

Decision for dispute CAC-UDRP-105227

Case number CAC-UDRP-105227

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Domain names bours-gestion.com

Case administrator

Name Olga Dvořáková (Case admin)

Complainant

Organization BOURSORAMA

Complainant representative

Organization NAMESHIELD S.A.S.

Respondent

Name Kevin Sandler

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 French trademark "BOURSO", no. 3009973 registered since July 28,2000 at classes 9, 35, 36, 38, 41 & 42.

In addition, the Complainant owns domain names with the terms "BOURSO" & "BOURSORAMA", such as i) <boursorama.com> created since March 1st, 1998 and ii) <bourso.com> created since January 11, 2000.

FACTUAL BACKGROUND

The Complainant is the online banking reference with over 4,7 million customers in France.

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

The Complainant is the owner of several trademarks and domain names, including the term "BOURSO" at least since the year 2000.

The disputed domain name <bours-gestion.com> (hereinafter, the "Disputed Domain Name") was registered on December 28, 2022, by Kevin Sandler based in France and it currently resolves to a parking page. In this vein, Complainant states that it was used for

phishing activity

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.

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 is confusingly similar to its trademark "BOURSO" and the domain name associated therewith.

The Complainant asserts that the omission of the letter "O" in the trademark "BOURSO" for the Disputed Domain Name and the addition of the French term "GESTION" (which means Management in English) are not sufficient to escape the finding that the Disputed Domain Name is similar to the trademark "BOURSO@"

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 BOURSO. 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 BOURSO or apply for registration of the Disputed Domain Name.

The Complainant indicates that the Disputed Domain Name points to a parking page, however, said Disputed Domain Name was used for phishing activity which cannot be a bona fide offering of goods or services or legitimate non-commercial or fair use.

Third element: The Disputed Domain Name has been registered and is being used in bad faith

The Complainant states that the Disputed Domain Name has been registered for phishing activities. In this sense, the Complainant indicates that registering a domain name for purposes of phishing is bad faith and registration and use within the Uniform Domain Name Dispute Resolution Policy (hereinafter, "the Policy").

The Complainant indicates that Respondent was fully aware of the Complainant's mark when Respondent registered the Disputed Domain Name and that Respondent has registered and is using the Disputed Domain Name in bad faith for obtaining sensitive information by impersonating the Complainant.

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 BOURSO® OF THE COMPLAINANT.

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.

The evidence provided by the Complainant shows that it owns at least one trademark and one domain name with the term BOURSO at least since the year 2000.

In the present case, the Disputed Domain Name is composed of a typo variant combination of the trademark BOURSO; i.e. BOURS together with the addition of the French term "GESTION" (which means Management in English). This combination is not sufficient to escape the finding that the Disputed Domain Name is similar to the trademark "BOURSO".

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 of WIPO Panel Views on Selected UDRP Questions, Third Edition – hereinafter the "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.

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 (WIPO Overview 3.0, paragraph 2.3.).

The Registrar's verification provided to the Czech Arbitration Court on February 22, 2023 by the Registrar identified "Kevin Sandler" 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 by the relevant moniker apart from the Disputed 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 BOURSO® trademark. Furthermore, the Complainant asserts that the Respondent is not affiliated with him nor authorized in any way to use the trademark BOURSO®.

Moreover, the website associated with the Disputed Domain Name resolves to a parking page with commercial links (PPC). Previous Past Panels 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 WIPO Overview 3.0, paragraph 2.9). For a confirmation about this point of view, see UDRP WIPO Case Nr. D2023-0496 Syngenta Participations AG vs Lei Shi, where the Panel found the following:

„ As regards the first and third circumstances set out above, the disputed domain name resolves to a landing page displaying PPC links. The Complainant submits that the Respondent has no affiliation with it nor is the Respondent authorized to use the Complainant's registered trademark. The PPC links operate for the commercial gain of the Respondent, if he is paid to direct traffic to the linked websites, or for the commercial gain of the operators of the linked websites, or both. The Panel does not consider this to be a use of the disputed domain name in connection with a bona fide offering of goods or services that would create rights or legitimate interests, nor a legitimate noncommercial or fair use of the disputed domain name“.

In addition, the Complainant has provided with evidence about a phishing email address associated with the Disputed Domain Name where the Respondent attempted to pass itself off as an employee of the Complainant for financial gain by writing to a Complainant's customer using Complainant's contact information such as Company's name, address, etc. In this regard, past panels have found that the use of a Disputed Domain Name to pass off as a Complainant via emails is not a bona fide offering of goods or services or a legitimate noncommercial or fair use per the Policy (see for instance FORUM Case nr. 1735949 Emerson Electric Co. v. Adilcon Rocha).

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 FAITH.

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 the Disputed Domain Name has been used for phishing purposes. In this regard, Past Panels have found that the use of a Disputed Domain Name for purposes other than to host a website may constitute bad faith. Such purposes include sending emails, phishing among others (WIPO Overview 3.0, paragraph 3.4).

Furthermore, some panelist have also considered that phishing is a disruptive, deceptive and evidence of bad faith registration and use within the Policy (see for instance FORUM Case nr. 1506001625750 Klabzuba Oil & Gas v. LAKHPAT SINGH BHANDARI).

Last but not least, the evidence provided by the Complainant confirmed that the Respondent was aware of Complainant's mark BOURSO by choosing a typo variant domain name for its phishing activity and by passing itself off as a Complainant's employee.

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. bours-gestion.com: Transferred

PANELLISTS

Name **Victor Garcia Padilla**

DATE OF PANEL DECISION **2023-03-31**

Publish the Decision
