

Decision for dispute CAC-UDRP-105205

Case number CAC-UDRP-105205

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Domain names boursobk.online

Case administrator

Organization Iveta Špiclová (Czech Arbitration Court) (Case admin)

Complainant

Organization BOURSORAMA SA

Complainant representative

Organization NAMESHIELD S.A.S.

Respondent

Name Julien Cigan

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 registrant of the French trademark registration No. 3009973 "BOURSO", registered on July 28, 2000, for goods and services in classes 9, 35, 36, 38, 41 and 42.

The disputed domain name was registered by the Respondent on February 12, 2023.

FACTUAL BACKGROUND

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

The Complainant points out that it is a company, founded in 1995, in the field of online brokerage, financial information on the Internet and online banking.

The Complainant states that, in France, it has over 4,7 million customers as regards online banking and that its portal is the first national financial and economic information website and the first French online banking platform.

The Complainant submits that is the owner of the registered trademark BOURSORAMA.

The Complainant underlines that it owns a number of domain names, including the domain name <boursorama.com>, registered since March 1, 1998, and <bourso.com>, registered since January 11, 2000.

The Complainant notes that the disputed domain name was registered on February 12, 2023.

The Complainant observes that the disputed domain name redirects to a website offering financial services such as personal loans and displaying the Complainant's trademark.

The Complainant considers that the disputed domain name is confusingly similar to its trademark BOURSO because it includes in its entirety the trademark, and the addition of the letters "BK" (which are a common abbreviation for the term "BANK") is not sufficient to escape the finding that the disputed domain name is confusingly similar to the trademark BOURSO. The Complainant adds that the addition of that abbreviation increases the likelihood of confusion between the disputed domain name and the Complainant's trademark because it refers to the Complainant's activities.

The Complainant asserts that the Respondent is not identified in the Whois database as the disputed domain name.

The Complainant contends that the addition of the top-level domain "ONLINE" does not change the overall impression of the designation as being connected to the Complainant's trademark.

The Complainant states that the Respondent is not known by the Complainant. The Complainant contends that Respondent is not affiliated with nor authorized by the Complainant in any way. The Complainant contends that Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant underlines that it does not carry out any activity for, nor has any business with the Respondent.

The Complainant clarifies that neither license nor authorization has been granted to the Respondent to make any use of the Complainant's trademark BOURSO, or apply for registration of the disputed domain name.

The Complainant submits that the website in relation with the disputed domain name offers financial services, particularly personal loans, which are highly similar to the services provided by the Complainant.

The Complainant considers that the disputed domain name is confusingly similar to the Complainant's trademark BOURSO, and that the Respondent has registered the disputed domain name with full knowledge of the Complainant's trademark.

The Complainant points out that the Respondent choose to associate the term "BOURSO" with the addition of the letters "BK", abbreviation of "BANK", and the disputed domain name redirects to a website providing financial services such as professional loans under the name BOURSORAMA, which are highly similar to the services offered by the Complainant and the services covered by its trademarks.

The Complainant considers that, by using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its 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 or service on the Respondent's website or location.

The Complainant concludes that the Respondent has registered and is using the disputed domain name in bad faith.

PARTIES CONTENTIONS

Complainant's contentions are summarised above.

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

In accordance with paragraph 4(a) of the Policy, in order to obtain the transfer of the disputed domain name, the Complainant has to demonstrate that:

- (i) The disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (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.

IDENTICAL OR CONFUSINGLY SIMILAR

The first requirement that the Complainant must establish is that the disputed domain name is identical with, or confusingly similar to, the Complainant's trademark or service mark rights.

There are two elements of this test: the Complainant must demonstrate that it has rights in a trademark or service mark and, if so, the disputed domain name must be shown to be identical or confusingly similar to the trademark or service mark.

The Complainant has proven ownership of the registered trademark "BOURSO", identified in section "Identification of rights" above.

On the question of identity or confusing similarity, what is required is simply a comparison and assessment of the disputed domain name itself to the Complainant's trademark.

The disputed domain name differs from the Complainant's trademark "BOURSO" only by the addition of the letters "BK" (abbreviation of "bank"), and by the presence of the top-level domain ".ONLINE".

It is a common view that where a trademark is the distinctive part of a domain name, the domain name is considered to be confusingly similar to the trademark (see, for example, WIPO case No. D2017-1266).

In the present case, the addition of the letters "BK" has no impact on the distinctive part "BOURSO". It is well established that where the relevant trademark is recognizable within the domain name, the addition of other terms would not prevent a finding of confusing similarity.

It is also well established that the top-level domain may generally be disregarded in the confusing similarity test (see, for example, WIPO case No. D2016-2547).

Therefore, the Panel considers that the disputed domain name is confusingly similar to the Complainant's trademark "BOURSO".

Accordingly, the Panel finds that the Complainant has satisfied paragraph 4(a)(i) of the Policy.

RIGHTS OR LEGITIMATE INTERESTS

The second requirement that the Complainant must prove is that the Respondent has no rights or legitimate interests in the disputed domain name.

Paragraph 4(c) of the Policy provides that the following circumstances can be situations in which the Respondent has rights or legitimate interests in the disputed domain name:

- (i) before any notice to [the Respondent] of the dispute, [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; or

(ii) [the Respondent] (as an individual, business, or other organization) [has] been commonly known by the [disputed] domain name, even if [the Respondent] [has] acquired no trademark or service mark rights; or

(iii) [the Respondent] [is] making a legitimate non-commercial or fair use of the [disputed] domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

This is a non-exhaustive list of circumstances in which a respondent can show rights or legitimate interests in a domain name.

The onus of proving this requirement falls on the Complainant. UDRP panels have recognized that proving that a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of "proving a negative".

Accordingly, it is usually sufficient for a complainant to raise a prima facie case against the respondent and the burden of proof on this requirement shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in a domain name.

The Panel finds that the Complainant has made out a prima facie case that the Respondent does not have rights or legitimate interests in the disputed domain name.

In particular, the Complainant states that:

- it does not carry out any activity for, nor has any business with the Respondent;
- the Respondent is not identified in the Whois database as the disputed domain name;
- the Respondent is not affiliated with nor authorized by the Complainant in any way;
- neither license nor authorization has been granted to the Respondent to make any use of the Complainant's trademark BOURSO, or apply for registration of the disputed domain name;
- the website in relation with the disputed domain name offers financial services which are highly similar to the services provided by the Complainant.

In the absence of a Response, there is no indication in the present case that the Respondent is commonly known by the disputed domain name.

Furthermore, the Respondent has failed to demonstrate any of the other non-exclusive circumstances evidencing rights or legitimate interests under paragraph 4(c) of the Policy or other evidence of rights or legitimate interests in the disputed domain name.

The Respondent does not appear to make any legitimate non-commercial or fair use of the disputed domain name, nor any use in connection with a bona fide offering of goods or services. Indeed, the disputed domain name has been used for a website which offers financial services, similar to the services provided by the Complainant.

Taking into account that the Respondent is not identified as the disputed domain name, that the Respondent is not affiliated with nor authorized by the Complainant in any way, that the Complainant does not carry out any activity for, nor has any business with the Respondent, that the Complainant has not authorized or licensed the Respondent to use the disputed domain name or to apply for registration of it, that the disputed domain name is used in a website offering services similar to the Complainant's services, the Panel cannot imagine any possible legitimate justification for this use, and the Respondent has not come forward with any explanation that demonstrates any rights or legitimate interests in the disputed domain name.

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

BAD FAITH

Under the third requirement of the Policy, the Complainant must establish that the disputed domain name has been both registered and used in bad faith by the Respondent.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, including:

(i) circumstances indicating that [the Respondent] [has] registered or [has] 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 [disputed] domain name; or

(ii) [the Respondent] [has] registered the [disputed] 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 [disputed] domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the [disputed] domain name, [the Respondent] [has] intentionally attempted to attract, for commercial gain, Internet users to [the Respondent's] web site 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] web site or location or of a product or service on [the Respondent's] web site or location.

The Panel, on the basis of the evidence presented, agrees with the Complainant's contentions that the disputed domain name was registered in bad faith and that it has been used in bad faith.

Taking into account that the Respondent is based in France and works in the financial services, the Panel agrees that it is inconceivable that the Respondent was not aware of the Complainant's rights in the trademark "BOURSO" when registering the disputed domain name. Other panels considered that knowledge of a corresponding mark at the time of the domain name's registration can suggest bad faith (see, for example, WIPO Case No. D2017-0100) and the Panel shares this view.

The Panel considers that, on the balance of probability, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website within the terms of paragraph 4(b)(iv) of the Policy.

The Panel observes that if the Respondent had legitimate purposes in registering and using the disputed domain name it would have filed a Response in this proceeding.

The Panel, having taken into account the Respondent's knowledge of the "BOURSO" trademark at the time of the disputed domain name's registration, that no response to the complaint has been filed and the use of the disputed domain name in a website which offers financial services, considers that the disputed domain name was registered and is being used in bad faith.

Accordingly, the Panel finds that the disputed domain name was registered and is being used in bad faith within the meaning of paragraph 4(b)(iv) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **boursobk.online**: Transferred

PANELLISTS

Name	Michele Antonini
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DATE OF PANEL DECISION 2023-03-22

Publish the Decision
