

Decision for dispute CAC-UDRP-105298

Case number	CAC-UDRP-105298
Time of filing	2023-03-24 08:46:48
Domain names	boursorama-app.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	Yamamoto Isoroku
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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 name.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of the European trademark BOURSORAMA® n°001758614 registered since October 19, 2001.

The Complainant also owns a number of domain names, including the same distinctive wording BOURSORAMA®, such as the domain names <boursorama.com> and <boursoramabanque.com>.

FACTUAL BACKGROUND

The portal www.boursorama.com is a French national financial and economic information site and online banking platform with over 4.7 million customers.

The disputed domain name was registered on February 5, 2023 and resolves to an error page.

PARTIES CONTENTIONS

COMPLAINANT:

A. The disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights

The Complainant states that the disputed domain name <boursorama-app.com> is confusingly similar to its trademark BOURSORAMA® and its domain names. The disputed domain name includes the trade mark in its entirety.

The addition of the generic term "APP" (which means "application") is not sufficient to escape the finding that the disputed domain name is confusingly similar to the trademark BOURSORAMA®. It is well-established that "a domain name that wholly incorporates a Complainant's registered trademark may be sufficient to establish confusing similarity for purposes of the UDRP" (WIPO Case No. D2003-0888, Dr. Ing. h.c. F. Porsche AG v. Vasilij Terkin).

The addition of the suffix ".COM" does not change the overall impression of the designation as being connected to the trademark BOURSORAMA®. It does not prevent the likelihood of confusion between the disputed domain name and the Complainant, its trademark and its domain names. WIPO Case No. D2006-0451, F. Hoffmann-La Roche AG v. Macalve e-dominios S.A. ("It is also well established that the specific top level of a domain name such as ".com", ".org" or ".net" does not affect the domain name for the purpose of determining whether it is identical or confusingly similar.").

Many UDRP decisions have confirmed the Complainant's rights such as:

- CAC Case No. 104433, BOURSORAMA SA v. 1337 Services LLC <fr-boursorama.com>;
- CAC Case No. 102278, BOURSORAMA v. yvette cristofoli, <boursorama-ecopret.com>;
- CAC Case No. 101844, BOURSORAMA SA likid french, <client-boursorama.net>.

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

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

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

Neither licence nor authorization has been granted to the Respondent to make any use of the Complainant's trademark BOURSORAMA, or apply for registration of the disputed domain name.

The disputed domain name resolves to an error page. The Respondent has not used the disputed domain name, and this confirms that Respondent has no demonstrable plan to use the disputed domain name.

C. The disputed domain name was registered and is being used in bad faith

The disputed domain name includes the well-known and distinctive trademark BOURSORAMA.

- CAC Case No. 101131, BOURSORAMA v. PD Host Inc - Ken Thomas ("In the case at hand, the Respondent acted in bad faith especially because the Respondent, who has no connection with the well-known "BOURSORAMA" trademark, registered a domain name, which incorporates the well-known "BOURSORAMA" trademark and it is totally unrealistic to believe that the Respondent did not know the Complainant's trademark when registered the domain name <wwwboursorama.com>.");
- WIPO Case No. D2017-1463, Boursorama SA v. Estrade Nicolas ("Given the circumstances of the case including the evidence on record of the longstanding of use of the Complainant's trademark, and the distinctive nature of the mark BOURSORAMA, it is inconceivable to the Panel in the current circumstances that the Respondent registered the disputed domain name without prior knowledge of the Complainant and the Complainant's mark.").

Consequently, the Respondent, must have known about the Complainant and its rights at the time of the registration of the disputed domain name.

The disputed domain name resolves to an error page. The Respondent has not demonstrated any activity in respect of the disputed domain name, and it is not possible to conceive of any plausible actual or contemplated active use of the 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 trademark law.

As prior WIPO UDRP panels have held, the incorporation of a famous mark into a domain name, coupled with an inactive website, may be evidence of bad faith registration and use.

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

RESPONDENT:

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

The disputed domain name registered in 2023 is confusingly similar to the Complainant's trade mark (registered as a European trade mark since 2001) adding the generic designation 'app' meaning computer application, a hyphen and the gTLD.com which do not prevent said confusing similarity.

The disputed domain name has not been used and so there is no bona fide offering of goods or services or legitimate non commercial fair use.

The Respondent has not answered the Complaint or given any legitimate reason for registration of the disputed domain name and has not rebutted the prima facie case evidenced by the Complainant as set out herein.

The incorporation of a mark with a reputation into a domain name, coupled with an inactive website, may be evidence of bad faith registration and use.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **boursorama-app.com**: Transferred
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PANELLISTS

Name	Dawn Osborne
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DATE OF PANEL DECISION 2023-04-22

Publish the Decision
