

Decision for dispute CAC-UDRP-105256

Case number **CAC-UDRP-105256**

Time of filing **2023-03-02 12:56:30**

Domain names **ameliorationsecubourso.com, frespaceclientboursogestion.com,
nouvelledirectivegroupebourso.com, reglesdeprofilsbourso.com,
gestionnairedesinformationsbourso.com**

Case administrator

Name **Olga Dvořáková (Case admin)**

Complainant

Organization **BOURSORAMA**

Complainant representative

Organization **NAMESHIELD S.A.S.**

Respondent

Name **Paulin Morning**

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 names.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of French trademark registration No. 3009973 for BOURSO registered on February 22, 2000 for various goods and services in classes 9, 35, 36, 38, 41, 42.

FACTUAL BACKGROUND

The Complainant, BOURSORAMA S.A. is a French company in the field of online banking, as well as in the provision of financial information on the Internet. It states that it has over 4.67 million customers in France and its webpage, www.boursorama.com is France's first online banking platform as well as the first national financial and economic information site.

The Complainant owns the domain names <boursorama.com>, registered since March 1, 1998 and <bourso.com>, registered since January 11, 2000.

The disputed domain names were registered on February 26, 2023, and according to the Complainant, resolved to error pages.

PARTIES CONTENTIONS

The Complainant contends that the requirements of the Policy have been met and that the disputed domain names 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 names are 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 names (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 names have been registered and are 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

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires a complainant to show that a domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights.

A registered trademark provides a clear indication that the rights in the mark shown on the trademark certificate belong to its respective owner. The Complainant has provided evidence that it owns trademark registrations of the BOURSO mark.

The differences between the disputed domain names and the Complainant's BOURSO trademark are the addition of generic terms in the French language - "ameliorationsecu", "frespaceclient" and "gestion", "nouvelledirectivegroupe", "gestionnairedesinformations" and "reglesdeprofils" and the gTLD ".com" which in the Panel's view do not avoid confusing similarity with the Complainant's trademark.

It is established that where a trademark is recognizable within the disputed domain names, the addition of a descriptive term would not prevent a finding of confusing similarity under the first element. (See WIPO Overview 3.0, section 1.8). It is further established that the gTLD is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test. (See WIPO Overview 3.0, section 1.11). The addition of a gTLD to a disputed domain name does not avoid confusing similarity as the use of a TLD is technically required to operate a domain names (see *Accor v. Noldc Inc.*, WIPO Case No. D2005-0016; *F. Hoffmann-La Roche AG v. Macalve e-dominios S.A.*, WIPO Case No. D2006-0451; *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. D2000-0003; *L'Oréal v Tina Smith*, WIPO Case No. 2013-0820; *Titoni AG v Runxin Wang*, WIPO Case No. D2008-0820; and *Alstom v. Itete Peru S.A.*, WIPO Case No. D2009-0877).

Therefore, the Panel finds that the disputed domain names are confusingly similar to the BOURSO mark and the element under paragraph 4(a)(i) of the Policy is satisfied.

B. Rights or Legitimate Interests

Paragraph 4(a)(ii) of the Policy requires the complainant to show that the respondent has no rights or interests in respect of the domain names. Once the complainant establishes a prima facie case that the respondent lacks rights or legitimate interests in the domain

names, the burden of production shifts to the respondent to show that it has rights or legitimate interests in respect to the domain names (see WIPO Overview 3.0, section 2.1).

In the present case, the Complainant has demonstrated *prima facie* that the Respondent lacks rights or legitimate interests in respect of the disputed domain names and the Respondent has failed to assert any such rights or legitimate interests.

The Complainant submitted evidence that it owns a trademark for the BOURSO mark and that it did not authorize or license the Respondent to use the BOURSO mark (see *OSRAM GmbH. v. Mohammed Rafi/Domain Admin, Privacy Protection Service INC d/b/a PrivacyProtect.org*, WIPO Case No. D2015-1149; *Sanofi-Aventis v. Abigail Wallace*, WIPO Case No. D2009-0735). The Complainant also submitted evidence that its registrations and use of the trademarks predate the registration of the disputed domain names by over twenty years.

In addition, the evidence submitted by the Complainant shows that the Respondent is not commonly known by the disputed domain names.

The Complainant further submitted evidence that the Respondent is not making a legitimate non-commercial or fair use of the domain names as the disputed domain names resolve to control panel HTTP server test webpages. Such webpages shows that the Respondent was at the very least testing the use of servers in connection with the disputed domain names.

The Respondent did not submit a response in the present case and did not provide any explanation or evidence to show rights or legitimate interests in the disputed domain names which is sufficient to rebut the Complainant's *prima facie* case.

The Panel is therefore of the view that the Respondent has no rights or legitimate interests in respect of the disputed domain names and accordingly, paragraph 4(a)(ii) of the Policy is satisfied.

C. Registered and Used in Bad Faith

The complainant must show that the respondent registered and is using the disputed domain names in bad faith (Policy, paragraph 4(a)(iii)). Paragraph 4(b) of the Policy provides circumstances that may evidence bad faith under paragraph 4(a)(iii) of the Policy.

The Complainant has submitted evidence that the Respondent registered the disputed domain names long after the Complainant registered its BOURSO trademark. Furthermore, the disputed domain names incorporate the Complainant's mark in its entirety with the additional prefixes "ameliorationsecu", "frespaceclient" and "gestion", "nouvelledirectivegroupe", "gestionnairedesinformations" and "reglesdeprofils" in the French language, which given the circumstances of this case, show The use of such terms in connection with the Complainant distinctive mark, is, in the view of this Panel, an attempt by the Respondent to confuse and/or mislead Internet users seeking or expecting the Complainant's website. Previous UDRP panels have ruled that in such circumstances "a likelihood of confusion is presumed, and such confusion will inevitably result in the diversion of Internet traffic from the Complainant's site to the Respondent's site" (see *Edmunds.com, Inc v. Triple E Holdings Limited*, WIPO Case No. D2006-1095).

The Complainant also submitted evidence that the disputed domain names resolved to HTTP server test pages. These show that the Respondent was testing the use of the disputed domain names in preparation for use of the same. Since the Respondent failed to file a Response in these proceedings it is impossible for the Panel to second guess what use if any the Respondent was contemplating of the disputed domain names, though given the above, the Panel is of the position that on the balance, no good faith use was contemplated and none was likely to be possible.

Based on the circumstances of the particular case, it is the Panel's view that it is unlikely that the Respondent registered the disputed domain names without sight and knowledge of the Complainant's marks, and it is implausible that there is any good faith use to which the disputed domain names may be put to. It is clear to the Panel that the Respondent specifically targeted the Complainant and its marks and registered the disputed domain names to divert Internet traffic and benefit commercially from unsuspecting Internet users seeking out the Complainant.

Based on the evidence presented to the Panel, including the confusing similarity between the disputed domain names and the Complainant's BOURSO mark, the fact that the domain names resolve to test pages and the fact that no Response was submitted by the Respondent, the Panel draws the inference that the disputed domain names were registered and are being used in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **ameliorationsecubourso.com**: Transferred
 2. **frespaceclientboursogestion.com**: Transferred
 3. **nouvelledirectivegroupebourso.com**: Transferred
 4. **reglesdeprofilsbourso.com**: Transferred
 5. **gestionnairedesinformationsbourso.com**: Transferred
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PANELLISTS

Name	Jonathan Agmon
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DATE OF PANEL DECISION	2023-04-05
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Publish the Decision	
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