

Decision for dispute CAC-UDRP-105306

Case number	CAC-UDRP-105306
-------------	------------------------

Time of filing	2023-03-27 09:54:43
----------------	----------------------------

Domain names	bienvenuegroupeboursos.com, dedicatedsupportboursos.com
--------------	----------------------------------------------------------------

Case administrator

Name	Olga Dvořáková (Case admin)
------	------------------------------------

Complainant

Organization	BOURSORAMA
--------------	-------------------

Complainant representative

Organization	NAMESHIELD S.A.S.
--------------	--------------------------

Respondent

Name	Ryad Hadjeb
------	--------------------

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

In addition, the Complainant owns domain names comprising of or including the term "BOURSO" such as <boursos.com> registered since January 11, 2000.

FACTUAL BACKGROUND

The Complainant, founded in 1995, is the online banking reference in France with over 4.7 million, including conducting business under the BOURSORAMA brand.

The Complainant's 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 terms "BOURSO" and "BOUSRORAMA" at least since 2000.

The disputed domain names <bienvenuegroupebourso.com> and <dedicatedsupportbourso.com> were registered on March 22, 2023, by Respondent Ryad Hadjeb based in France and both resolve to pages with text stating “Forbidden. You don’t have permission to access this resource”.

According to Complainant’s non-contested allegations, the Respondent has no rights or legitimate interest in respect of the disputed domain names, and he is not related in any way to the Complainant’s business.

The Registrar of the disputed domain names 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.

PARTIES CONTENTIONS

COMPLAINANT:

First element: Confusingly similar to the protected mark

The Complainant states that the disputed domain names <bienvenuegroupebourso.com> and <dedicatedsupportbourso.com> are confusingly similar to its trademark “BOURSO”.

The Complainant asserts that the addition of the respective terms “bienvenuegroupe” (meaning “welcome group” in English) and “dedicated support” does not change the overall impression of the designation as being connected to the Complainant’s trademark BOURSO. Furthermore, the addition of those terms does not prevent the likelihood of confusion between the disputed domain names and the Complainant its trademark and domain names associated.

Finally, Complainant contends that its rights in the denomination BOURSO have been recognized by previous panels in at least three prior decisions under the Uniform Domain Name Dispute Resolution Policy (the “Policy”).

Second element: Rights or legitimate interest

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain names 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 names. 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 either of the disputed domain names.

The Complainant asserts that the Respondent is not affiliated with nor authorized in any way 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 to apply for registration of the domain names incorporating it.

The Complainant indicates that the disputed domain names resolve to a “forbidden” page not in active use which indicates that the disputed domain names are not in use nor is there any evidence of a demonstrable plan to use the disputed domain names.

Third element: The domain name has been registered and is being used in bad faith

The Complainant states that the disputed domain names are confusingly similar to its distinctive trademark BOURSO. Complainant assert that the status of its BOURSO trademark has been affirmed by a prior decision in which the panel held “As discussed above, Complainant’s BOURSO mark is well established” (see [WIPO Case No. D2022-4646](#) Boursorama S.A. v Ibraci Links SAS)

According to the Complainant, the addition of generic terms in the disputed domain names related to customer support cannot be coincidental, and as such may create confusion in the minds of Complainant’s customers.

Complainant contends that it is reasonable to infer that the Respondent – who is also French - registered and use the disputed domain names with full knowledge of the Complainant’s trademarks.

Finally, the Complainant claims that the lack of active use of the disputed domain names is evidence of bad faith, because it is not possible to conceive of any plausible active purpose thereof that would not be infringing on Complainant’s rights.

For these reasons, the Complainant concludes that the Respondent has registered and is using the disputed domain names in bad faith.

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

1. THE DISPUTED DOMAIN NAMES ARE CONFUSINGLY SIMILAR TO THE TRADEMARK BOURSO® OF THE COMPLAINANT.

Paragraph 4(a)(i) of the Policy 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.

In accordance with the evidence provided, Complainant owns different trademarks and domain names with the term BOURSO with ownership at least since 2000. The Complainant therefore has well-established rights to the term BOURSO both through its registrations and commercial use thereof.

In the present case, the Panel finds that the disputed domain names are confusing similar to Complainant's BOURSO trademark. The disputed domain names are both composed of the trademark BOURSO reproduced in its entirety together with the respective generic terms "BIENVENUEGROUPE" (French word which means WELCOME GROUP in English) and "DEDICATED SUPPORT". Panels have long-held that the addition of relevant generic terms within a domain name does not prevent a finding of confusing similarity under the Policy.

Furthermore, the addition of the Top-Level Domain ".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 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 names are confusingly similar to Complainant's mark.

2. RESPONDENT'S LACK OF RIGHTS OR LEGITIMATE INTERESTS IN THE DISPUTED DOMAIN NAMES

The second element of the Policy requires that the Complainant establishes the Respondent has no rights or legitimate interests in the disputed domain names. 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](#)).

Here, the Panel finds that Complainant has made out its prima facie case. First, the Complainant asserts – and the evidence supports – that the Respondent is not identified in the Whois database to be related in any way to the disputed domain names. The Registrar's verification provided to the instant domain name dispute resolution provider on March 22, 2023, identifies "Ryad Hadjeb" as the registrant of the disputed domain names. Absent any response or explanation from the Respondent, the Panel finds that the relevant moniker at the Whois database supports a finding that the Respondent not is commonly known by the disputed domain names.

Further, the Complainant indicates that it has not granted authorization to Respondent to use its BOURSO trademarks. Furthermore, the Complainant asserts that the Respondent is not affiliated with Complainant nor authorized in any way to use its trademark BOURSO

Additionally, the websites associated with the disputed domain names are not being actively used, but rather they both resolve to a page with the text "Forbidden". Accordingly, there is no evidence that the Respondence is using or has made demonstrable preparations to use either of the disputed domain names.

Lastly, Respondent's lack of response to the Complaint is an additional indication that Respondent lacks rights or legitimate interest since Respondent did not provide evidence regarding the factors specified in paragraph 4 (c) of the Policy, nor of any circumstances at all, giving rise to rights or legitimate interests in the disputed domain names.

For the above reasons, the Panel concludes that neither the Respondent nor the evidence establishes that the Respondent has any right or legitimate interest to the disputed domain names. The Complainant has therefore also satisfied the requirements under paragraph 4(a)(ii) of the Policy.

3. THE DISPUTED DOMAIN NAMES HAVE BEEN REGISTERED AND ARE BEING USED IN BAD FAITH.

Paragraph 4(a)(iii) of the Policy indicates that Complainant must establish that the Respondent registered and is using the disputed domain name in bad faith. Further, Paragraph 4(b) of the Policy sets out four non-exclusive 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.

Notwithstanding the aforementioned articulated factors indicative of bad faith, the consensus view of panels is that "bad faith under the UDRP is broadly understood to occur where a respondent takes unfair advantage of or otherwise abuses a complainant's mark" (see [Paragraph 3.1, WIPO Overview 3.0](#)).

Panels have consistently found that the registration of a domain name that is confusingly similar to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith ([Paragraph 3.1.4 WIPO Overview 3.0](#)). In [CAC Case No. 104986 BOURSORAMA SA v Didier Jore](#) concerning the domain name <supportbourso.com> the panel in that case was held that "the most likely explanation of the combination of the words "Support" and "Bourso" is as a reference to customer support services of the Complainant[sic]". The Panel makes the same finding in this instant case, that the terms "dedicated support" and the French term for "welcome group" almost certainly refer to the services of the Complainant associated with its BOURSO trademark. Because there is persuasive evidence that Complainant's trademark BOURSO is distinctive and it has a strong reputation in the banking industry in France as well as in different countries, there can be a presumption of bad faith regarding the registration of the disputed domain names in this case

Further, the disputed domain names are not in active use, except for a notice on the sites stating "Forbidden". The consensus view of panels states "the non-use of a domain name (including a blank or 'coming soon' page) would not prevent a finding of bad faith under the doctrine of passive holding." and further, "While panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put." ([Paragraph 3.3 WIPO Overview 3.0](#)). The Panel finds that most of these factors apply here, because (i) the Complainant's BOURSO trademark is distinctive and well-established, (ii) the Respondent has not responded to the Complaint nor given any justification for its registration of the disputed domain names, (iii) the fact that the Respondent's identity was concealed in the Whois is not probative in this case, as concealing registrant details has evolved to become standard procedure for Whois records since the time the WIPO Overview 3.0 was developed, and (iv) due to the descriptive nature of the related terms included within the disputed domain names which improperly suggests an association with Complainant and its business, the Panel finds no plausible use of the disputed domain names that could be considered as in good faith.

The Panel finds the bad faith on behalf of the Respondent under this third element of the Policy because, on the balance of probabilities, Respondent was taking unfair advantage of or otherwise abusing Complainant's mark. It is appropriate in the circumstance to infer that Respondent was aware of Complainant and its BOURSO mark, and was targeting the Complainant when it registered the disputed domain names. Further, the fact that Respondent registered two disputed domain names – both incorporating Complainant's mark and related terms – is further support for a finding of targeting, because this conduct evidences a systematic and deliberate plan on the part of Respondent.

Therefore, the Panel concludes that Respondent registered and is using the disputed domain names in bad faith and thus has satisfied the requirement under paragraph 4(a)(iii) of the Policy.

Accepted

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

- 1. **bienvenuegroupeboursos.com**: Transferred
- 2. **dedicatedsupportboursos.com**: Transferred

PANELLISTS

Name	Claire Kowarsky
------	-----------------

DATE OF PANEL DECISION	2023-04-30
------------------------	------------

Publish the Decision