

Decision for dispute CAC-UDRP-104277

Case number	CAC-UDRP-104277
Time of filing	2022-01-21 09:42:35
Domain names	boursoramabanquefrance.com

Case administrator

Organization	Denisa Bilík (CAC) (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	Lucie Dupont
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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 owner of the European trademark "BOURSORAMA®", no. 1758614 registered since October 19, 2001 at classes 9, 16, 35, 36, 38, 41 & 42.

In addition, the Complainant owns domain names with the term "BOURSORAMA®", such as i) <boursorama.com> created since 28.02.1998 and ii) <boursoramabanque.com> created since May 25,2005

FACTUAL BACKGROUND

The Complainant, founded in 1995, is the online banking reference with over 3 million customers in France.

The Complainant contends that the portal www.boursorama.com is the first French national financial and economic information site and the first French online banking platform.

The Complainant is the owner of several trademarks and domain names, including the term "BOURSORAMA®" at least since 2001.

The disputed domain name <boursoramabanquefrance.com> was registered on January 16t, 2022, by Lucie Dupont based in France and it resolves to a parking page with commercial links.

According to Complainant's non-contested allegations, the Respondent has no rights or legitimate interest in respect of the disputed domain name, and he is not related in any way to the Complainant's business.

The Registrar of the disputed domain name confirmed that the Respondent is the current Registrant, and that English is the language of the registration agreement.

The facts asserted by the Complaint are not contested by the Respondent.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

PARTIES' CONTENTIONS:

COMPLAINANT:

First element: Confusingly similar to the protected mark

The Complainant states that the disputed domain name <boursoramabanquefrance.com> is confusingly similar to its trademark "BOURSORAMA®" and the domain names associated therewith.

The Complainant asserts that the addition of the terms "BANQUE" and "FRANCE" does not change the overall impression of the designation as being connected to the Complainant's trademark BOURSORAMA®. Furthermore, the addition of those terms does not prevent the likelihood of confusion between the disputed domain name and the Complainant, its trademark and domain names associated.

Second element: Rights or legitimate interest

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name and that he is not related in any way to the Complainant's business.

The Complainant indicates that the Respondent is not identified in the Whois database as the disputed domain name. In accordance with Complainant's allegations, 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, Complainant argues that the Respondent is not known as the disputed domain name.

The Complainant asserts that the Respondent is not affiliated with him nor authorized by him in anyway to use the trademark BOURSORAMA®. 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 <boursoramabanquefrance.com>.

The Complainant indicates that the disputed domain name resolves to a parking page with commercial links and past panels have found it is not a bona fide offering of goods or services or legitimate non-commercial or fair use.

Third element: The domain name has been registered and is being used in bad faith

The Complainant states that the disputed domain name <boursoramabanquefrance.com> is confusingly similar to its trademark "BOURSORAMA®" and the domain names associated therewith.

The Complainant indicates that all of the results of a search of the terms “BOURSORAMA”, “BANQUE”, FRANCE” refers to the Complainant. Furthermore, the Complainant has presented several successful UDRP decisions involving the trademark “BOURSORAMA®”.

Therefore, Complainant contends that the Respondent has registered and uses the disputed domain name <boursoramabanquefrance.com> with full knowledge of the Complainant's trademark.

Finally, the Complainant indicates that the disputed domain name resolves to a parking page with commercial links. In this sense, Complainant contends that Respondent attempted to attract Internet users for commercial gain to his own website thanks to the Complainant's trademarks for its own commercial gain, which is evidence of bad faith.

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

RESPONDENT:

Respondent did not reply to the Complaint.

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. THE DISPUTED DOMAIN NAME IS CONFUSINGLY SIMILAR TO THE TRADEMARK BOURSORAMA® OF THE COMPLAINANT.

The Uniform Domain Name Dispute Resolution Policy (the Policy) in its Paragraph 4(a)(i) indicates the obligation of Complainant to demonstrate that the disputed domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights.

In accordance with the evidence provided, Complainant owns different trademarks and domain names with the term BOURSORAMA® with ownership at least since 2001.

In the present case, the disputed domain name is composed of the trademark BOURSORAMA® together with the generic terms „BANQUE” (French word which means BANK in English) and “FRANCE”.

Furthermore, the addition of the Top Level Domain Name “.com” in a domain is considered as a standard registration requirement and, therefore, it should be disregarded under the first element confusing similarity test (see paragraph 1.11 WIPO Overview 3.0).

Therefore, the Panel concludes that the Complainant has satisfied the requirement under paragraph 4(a)(i) of the Policy and the disputed domain name is confusingly similar to Complainant's mark.

2. RESPONDENT'S LACK OF RIGHTS OR LEGITIMATE INTERESTS IN THE DISPUTED DOMAIN NAME

The second element of the Policy requires that the Complainant establishes that the Respondent has no rights or legitimate interests in the disputed domain name. The generally adopted approach by UDRP panels, when considering the second element, is that if a complainant makes out a prima facie case, the burden of proof shifts to the respondent to rebut it (see WIPO Overview 3.0., paragraph 2.1).

First of all, the Complainant asserts that the Respondent is not identified in the Whois database as the disputed domain name. In this sense, Complainant indicated that 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 and, consequently, the Respondent is not known as the disputed domain name.

In terms of the UDRP common practice, for a Respondent to demonstrate that it (as an individual, business, or other organization) has been commonly known by the domain name or a name corresponding to the domain name, it is not necessary for the respondent to have acquired corresponding trademark or service mark rights. The Respondent must however be "commonly known" (as opposed to merely incidentally being known) by the relevant moniker (e.g., a personal name, nickname, corporate identifier), apart from the domain name. Such rights, where legitimately held/obtained, would prima facie support a finding of rights or legitimate interests under the UDRP (see WIPO Overview 3.0, paragraph 2.3.).

The Registrar's verification provided to this Center on 19.01.2022 identified "Lucie Dupont" as the Registrant's contact of the disputed domain name. Absent of reply of Respondent, the Panel is of the opinion that the relevant moniker at the Whois database does not provide enough elements to support that the Respondent is commonly known apart from the domain name. Thus, the Panel is not able to find rights or legitimate interests under the UDRP on behalf of Respondent. Furthermore, the Complainant indicates that they have not granted authorization to Respondent to use their BOURSORAMA® trademarks. Furthermore, the Complainant asserts that the Respondent is not affiliated with him nor authorized in any way to use the trademark BOURSORAMA®.

Moreover, the website associated with the disputed domain name resolves to a parking page with commercial links (PPC). UDRP past decisions have found that the use of a disputed domain name to host a parked page comprising PPC links does not represent a bona fide offering where such links compete with or capitalize on the reputation and goodwill of the complainant's mark or otherwise mislead Internet users (see paragraph 2.9 WIPO Overview 3.0).

Panels have additionally noted that Respondent efforts to suppress PPC advertising related to the complainant's trademark (e.g., through so-called "negative keywords") can mitigate against an inference of targeting the complainant. In this particular case, Respondent did not reply the Complaint and, therefore, there is no evidence that Respondent took efforts to suppress PPC advertising.

The fact that Respondent did not reply to the Complaint gives an additional indication that Respondent lacks rights or legitimate interest since Respondent did not provide with evidence of the types specified in paragraph 4 (c) of the Policy, or of any circumstances, giving rise to rights or legitimate interests in the disputed domain name.

In light of the facts at hand, the Panel concludes that neither the Respondent nor the evidence establishes that the Respondent has any right or legitimate interest to the disputed domain name. The Complainant has therefore also satisfied the requirement under paragraph 4(a)(ii) of the Policy.

3. THE DISPUTED DOMAIN NAME HAS BEEN REGISTERED AND IS BEING USED IN BAD.

Paragraph 4(a)(iii) of the Policy indicates that Complainant must assert that the Respondent registered and is using the

disputed domain name in bad faith. In this sense, Paragraph 4(b) of the Policy sets out four circumstances which if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

(i) circumstances indicating that the Respondent has registered or acquired the disputed domain name primarily for the purpose of selling, renting, or otherwise transferring the disputed domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that 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 Respondent has engaged in a pattern of such conduct; or

(iii) The Respondent has registered the disputed 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 the Respondent's website or other on-line 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.

The evidence submitted by Complainant confirms that its trademark BOURSORAMA® is distinctive and it has a strong reputation in the banking industry in France as well as in different countries. In this vein, Panels have consistently found that the registration of a domain name that is confusingly similar to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith (see paragraph 3.1.4 WIPO Overview 3.0).

In fact, Complainant referred to CAC Case No. 101131, BOURSORAMA v. PD Host Inc – Ken Thomas by which the Panel recognized the well know status of the trademark BOURSORAMA®. In this regard and absent of Respondent's reply, the Panel finds that Respondent, prior to the registration of the disputed domain name was aware of Complainant's trademark, in particular since the disputed domain name was registered on January 16, 2022 and Complainant's trademarks were registered long before the registration of the disputed domain name.

As indicated by Complainant and confirmed by the Panel, the website associated with the disputed domain name resolves to a PPC website with commercial links, most of them in French language and mainly related to Finance and Banking services. Prior panels have held that a Respondent cannot disclaim responsibility for content appearing on the website associated with its domain. In this regard, the fact that Respondent may not have directly profited from the PPC cannot prevent a finding of bad faith.

This view is also supported by UDRP CAC cases such as Case Nr. 100364, eLeader Sp. Z.o.o.v v. Hyunjong Lee, where the Panel stated that a domain name registrant is normally deemed responsible for the content appearing on its website, even if it is not exercising direct control over such content.

In light of the above-mentioned findings, the Panel finds that the evidence submitted by the Complainant supports the argument that by using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to the Respondent's website or other on-line 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.

Therefore, the Panel concludes that Respondent registered and is using the disputed domain name in bad faith and thus has satisfied the requirement under 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. **BOURSORAMABANQUEFRANCE.COM**: Transferred

PANELLISTS

Name **Victor Hugo Garcia Padilla, LL.M.**

DATE OF PANEL DECISION 2022-02-21

Publish the Decision
