

Decision for dispute CAC-UDRP-105096

Case number	CAC-UDRP-105096
Time of filing	2022-12-28 09:29:29
Domain names	securite-boursorama.site

Case administrator

Organization	Iveta Špiclová (Czech Arbitration Court) (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	Anna Sorok
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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 relies on its various registered marks including its EUTM no. 001758614 for the word mark BOURSORAMA registered on 19 October 2001 in classes 9, 16, 35, 36, 38, 41 and 42. It also has various subsequent national registered marks in France. It also relies on its use online of its related domain names, including <boursorama.com> registered in 1998.

FACTUAL BACKGROUND

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

Founded in 1995, BOURSORAMA S.A., the Complainant, was one of the very first online financial platforms in Europe. It grew into a market leader in its three core businesses: online brokerage, financial information on the Internet and online banking. Today in France, BOURSORAMA is a leading online banking provider and its portal at www.boursorama.com has millions of customers.

The disputed domain name <securiteboursorama.site> was registered on 21 December 2022 by Anna Sorok of Ottawa, Canada. The disputed domain was and remains inactive.

PARTIES CONTENTIONS

COMPLAINANT:

The Complainant alleges that the disputed domain name is confusingly similar to its trademark BOURSORAMA and that the disputed domain name includes the Complainant's BOURSORAMA trademark in its entirety. It says the additional word elements do not add anything or change the overall impression. It says 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. It also relies on previous decisions in its favour such as the CAC Case No. 101131, BOURSORAMA v. PD Host Inc - Ken Thomas and WIPO Case No. D2017-1463, Boursorama SA v. Estrade Nicolas. The Complainant further asserts that the Respondent is not commonly known by the disputed domain name and was neither licensed nor otherwise authorized by the Complainant to use its trademarks. Further, the disputed domain name is not used in relation to any website and the Respondent has not made any use of the disputed domain name. No evidence has been produced by the Respondent at all and none as to any demonstrable plan to use the disputed domain name. Therefore, the Respondent does not have any rights or legitimate interests in the disputed domain name. As to bad faith, the Complainant says its trademarks are well known and it is therefore reasonable to infer that the Respondent has registered the disputed domain name with full knowledge of the Complainant's name and marks.

RESPONDENT:

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

The mark BOURSORAMA is a fanciful and highly distinctive mark. It has no ordinary meaning whatsoever in English, French or in any other language. It has a reputation and/or is a well-known mark. Other panels have made similar findings.

The Complainant says the disputed domain name is confusingly similar to its registered trade mark(s) as it contains the Complainant's trademark in its entirety with the addition of some new word elements. When a distinctive trademark is paired with less distinctive terms, that is often treated as impersonation. Here the additional word elements "securite" and ".site" reinforce the conceptual link to the Complainant's sector, namely banking and financial services. This compounds confusion and the disputed domain name may suggest that this is the place to logon to the Complainant's site and access its services. Further, the additional word elements do not change the overall impression that the registrant is, or is connected to, the Complainant nor prevent the likelihood of confusion or association. The Panel finds the disputed domain name is confusingly similar to the Complainant's trademark.

As to whether the Respondent lacks rights or legitimate interest in the disputed domain name, 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 shifts to the Respondent to demonstrate rights or legitimate interests in the disputed domain name. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(a) (ii) of the Policy. See WIPO case no. D2003-0455, Croatia Airlines d.d. v. Modern Empire Internet Ltd. In this case, on the fact of it, the Respondent has no rights or legitimate interests in the disputed domain name. Past panels

have held a Respondent is not commonly known by a domain name if the WHOIS information was not similar to the domain name and here the Respondent is not known as "BOURSORAMA". See the Forum Case - FA699652 - Braun Corp. v. Loney and Forum Case - FA139720 - Tercent Inc. v. Lee Yi. Further, the disputed domain name has resolved to an inactive page ("passive holding") since registration, so there is no use. The Respondent has not come forward and asserted any basis on which we could conclude that he has a right or legitimate interest in the domain name and none is obvious on the face of the matter. Therefore, the Panel finds the Respondent has no rights or legitimate interests in respect of the disputed domain name.

As to bad faith, 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.

Non-use is not bad faith per se. This is highly fact sensitive, and all other circumstances will be carefully considered. Often, where there is no website, the purpose will be for emails and for phishing purposes. Panels have held that the use of a domain name for purposes other than to host a website may constitute bad faith. Such purposes include sending email, phishing, identity theft, or malware distribution. WIPO Overview 3.0, section 3.4. See, e.g., DeLaval Holding AB v. Registration Private, Domains By Proxy LLL / Craig Kennedy, WIPO Case No. D2015-2135. We have no evidence of such emails in this case, however.

Given the distinctiveness of the Complainant's trademark(s) and its fame and reputation, and in light of the failure of the Respondent to come forward and provide any answer for its conduct, the Panel may infer this Respondent registered the disputed domain name with full knowledge of the Complainant's trademarks and in bad faith. See Telstra Corp. Ltd. V. Nuclear Marshmallows, WIPO Case No. D2000-0003. This will often be an appropriate inference and finding in these circumstances. Such conduct qualifies as 'bad faith' within the meaning of paragraph 4(b)(iv) of the Policy," see Accenture Global services Limited v. Vistaprint Tenchologies Ltd, WIPO Case No. D2015-1922.

WIPO Overview 3.0 para. 3.1.4 states that "Panels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith."

So the Panel finds.

The Complainant has discharged its burden of proof on all three limbs of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

- 1. **securite-boursorama.site**: Transferred

PANELLISTS

Name	Victoria McEvedy
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DATE OF PANEL DECISION 2023-02-02

Publish the Decision