name.

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

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

Consequently, the Complainant asserts that the Respondent must have known about the Complainant and its rights at the time of the registration of the disputed domain name.

Finally, the disputed domain name is inactive. The Complainant contends that the Respondent has not demonstrated any activity in respect of the disputed domain name, and it is not possible to conceive of any plausible actual or contemplated active use of the domain name by the Respondent that would not be illegitimate, such as by being a passing off, an infringement of consumer protection legislation, or an infringement of the Complainant's rights under trademark law. As prior WIPO UDRP panels have held, the incorporation of a famous mark into a domain name, coupled with an inactive website, may be evidence of bad faith registration and use.

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

RESPONDENT

No administratively compliant Response was filed.

RIGHTS

To the satisfaction of the Panel, the Complainant has shown that the disputed domain name is identical or confusingly similar to the trademark in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

To the satisfaction of the Panel, the Complainant has 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

To the satisfaction of the Panel, the Complainant has 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 have been met, and there is no other reason why it would be unsuitable for providing the Decision.

PRINCIPAL REASONS FOR THE DECISION

1. Identical or Confusingly Similar

First, the Panel is satisfied that the Complainant has shown it owns rights in the "BOURSORAMA" trademark, with registration and evidence provided dating the trademark registration back to 2001.

Turning to analyze if there is a confusing similarity between the disputed domain name and the trademark, the Panel notes, based on the record at hand, that the disputed domain name reproduces the trademark in its totality, namely "BOURSORAMA", with an addition of a term. This term is the only difference, which is the word "contact", preceding the trademark, with the addition of a hyphen separating it from the trademark.

This slight difference is immaterial to dispel the confusing similarity between the disputed domain name and the Complainant's trademarks.

Consequently, the Panel determines that the Complaint has satisfied the Policy's first element set under paragraph 4(a)(i).

2. Rights or Legitimate Interests

Based on the evidence on record and acknowledging that the Respondent failed to produce any allegations or evidence necessary to demonstrate its rights or legitimate interests in the disputed domain name, the Panel must turn to the uncontested facts.

The uncontested facts indicate that:

1. The Respondent is not commonly known by the disputed domain name.
2. The Respondent is not affiliated with the Complainant.
3. The Respondent is not authorized to carry out any business activity for the Complainant.
4. The Respondent has no license or authorization to use the trademarks.
5. The Respondent has not been authorized to apply for registration of the disputed domain name.
6. The Respondent is not using the disputed domain name and has no demonstratable plans to use the disputed domain name legitimately.

Based on the above, the record at hand, and on the balance of probability, and considering that the Respondent has failed to respond to the Complainant's contentions, the Respondent has consequently not rebutted the prima facie case, as described in paragraph 2.1 of WIPO 3.0 Overview.

In addition to this, the Respondent's use of the trademark plus the term "contact", seems to indicate, on the balance of probabilities, that the Respondent not only was aware of the Complainant but deliberately targeted the Complainant to benefit from the appearance of legitimate association to the Complainant and confuse Internet users as to the source of sponsorship. A practice like this can never be considered a bona fide offering under the Policy, but further analysis will be conducted under the last element below.

These facts lead the Panel to conclude that the Respondent did not have rights or legitimate interests in the disputed domain name.

Consequently, the Panel determines that the Respondent has no rights or legitimate interests in the disputed domain name. Subsequently, the Complainant has fulfilled the second requirement set under paragraph 4(a)(ii) of the Policy.

3. Registered and Used in Bad Faith

Per the record and evidence at hand, the Panel finds that the Respondent was likely aware of the Complainant and had the Complainant's trademark in mind when registering the disputed domain name. This is further reinforced by the fact that "BOURSORAMA" is a well-known, distinctive trademark worldwide.

Additionally, this conclusion is supported by the fact that the Respondent seems to evoke a connection to the Complainant's trademark by including the term "contact", which appears to misrepresent the origin of the disputed domain name for it to appear as an official channel of an organization. In this case, that organization is the Complainant. If this is indeed the case, the Respondent appears to have targeted the Complainant on the balance of probabilities.

All the preceding analysis leaves the Panel no other option than to conclude that the most likely intention of the Respondent was to intentionally attempt to attract, for commercial gain, Internet users to its website/disputed domain name, by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website and/or disputed domain name, as per illustrated under paragraph 3.1 of WIPO 3.0 Overview.

In light of the case's circumstances, based on the available records, the Panel finds that the Complainant has proven that the disputed domain name was registered and is used in bad faith according to paragraph 4(a)(iii) of the Policy.

4. Decision

For the preceding reasons and in concurrence with the provisions specified under Paragraph 4(i) of the Policy and Paragraph 15 of the Rules, the Panel orders the transfer of the disputed domain name to the Complainant.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

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

PANELLISTS

Name	Rodolfo Rivas Rea
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DATE OF PANEL DECISION 2023-01-23

Publish the Decision
