

Decision for dispute CAC-UDRP-105366

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| Case number | CAC-UDRP-105366 |
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| Time of filing | 2023-04-19 10:38:57 |
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| Domain names | brsrma-support.com |
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Case administrator

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| Name | Olga Dvořáková (Case admin) |
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Complainant

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| Organization | BOURSORAMA |
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Complainant representative

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| Organization | NAMESHIELD S.A.S. |
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Respondent

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| Name | Jean gabin |
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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

EU Trademark No. 001758614 BOURSORAMA registered since 19 October 2021 (effective priority date 13 July 2000) for various goods and services.

FACTUAL BACKGROUND

The Complainant operates a French based business that trades under the BOURSORAMA and was founded in 1995. It operates in three core service areas, being online brokerage, financial information on the internet and online banking. In France alone the complainant has over 2 million customers and it created the first French online banking platform.

The Complainant owns several trademarks containing or consisting of the word BOURSORAMA, including the EU trademark registration referred to above. It also owns a number of domain names containing or consisting of BOURSORAMA, including <boursorama.com>, as well as similar domain names like <brsimg.com>, <brsourama.com> and <brsp.app>.

The disputed domain name <brsrma-support.com> was registered on 9 March 2023. In registered the disputed domain name the Respondent provided its name as "Jean gabin".

The disputed domain name redirects to a parking page with pay per click advertising links. Further, on 22 March 2023, shortly after

registration, the Respondent used the disputed domain name to send an email that impersonated the Complainant by way of using the Complainant unique Boursorama Banque logo. The Complainant alleges, and the Respondent does not dispute, that this email was sent in an attempt to engage in consumer fraud.

PARTIES CONTENTIONS

The Complainant contends that the requirements of the Policy have been met and that the disputed domain name 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 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

Paragraph (4)(a) of the Policy lists three elements that the Complainant must prove to merit a finding that the domain name registered by the Respondent be transferred to the Complainant:

- 1) The domain name is identical or confusingly similar to a trademark or service mark ("mark") in which the Complainant has rights; and
- 2) the Respondent has no rights or legitimate interests in respect of the domain name; and
- 3) the domain name has been registered and is being used in bad faith.

The Panel is satisfied the Complainant has satisfied all three elements for the principal reasons set out below.

RIGHTS IN AN IDENTICAL OR CONFUSINGLY SIMILAR TRADEMARK

As mentioned above the Complainant asserts it has numerous trademark registrations containing or consisting of the word BOURSORAMA. In particular it provides documentary evidence of an EU trademark for the word BOURSORAMA filed on 13 July, 2000 and subsequently registered on 19 October, 2001. This is over 20 years before the creation date of the disputed domain name, being 9 March 2023.

To satisfy paragraph 4(a)(i) of the Policy it is enough that the Panel is satisfied that the Complainant has registered rights in a trademark that predates the registration of the disputed domain name in a single jurisdiction (Koninklijke KPN N.V. v. Telepathy, Inc D2001-0217 (WIPO May 7, 2001); see also WIPO Case Nos. D2012-0141 and D2011-1436). The Panel is satisfied of such.

The next question is whether the disputed domain name is confusingly similar to BOURSORAMA trademark.

The Complainant argues that the "-support" element in the disputed domain name does not assist the Respondent in avoiding a finding

of confusing similarity. The panel agrees with this submission. This element merely indicates that the domain name is being used in relation to a website or email where a business is providing "support". It is not likely to perform any function relating to branding significance in the eyes of consumers.

The question of confusing similarity therefore largely concerns a comparison of the more distinctive element BRSRMA with BOURSORAMA. In so comparing these two words it is first necessary to address the relevance of the above mentioned fraudulent use of the domain name to mimic the Complainant via an email service.

In most instances the content of a website or how a domain name has been used has little role to play in answer the question of whether a domain name is confusingly similar to a trademark or service mark in which a complainant has rights. In *Arthur Guinness Son & Co v. Macesic* (WIPO Case No. D2000-1698) that point was made expressly by the sole panalist, Alan Limbury, in answer to a respondent's argument that he used the disputed domain name for a website that operated in a different market to the complainant, hence reducing the prospect of confusion. Mr Limbury stated that the content of the website to which the disputed domain named resolves;

"[H]as no bearing upon the issue whether the domain name is confusingly similar to the trademark, because by the time Internet users arrive at the Website, they have already been confused by the similarity between the domain name and the Complainant's mark into thinking they are on their way to the Complainant's Website."

However, the facts and circumstances of the present proceeding are quite different to those considered in *Arthur Guinness Son*.

In the present proceeding the Complainant alleges that BRSRMA is an abbreviation of BOURSORAMA. The letters of BRSRMA are produced in order in BOURSORAMA. Further, although it may be difficult to pronounce BRSRMA aloud if one does attempt to do so the sound produced is similar to how one would pronounce BOURORAMA. Notably, there is no counter argument from the Respondent that the two words are not so similar.

At this point in the analysis, having noted the prima facie similarities, it is proper to consider the Respondent's use of the domain name. As discussed further below, the Respondent has clearly engaged in fraudulent use of the domain name by sending emails mimicking the branding of the Complainant. Although such fraudulent use of the domain name cannot alone make out the first limb of Paragraph (4)(a) of the Policy it can be relevant to the drawing of inferences, thereby strengthening the factual assertions of the Complainant. In the circumstances of the present proceeding the inference must be drawn that the Respondent has no counter argument against confusing similarity. Nothing can be said against the importance of the order of the letters BRSRMA. Nothing can be said against the apparent phonetic similarities to BOURSORAMA. In fact, the Respondent's conduct just confirms that the domain name was registered for the very reason of its confusing similarity with the Complainant's trade mark. The Respondent's conduct betrays its implied agreement that the disputed domain name and the Complainant's trade mark are confusingly similar.

The Panel also notes that other panels have deemed it appropriate to observe the content of a website for which the domain name was used when determining that a disputed domain name is confusingly similar to a trademark or service mark. For example, the panel refers to the decision of sole panelist, Neil Brown KC, in *Kames Capital PLC v. Harrison / Kames Capital Plc Limited*, FA 1604001671583 (Forum May 20, 2016).

The Panel therefore finds that the disputed domain name is confusingly similar to the Complainant's BOURSORAMA trade mark.

NO RIGHTS OR LEGITIMATE INTERESTS

The registrant's name according to the WHOIS extract is "Jean gabin". The Complainant has pointed out that Jean Gabin was the name of a well known late actor, suggesting the Respondent is using a pseudonym. Regardless of whether or not this is the case the name "Jean gabin" has no connection with the disputed domain name. Further, there is no basis to conclude legitimate interests from observing the contents of the parking page to which the disputed domain name resolves.

However, what is most telling is that the disputed domain name has been used to send emails that mimic the Complainant. Such conduct could not be further from legitimate.

It is clear the Respondent has no rights or interests in the disputed domain name.

BAD FAITH

The Panel finds that the Complainant has established that shortly after registering the disputed domain name the Respondent used it to send an email to a recipient pretending to be the Complainant. The email was written in French and prominently displayed the Complainant's unique Boursorama Banque logo. The words BOURSORAMA BANQUE also appeared in the subject line of the email and in a main heading. There is absolutely no doubt the email is a fraudulent attempt to deceive the recipient into believing it is receiving an email from the Complainant. It is particularly concerning that this email is sent to mimic an online financial services business.

It is clear the Respondent has registered and used the disputed domain name in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

- 1. **brsrma-support.com**: Transferred

PANELLISTS

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| Name | Andrew Sykes |
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| DATE OF PANEL DECISION | 2023-05-17 |
|------------------------|------------|

Publish the Decision