

Decision for dispute CAC-UDRP-105149

Case number	CAC-UDRP-105149
Time of filing	2023-01-26 10:33:24
Domain names	monespace-boursorama.com

Case administrator

Name	Olga Dvořáková (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

Name	Ibra Calle
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OTHER LEGAL PROCEEDINGS

The Panel is unaware of any other pending or decided legal proceedings in respect of the domain name <monespace-boursorama.com> ('the disputed domain name').

IDENTIFICATION OF RIGHTS

The Complainant relies upon the following registered trade mark:

- EU trade mark registration no. 001758614, registered on 19 October 2001, for the word mark BOURSORAMA, in classes 09, 16, 35, 36, 38, 41 and 42 of the Nice Classification.

(Hereinafter, 'the Complainant's trade mark'; 'the Complainant's trade mark BOURSORAMA'; or 'the trade mark BOURSORAMA' interchangeably).

The disputed domain name was registered on 18 January 2023 and, at the time of writing, it does not resolve to an active website.

FACTUAL BACKGROUND

The Complainant's contentions can be summarized as follows:

A. Background History

The Complainant is a pioneer and leader in three core businesses, namely online brokerage, financial information on the Internet and online banking. The Complainant is the online banking reference in France, providing services for over 4.3 million customers. The Complainant's portal at <www.boursorama.com> is the first national financial and economic information website and the first French online banking platform.

In addition to the trade mark mentioned under section 'Identification of rights' above, the Complainant is the owner of numerous domain names, such as the domain name <boursorama.com> (registered in 1998) and <boursoramabanque.com> (registered in 2005) ('the Complainant's domain names').

By way of relief, the Complainant seeks to obtain the ownership of the disputed domain name <monospace-boursorama.com> on the grounds advanced in section B below.

B. Legal Grounds

I. The disputed domain name is confusingly similar to a trade mark in which the Complainant has rights

The Complainant avers that the disputed domain name is confusingly similar to the Complainant's trade mark BOURSORAMA and the Complainant's domain names. The addition of the French language generic term "monespace" is insufficient to escape the finding of confusingly similar to the Complainant's trade mark BOURSORAMA.

Moreover, the Complainant contends that the generic Top-Level Domain (**gTLD**) suffix <.com> does not change the overall impression of the designation being connected to the Complainant's trade mark BOURSORAMA. Hence, the gTLD does not prevent the likelihood of confusion between the disputed domain name and both the Complainant's trade mark BOURSORAMA and the Complainant's domain names.

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

The Complainant asserts that the Respondent has no rights in the disputed domain name, and that the Respondent is not affiliated with, nor authorised by, the Complainant in any way. The Complainant does not carry out any activity for, nor has any business with, the Respondent. The Respondent has not been authorised or licensed by the Complainant to make any use of the Complainant's trade mark BOURSORAMA nor to apply for registration of the disputed domain name by the Complainant.

The Complainant further asserts that the Respondent is not known by the disputed domain name, and that the disputed domain name does not resolve to an active website. The Complainant contends on this point that the Respondent has not made any use of the disputed domain name since its registration, which confirms that the Respondent has no demonstrable plan to use the disputed domain name.

In view of the above factors, the Complainant argues that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

III. The Respondent registered and is using the disputed domain name in bad faith

The Complainant states that the disputed domain name incorporates the well-known and distinctive trade mark BOURSORAMA. Furthermore, the additional generic terms "mon espace" to the trade mark BOURSORAMA cannot be coincidental, insofar as it refers to the Complainant's online customer access.

Lastly, the disputed domain name resolves to an inactive website. In this regard, the Complainant states that the Respondent has not demonstrated any activity in respect of the disputed domain name, that it is not possible to conceive any plausible actual or contemplated use of the disputed 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 trade mark law.

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

PARTIES CONTENTIONS

The Respondent has failed to serve a Response in this administrative proceeding, the result of which being that the above referenced Complainant's allegations are uncontested.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown that the disputed domain name is identical or confusingly similar to a trade mark in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the UDRP 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 UDRP 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 UDRP 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

UDRP Threshold

Pursuant to Rule 15 of the UDRP Rules, the Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the UDRP Policy, the UDRP Rules, and any rules and principles of law that the Panel deems applicable.

Paragraph 4(a) of the UDRP Policy sets out the following threshold for the Complainant to meet for the granting of the relief sought (transfer of the disputed domain name):

- (i) The disputed domain name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights;
- (ii) The Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) The disputed domain name has been registered and is being used in bad faith.

It is incumbent on the Complainant the onus of meeting the above threshold. The evidentiary standard under the UDRP proceedings is the balance of probabilities and, on that basis, the Panel will now proceed to determine each of the three UDRP Policy grounds in turn.

I. Identical or Confusingly Similar

The Panel is satisfied that the Complainant owns trade mark rights in 'BOURSORAMA' since 2001.

The disputed domain name wholly incorporates the Complainant's trade mark BOURSORAMA. The joint French language words 'monespace' and 'boursorama' are connected by a dash "-". The French language words (mon+espace) have the meaning of 'my space' in the English language. Furthermore, and as rightly asserted by the Complainant, the gTLD <.com> is typically disregarded by UDRP panels under this Policy ground given that the gTLD is part of the domain name's anatomy.

The Panel takes the view that the presence of the joint words "monospace" in the disputed domain name string enhances the confusion with the Complainant's trade mark BOURSORAMA. This is because "espace" is a word representative of the interface between online banking service providers, such as the Complainant, and their customers.

The Panel therefore finds that the Complainant has met the requirement under paragraph 4(a)(i) of the UDRP Policy.

II. Rights or Legitimate Interests

The Respondent has defaulted in this UDRP proceeding. Nevertheless, the Panel is empowered to draw adverse inferences from the Respondent's silence (Rule 14 (b) of the UDRP Rules).

The Panel notes that the Respondent does not appear to carry out any activity for, or have any business or relationship of any nature with, the Complainant. There is no evidence of any contractual arrangement/endorsement/sponsorship between the parties to that effect, nor has the Complainant otherwise authorised the Respondent to make any use of the Complainant's trade mark or to register the disputed domain name on the Complainant's behalf. In addition, nothing on the record suggests that the Respondent (as an individual, business, or other organisation) has been commonly known by the disputed domain name.

Furthermore, there is no evidence establishing (before any notice of this UDRP proceeding) the Respondent's use of, or demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a bona fide offering of goods or services. In addition, the available record does not demonstrate that the Respondent is making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers.

In view of the above reasons, and noting that the Respondent has not provided a Response to refute any of the evidence adduced by the Complainant, the Panel finds that the Complainant has made a prima facie showing of the Respondent's lack of rights or legitimate interests in the disputed domain name under paragraph 4(a)(ii) of the UDRP Policy.

III. Registered and Used in Bad Faith

Registration in bad faith

The following facts are compelling evidence to this Panel that the disputed domain name was registered in bad faith:

- The Complainant has been using the trade mark BOURSORAMA since at least 2001, whereas the disputed domain name <monespace-boursorama.com> was registered in January 2023;
- The disputed domain name incorporates the Complainant's trade mark BOURSORAMA in its entirety. The joint French language words "monespace" in the disputed domain name string enhances the confusion with the Complainant's trade mark BOURSORAMA, given that "espace" is a word representative of the interface between online banking service providers, such as the Complainant, and their customers;
- The Complainant offers online services using domain names which resemble the disputed domain name, namely <boursorama.com> (registered in 1998). The Panel also notes that the Complainant uses French words in the domain name strings, presumably to relate to their francophone based customers, for instance <boursoramabanque.com> (registered in 2005);
- UDRP panels have consistently found that the mere registration of a domain name that is identical or confusingly similar to a famous or widely-known trade mark can by itself create a presumption of bad faith (paragraph 3.1.4 of the WIPO Panel Views on Selected UDRP Questions, Third Edition ('WIPO Jurisprudential Overview 3.0')), and the Panel accepts that the Complainant's trade mark is widely known in its segment of business;
- The Respondent's lack of participation in the course of this UDRP proceeding; and
- This Panel additionally views the provision of false contact information as an indication of bad faith. In this instance, the Respondent appears to have adopted a non-existent address.

Use in bad faith

The Complainant alleges that the Respondent has not demonstrated any activity in respect of the disputed domain name, and that it is not possible to conceive any plausible or contemplated active use of the disputed domain name by the Respondent that would not infringe the Complainant's rights.

As mentioned in the above section 'Identification of rights', the disputed domain name does not currently resolve to an active website, and there is no evidence on the record demonstrating that it has ever held any active content.

The Panel has consulted the WIPO Jurisprudential Overview 3.0, in particular paragraph 3.1.4 (divert Internet users for commercial gain) and paragraph 3.3 (passive holding), to determine whether and, if so, the basis upon and the extent to which there has been bad faith use of the disputed domain name.

In order to further determine this UDRP Policy ground, the Panel refers in tandem to the above paragraphs, according to which UDRP panels have found various types of evidence to support a finding under the case circumstances. The Panel considers the most conducive factors to a finding in favour of the Complainant under this Policy ground to be (i) the actual confusion between the disputed domain name and the Complainant's trade mark; (ii) the Respondent's intention to cause such confusion; (iii) the lack of the Respondent's own rights to, or legitimate interests in, the disputed domain name; (iv) the Respondent's default; (v) the Respondent's use of false contact details (in breach of its registration agreement); and (vi) the implausibility of any good faith use to which the disputed domain name may be put.

The Panel therefore finds that the Complainant has succeeded under paragraph 4(a)(iii) of the UDRP Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. monespace-boursorama.com: Transferred

PANELLISTS

Name Yana Zhou

DATE OF PANEL DECISION 2023-02-26

Publish the Decision