

Decision for dispute CAC-UDRP-105132

Case number **CAC-UDRP-105132**

Time of filing **2023-01-16 09:25:21**

Domain names **bsma-clients.com**

Case administrator

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

Complainant

Organization **BOURSORAMA**

Complainant representative

Organization **NAMESHIELD S.A.S.**

Respondent

Name **Andrea Kauffman**

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 EUIPO trademark registration number 1758614 for the BOURSORAMA mark registered on October 19, 2001.

FACTUAL BACKGROUND**FACTS ASSERTED BY COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:**

The Complainant, BOURSORAMA SA, was founded in 1995 and grows in Europe with the emergence of e-commerce and the continuous expansion of the range of financial products online. The Complainant is a pioneer and leader in its three core businesses, online brokerage, financial information on the Internet and online banking. In France, the Complainant is the online banking reference with over 2 million customers. The portal www.boursorama.com is the first national financial and economic information site and first French online banking platform.

The Complainant also owns a number of domain names such as boursorama.com registered on March 1, 1998, brsimg.com, brsourama.com, brsp.app, etc.

The disputed domain name was registered on December 26, 2022. The disputed domain name redirects to a parking page. The

disputed domain name was used by the Respondent to impersonate the Complainant for the purpose of attempted consumer fraud by emails.

PARTIES CONTENTIONS

COMPLAINANT:

i) The Complainant has rights in the mark BOURSORAMA (EUIPO trademark registration number 1758614 registered on October 19, 2001). The disputed domain name is confusingly similar to the Complainant's trademark BOURSORAMA because it incorporates four letters of the BOURSORAMA trademark (e., 'BSMA') as the respective initial elements by merely adding a descriptive term "clients" referring to the Complainant's customers.

ii) The Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent is not commonly known by the disputed domain name. The Complainant is not related in any way with the Respondent. 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 to apply for registration of the disputed domain name. The disputed domain name resolves to a parking page. However, the disputed domain name has been registered for phishing scheme which cannot be a *bona fide* or legitimate purpose.

iii) The Respondent has registered and is using the disputed domain name in bad faith. Given the distinctiveness of the Complainant's trademark and reputation, it is reasonable to infer that the Respondent has registered the disputed domain name with full knowledge of the Complainant's trademark. It is likely that the main purpose of the Respondent was to use the disputed domain name for "phishing" financial information in an attempt to defraud the Complainant's customers for commercial gain.

RESPONDENT:

The Respondent did not submit a Response.

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

Paragraph 4(a) of the Policy requires that the complainant must prove each of the following three elements to obtain an order that a domain name should be cancelled or transferred:

(1) the domain name registered by the respondent is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and

(2) the respondent has no rights or legitimate interests in respect of the domain name; and

(3) the domain name has been registered and is being used in bad faith.

In view of the Respondent's failure to submit a response, the Panel shall decide this administrative proceeding on the basis of the Complainant's undisputed representations pursuant to paragraphs 5(f), 14(a) and 15(a) of the Rules and draw such inferences it considers appropriate pursuant to paragraph 14(b) of the Rules. The Panel is entitled to accept all reasonable allegations and inferences set forth in the Complaint as true unless the evidence is clearly contradictory. See *Vertical Solutions Mgmt., Inc. v. webnet-marketing, inc.*, FA 95095 (Forum July 31, 2000) (holding that the respondent's failure to respond allows all reasonable inferences of fact in the allegations of the complaint to be deemed true); see also *Talk City, Inc. v. Robertson*, D2000-0009 (WIPO February 29, 2000) ("In the absence of a response, it is appropriate to accept as true all allegations of the Complaint.").

RIGHTS

The Complainant contends that it has rights in the mark BOURSORAMA (EUIPO trademark registration number 1758614 registered on October 19, 2001). The Complainant has provided a copy of the trademark registration at issue. Registration of a mark with an international trademark organization sufficiently establishes the required rights in the mark for purposes of the Policy. As such, the Panel finds that the Complainant has established its rights in the mark BOURSORAMA.

The Complainant further contends that the disputed domain name **<bsma-clients.com>** is confusingly similar to the Complainant's trademark BOURSORAMA because it incorporates four letters of the BOURSORAMA trademark (*i.e.*, 'BSMA') as the respective initial elements. "BSMA" is the only element of the disputed domain name which is not a dictionary word, *i.e.*, "BRMA" is the main and most obviously recognizable source identification element of the disputed domain name. The generic term "clients" refers to the Complainant's customers. Coupled with the abbreviation of the trademark does not in the circumstances of this case sufficiently distinguish the disputed domain name from the Complainant's trademark nor avoid confusing similarity between the Complainant's trademark and the disputed domain name. The Panel agrees and finds that disputed domain name is confusingly similar to the Complainant's trademark per Policy paragraph 4(a)(i). See CAC Case No. 104408, BOURSORAMA v. BABOUCHI Rabah ("The disputed domain name consists of the term BRMA, an abbreviation for Complainant's business name," and thus the disputed domain name **<brma-info.com>** is confusingly similar to the Complainant's trademark "BOURSORAMA.").

THE RESPONDENT HAS NO RIGHTS OR LEGITIMATE INTERESTS IN RESPECT OF THE DOMAIN NAME

The Complainant must first make a *prima facie* case that Respondent lacks rights and legitimate interests in the disputed domain name under Policy paragraph 4(a)(ii), then the burden shifts to Respondent to show it does have rights or legitimate interests. See *Croatia Airlines d. d. v. Modern Empire Internet Ltd.*, WIPO Case No. D2003-0455 (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 Respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(a) (ii) of the Policy). See also *Advanced International Marketing Corporation v. AA-1 Corp.*, FA 780200 (Forum November 2, 2011) (finding that a complainant must offer some evidence to make its *prima facie* case and satisfy Policy paragraph 4(a) (ii)).

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant asserts that the Respondent is not commonly known by the disputed domain name. The Complainant is not related in any way with the Complainant. 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 to apply for registration of the disputed domain name by the Complainant.

Where a response is lacking, WHOIS information may be used to determine whether a respondent is commonly known by the disputed domain name under Policy paragraph 4(c)(ii). See *State Farm Mutual Automobile Insurance Company v. Dale Anderson*, FA1504001613011 (Forum May 21, 2015) (concluding that because the WHOIS record lists "Dale Anderson" as the registrant of the disputed domain name, the respondent was not commonly known by the **<statefarmforum.com>** domain name pursuant to Policy paragraph 4(c)(ii)). Additionally, lack of authorization to use a complainant's mark may indicate that the respondent is not commonly known by the disputed domain name. See *Alaska Air Group, Inc. and its subsidiary, Alaska Airlines v. Song Bin*, FA1408001574905 (Forum September 17, 2014) (holding that the respondent was not commonly known by the disputed domain name as demonstrated by the WHOIS information and based on the fact that the complainant had not licensed or authorized the respondent to use its ALASKA AIRLINES mark). The unmasked WHOIS information for the disputed domain name lists the registrant as "Andrea Kauffman." Thus, the Panel finds the Respondent is not commonly known by the disputed domain name per Policy paragraph 4(c)(ii).

The Complainant asserts the Respondent does not use the disputed domain name for any *bona fide* offering of goods or services or legitimate noncommercial or fair use because the disputed domain name resolves to a parking page. However, the domain name has been registered for phishing scheme. See *DaVita Inc. v. Cynthia Rochelo*, FA 1738034 (Forum July 20, 2017) ("a phishing scheme is not considered a *bona fide* offering of goods or services or legitimate noncommercial or fair use.").

The Panel finds that the Complainant has made out a *prima facie* case that arises from the considerations above. All of these matters go to make out the *prima facie* case against the Respondent. As the Respondent has not filed a Response or attempted by any other means to rebut the *prima facie* case against it, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name under Policy paragraph 4(a)(ii).

BAD FAITH

Paragraph 4(b) of the Policy provides a non-exclusive list of circumstances that evidence registration and use of a domain name in bad faith. Any one of the following is sufficient to support a finding of bad faith:

- (i) circumstances indicating that the respondent has registered or 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 the complainant, for valuable consideration in excess of the respondent's documented out-of-pocket costs directly related to the domain name; or
- (ii) the respondent has 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 the respondent has engaged in a pattern of such conduct; or
- (iii) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its 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 the respondent's website or location or of a product or service on the respondent's website or location.

The Complainant contends that the Respondent has registered and is using the disputed domain name in bad faith. The Complainant argues that given the distinctiveness of the Complainant's trademark and reputation, it is reasonable to infer that the Respondent has registered the disputed domain name with full knowledge of the Complainant's trademark. See:

-CAC Case No. 101131, BOURSORAMA v. PD Host Inc - Ken Thomas ("In the case at hand, the Respondent acted in bad faith especially because the Respondent, who has no connection with the well-known "BOURSORAMA" trademark, registered a domain name, which incorporates the well-known "BOURSORAMA" trademark and it is totally unrealistic to believe that the Respondent did not know the Complainant's trademark when registered the domain name <wwwboursorama.com>."); and

-WIPO Case No. D2017-1463, Boursorama SA v. Estrade Nicolas ("Given the circumstances of the case including the evidence on record of the longstanding of use of the Complainant's trademark, and the distinctive nature of the mark BOURSORAMA, it is inconceivable to the Panel in the current circumstances that the Respondent registered the disputed domain name without prior knowledge of the Complainant and the Complainant's mark.")

While constructive knowledge is insufficient for a finding of bad faith, per Policy paragraph 4(a)(iii), registration of an infringing domain name with actual knowledge of another's trademark rights is sufficient to establish bad faith, and can be shown by the notoriety of the mark and the use Respondent makes of the disputed domain name. See Orbitz Worldwide, LLC v. Domain Librarian, FA 1535826 (Forum February 6, 2014) ("The Panel notes that although the UDRP does not recognize 'constructive notice' as sufficient grounds for finding Policy paragraph 4 (a)(iii) bad faith, the Panel here finds actual knowledge through the name used for the domain and the use made of it."); see also AutoZone Parts, Inc. v. Ken Belden, FA 1815011 (Forum December 24, 2018) ("Complainant contends that Respondent's knowledge can be presumed in light of the substantial fame and notoriety of the AUTOZONE mark, as well as the fact that Complainant is the largest retailer in the field. The Panel finds that Respondent did have actual knowledge of Complainant's mark, demonstrating bad faith registration and use under Policy paragraph 4(a)(iii)."). The Panel here infers, due to the notoriety of the Complainant's mark and the manner of use of the disputed domain name that the Respondent had actual knowledge of the Complainant's rights in its mark BOURSORAMA at the time of registering the disputed domain name, and thus the Panel finds the Respondent's registration in bad faith.

Next, the Complainant contends that the disputed domain name resolves to an inactive page. The disputed domain name is connected to a website that is used to impersonate the Complainant. It is likely that the main purpose of the Respondent was to use the disputed domain name for "phishing" financial information in an attempt to defraud the Complainant's customers for commercial gain. The Complainant has provided copies of emails showing the Respondent's attempt to impersonate the Complainant. The Panel notes that using a disputed domain name to fraudulently phish for information is evidence of bad faith pursuant to Policy paragraph 4(a)(iii). See Morgan Stanley v. Bruce Pu, FA 1764120 (Forum February 2, 2018) ("The screenshot of the resolving webpage allows users to input their name and email address, which Complainant claims Respondent uses that to fraudulently phish for information. Thus, the Panel agrees that the Respondent phishes for information and finds that Respondent does so in bad faith under Policy paragraph 4(a)(iii)."). Therefore, the Panel here concludes that the Respondent registered and uses the disputed domain name in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

- 1. **bsma-clients.com**: Transferred

PANELLISTS

Name	Mr. Ho-Hyun Nahm Esq.
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DATE OF PANEL DECISION 2023-02-09

Publish the Decision

