

Decision for dispute CAC-UDRP-105137

Case number	CAC-UDRP-105137
Time of filing	2023-01-19 09:16:28
Domain names	client-private-boursorama.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

Organization	GoldDay Corporation
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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 registered owner of European Union trademark BOURSORAMA no. 1758614 registered on October 19, 2001 for goods and services in classes 9, 16, 35, 36, 38, 41 and 42.

FACTUAL BACKGROUND

It results from the Complainant's undisputed allegations that its three core businesses are: online brokerage, financial information on the Internet and online banking. In France, it is the online banking reference with over 4 million customers. In addition, it has been growing in Europe with the emergence of e-commerce and the continuous expansion of the range of financial products online.

The Complainant further contends its trademark BOURSORAMA be distinctive and well-known.

Furthermore, the Complainant owns and use the domain name <boursorama.com> registered since January 3, 1998 to connect to a website through which it informs about its products and services.

The disputed domain name <client-private-boursorama.com> was registered on January 9, 2023 and resolves to an inactive page.

PARTIES CONTENTIONS

The Complainant contends 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.

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

1. Pursuant to paragraph 4(a)(i) of the Policy, the Complainant must establish rights in a trademark or service mark and secondly establish that the disputed domain name is identical or confusingly similar to a trademark in which the Complainant has rights.

It results from the evidence provided that the Complainant is the registered owner of European Union trademark BOURSORAMA no. 1758614 registered on October 19, 2001 for goods and services in classes 9, 16, 35, 36, 38, 41 and 42.

Prior UDRP panels have found that a disputed domain name is confusingly similar to a complainant's trademark where the disputed domain name incorporates the complainant's trademark in its entirety (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0") at section 1.7).

This Panel shares this view and notes that the Complainant's registered trademark BOURSORAMA is fully included in the disputed domain name, preceded by the generic and descriptive terms "client" and "private" and hyphens. Furthermore, it is the view of this Panel that the addition of the term's "client" and "private" and hyphens in the disputed domain name cannot prevent a finding of confusing similarity between the disputed domain name and the Complainant's trademark since the Complainant's trademark is clearly recognizable in the disputed domain name (see WIPO Overview 3.0 at section 1.8).

Finally, the generic Top-Level Domain ("gTLD") ".com" of the disputed domain name may be disregarded under the first element confusing similarity test (see WIPO Overview 3.0 at section 1.11.1).

In the light of the above, the Panel finds that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights.

2. Pursuant to paragraph 4(a)(ii) of the Policy, the Complainant must secondly establish that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

Paragraph 4(c) of the Policy contains a non-exhaustive list of circumstances which, if found by the Panel to be proved, shall demonstrate the Respondent's rights or legitimate interests to the disputed domain name. In the Panel's view, based on the undisputed allegations stated above, the Complainant has made a prima facie case that none of these circumstances are found in the case at hand

and, therefore, that the Respondent lacks rights or legitimate interests in the disputed domain name.

According to the Complaint, which has remained unchallenged, the Complainant has no relationship in any way with the Respondent and did, in particular, not authorize the Respondent's use of the trademark BOURSORAMA, e.g. by registering the disputed domain name comprising the said trademark entirely.

Furthermore, the Panel notes that there is no evidence showing that the Respondent might be commonly known by the disputed domain name in the sense of paragraph 4(c)(ii) of the Policy.

Moreover, the Panel notes that the disputed domain name contains the Complainant's registered trademark BOURSORAMA and this trademark is not a trademark that one would legitimately adopt as a domain name unless to suggest an affiliation with the Complainant. The Panel finds it most likely that the Respondent selected the disputed domain name with the intention to take advantage of the Complainant's reputation by registering a domain name fully containing the Complainant's trademark with the intent to attract Internet users for commercial gain.

It is acknowledged that once the Panel finds a prima facie case is made by a complainant, the burden of production under the second element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain name (see WIPO Overview 3.0 at section 2.1). Since the Respondent in the case at hand failed to come forward with any allegations or evidence, this Panel finds, in the circumstances of this case, that the Respondent has no rights or legitimate interests in the disputed domain name.

The Panel finds that the Complainant has therefore satisfied paragraph 4(a)(ii) of the Policy.

3. According to paragraph 4(a)(iii) of the Policy, the Complainant must thirdly establish that the disputed domain name has been registered and is being used in bad faith. The Policy indicates that certain circumstances specified in paragraph 4(b) of the Policy may, "in particular but without limitation", be evidence of the disputed domain name's registration and use in bad faith. Based on the evidence submitted by the Complainant, the Panel shares the view of other UDRP panels and finds that the Complainant's trademark BOURSORAMA is well-known, e.g. CAC Case No. 105111 BOURSORAMA SA v. CLEMENT RENAULT. Therefore, this Panel has no doubt that the Respondent positively knew or should have known that the disputed domain name consisted of the Complainant's trademark when registered the disputed domain name. Registration of the disputed domain name in awareness of the reputed BOURSORAMA mark and in the absence of rights or legitimate interests in this case amounts to registration in bad faith.

The disputed domain name does not resolve to an active website. In this regard, the Panel notes that the passive holding does not preclude a finding of bad faith (see *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. D2000-0003). In fact, the further circumstances surrounding the disputed domain name's registration and use confirm the findings that the Respondent has registered and is using the disputed domain name in bad faith (see WIPO Overview 3.0 at section 3.3):

- (1) the Complainant's trademark BOURSORAMA is well-known;
- (2) the Respondent failed to submit a formal response or to provide any evidence of actual or contemplated good-faith use;
- (3) the respondent's concealing its identity
- (4) the implausibility of any good faith use, to which the disputed domain name may be put.

In the light of the above, the Panel finds that the disputed domain name has been registered and is being used in bad faith pursuant to paragraph 4(a)(iii) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **client-private-boursorama.com**: Transferred

PANELLISTS

Name	Dr. Federica Togo
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DATE OF PANEL DECISION 2023-02-23

Publish the Decision
