

Decision for dispute CAC-UDRP-105224

Case number	CAC-UDRP-105224
Time of filing	2023-02-24 09:12:11
Domain names	app-bourso.com, bourso-fr.com

Case administrator

Organization	Iveta Špiclová (Czech Arbitration Court) (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	Hugh Johnston
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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 names.

IDENTIFICATION OF RIGHTS

The Complainant is a registered owner of a following trademark containing a word element "BOURSO":

(i) BOURSO (word), French national trademark, priority (filing) date 20 February 2000, trademark registration no. 3009973, registered for goods and services in the international classes 9, 35, 36, 38, 41, and 42;

(referred to as "Complainant's trademark").

Also, the Complainant is the owner of the domain name <boursorama.com>, registered since 1 March 1998.

FACTUAL BACKGROUND

The Complainant was founded in 1995 and grows in Europe with the emergence of e-commerce and the continuous expansion of the range of financial products online. Pioneer and leader in its three core businesses: online brokerage, online financial information and online banking, Complainant based its growth on innovation, commitment and transparency. In France, Complainant is the online banking reference with more than 4,7 mil. customers.

Both disputed domain names <bourso-fr.com> and <app-bourso.com> were registered on 18 February 2023 and are held by the

Respondent.

The disputed domain names websites (i.e. website available under internet address containing the disputed domain name) are currently inactive with restricted access - they are blocked as potentially phishing sites. According to evidence provided by the Complainant, they used to redirect to a website resembling Complainant's official site.

The Complainant seeks transfer of the disputed domain names to the Complainant.

PARTIES CONTENTIONS

COMPLAINANT:

CONFUSING SIMILARITY

- Complainant's rights to Complainant's trademark predate registration of the disputed domain names;
- Disputed domain names incorporate Complainant's trademark with some minor changes such as addition of a descriptive term "FR" (which stands for France) or "APP" (which means application) respectively; and
- The Complainant refers to previous domain name decisions in this regard.

Thus, according to the Complainant, the confusing similarity between Complainant's trademarks and the disputed domain names is clearly established.

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant states that:

- The Respondent has not been commonly known by the disputed domain names;
- The Complainant has not authorized, permitted or licensed the Respondent to use Complainant's trademarks in any manner. The Respondent has no connection or affiliation with the Complainant whatsoever. On this record, Respondent has not been commonly known by the disputed domain names;
- The disputed domain names had been used (at least for some time) to redirect to a website mimicking Complainant's official customer access website. Thus, the Respondent used the dispute domain names in a way that fails to confer rights and legitimate interests, as it is used for illegitimate (phishing) purposes;
- To conclude, the disputed domain names were used for attracting internet users to services provided by the Respondent and this why it is free riding on reputation of the Complainant's trademark and its business;
- The Complainant refers to previous domain name decisions in this regard.

BAD FAITH REGISTRATION AND USE

The Complainant states that:

- Seniority of the Complainant's Trademark predates the disputed domain names registration;
- The disputed domain names were used for attracting internet users to services, which are similar to those provided by Complainant, and therefore it is free riding on reputation of the Complainant's trademark and its business;
- Respondent's registration of the dispute domain names can be also classified as a "phishing", a fraudulent practice of misleading internet users about origin of a particular website in order to induce individuals to reveal sensitive information, such as passwords or credit card numbers;
- The Complainant refers to previous domain name decisions in this regard.

RESPONDENT:

The Respondent has not provided any response to the complaint.

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

RIGHTS

Since the domain names and the Complainant's trademark are not identical, the key element investigated and considered by the Panel is whether the disputed domain names consisting of a term BOURSO-FR.COM and APP-BOURSO.COM respectively are confusingly similar to the Complainant's trademark.

The first disputed domain name is very similar to the Complainant's trademark since they differ only in addition of an extra letters "FR". These letters stand as an acronym for France, commonly used in domain names to denote a particular website including content linked to French customers or territory.

The second disputed domain name and the Complainant's trademark are also almost identical since they vary only in addition of three extra letters "APP". These letters stand as an abbreviation for "application" commonly used in domain names to denote a particular website where applications (usually for mobile phones) can be downloaded.

This use of descriptive terms cannot prevent the association in the eyes of internet consumers between the disputed domain names and the Complainant's trademarks and thus the likelihood of confusion still exists.

For sake of completeness, the Panel asserts that the top-level suffix in the domain name (i.e. the ".com") must be disregarded under the identity and confusing similarity tests, as it is a necessary technical requirement of registration.

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

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant's assertions that the Respondent is not commonly known by either disputed domain name and is not affiliated with nor authorised by the Complainant are sufficient to constitute prima facie showing of absence of rights or legitimate interest in the disputed domain names on the part of the Respondent.

Therefore, in the absence of the Respondent's response, the Panel concludes that there is no indication that either domain name was intended to be used in connection with a bona fide offering of goods or services as required by Policy.

Consequently, the evidentiary burden shifts to the Respondent to show by concrete evidence that it does have rights or legitimate interests in those names. However, the Respondent failed to provide any information and evidence that it has relevant rights or legitimate interests in respect of the disputed domain names (within the meaning of paragraph 4(a) (ii) of Policy).

BAD FAITH

It is clear that by adding extra descriptive word elements to Complainant's Trademark while all other characters of disputed domain names are identical to the Complainant trademark, it was clearly Respondent's intention to attract internet users to services, which are similar to those provided by Complainant. Such conduct constitutes free riding on reputation of the Complainant's trademark and its business.

Also, Respondent's registration of the dispute domain names can be also classified as a "phishing", a fraudulent practice of misleading internet users about origin of a particular website in order to induce individuals for purposes of intercepting passwords or other information which the visitor enters unsuspectingly.

For the reasons described above, since (i) there is only a remote chance that the Respondent has registered the disputed domain names just by a chance and without having a knowledge about the existence of the Complainant's rights and business (ii) there is no legitimate use of the dispute domain names and (iii) the Respondent is engaged in phishing, the Panel contends, on the balance of probabilities, that both disputed domain names have been registered and are being used by the Respondent in bad faith.

Thus, the Panel has taken a view that 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.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

- 1. **app-bourso.com**: Transferred
- 2. **bourso-fr.com**: Transferred

PANELLISTS

Name Jiří Čermák

DATE OF PANEL DECISION 2023-04-06

Publish the Decision