

Decision for dispute CAC-UDRP-105349

Case number	CAC-UDRP-105349
Time of filing	2023-04-12 09:44:54
Domain names	controle-clientboursorama.com

Case administrator

Organization	Iveta Špiclová (Czech Arbitration Court) (Case admin)
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Complainant

Organization	BOURSORAMA SA
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Complainant representative

Organization	NAMESHIELD S.A.S.
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Respondent

Name	Jeanne Madison
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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 proprietor of the EU trade mark 'BOURSORAMA' (001758614, registered 19 October 2001 and duly renewed, in classes including 9 (financial information software), 36 (financial and monetary services), and 41 (publication of financial information)).

FACTUAL BACKGROUND

The Complainant, a company (société anonyme) with its seat in Boulogne-Billancourt, Paris, France, operates in financial services fields - online brokerage, financial information, and online banking. It has significant operations in its home jurisdiction of France where it is a leading player in a number of markets. In this context it operates a number of websites, at domain names including BOURSORAMA.COM (first registered 1 March 1998).

The Respondent, an individual with an address in France, registered the disputed domain name on 5 April 2023.

PARTIES CONTENTIONS

No administratively compliant Response has been filed. The Provider is not aware of whether written notice of the Complainant has been received, as neither the written notice of such nor advice of delivery thereof was returned. One email sent to the Respondent was returned as undelivered, while it is unknown whether another was delivered or not. The Respondent never accessed the online platform.

The Complainant submits that all aspects of the Policy have been met and that the disputed domain name should be transferred to it. It makes the arguments set out below, which are accompanied by evidence in the form of properly presented Annexes, referenced as appropriate throughout the Complainant and acknowledged as relevant in this Decision.

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).

Setting aside in accordance with established practice the generic TLD .com, the Panel notes that there are three differences between the disputed domain name and the Complainant's mark. The first is the use of a hyphen which is not considered any further, given the common use of such in place of spacing in domain names. The second and third are the presence in the disputed domain name, but not the mark, of the terms CONTROLE and CLIENT. The Panel notes the Complainant's submission, bearing in mind the linguistic profile of the Complainant's operations and customers (and the domicile of the Respondent), that each would be recognised by a French speaker as meaning CONTROL and CUSTOMER respectively (the Panel finding too that the term CLIENT, would also be recognisable in English, the language of these proceedings, as being of not dissimilar meaning). On this basis, and further acknowledging the Complainant's citation of a range of previous cases where its mark has been considered, the Panel can easily find that the disputed domain name is confusingly similar to the Complainant's mark, in light of the incorporation in full of its mark and the generic or descriptive nature of the terms CONTROLE/CONTROL and CLIENT/CUSTOMER (see e.g. WIPO Jurisprudential Overview, version 3.0, para 1.8).

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).

The Complainant has made out the required prima facie in respect of this aspect of the Policy. The Complainant has declared, without contradiction from the Respondent, that the Respondent is not related in any way with the Complainant, that the Complainant does not carry out any activity for, nor has any business with the Respondent, and that it has not granted any licence or authorisation to the Respondent to make any use of its mark or to apply for registration of a domain name. The Panel notes that the Respondent is known by a personal name (originally unavailable due to a privacy / proxy registration) which does not have any connection with 'BOURSORAMA' or indeed the full text of the disputed domain name.

Due to the Respondent's lack of participation in the present proceedings, there is no further basis on which the Panel can identify any plausible rights or legitimate interests. The Panel also places particular weight on the uncontradicted evidence provided by the Complainant that the disputed domain name resolves to a web page which appears to duplicate the Complainant's own 'login' page on its own website, and the likelihood that the Respondent could by these means collect information from the Complainant's customers. Finding rights or legitimate interests in such circumstances is very difficult and would require strong evidence from the Respondent or otherwise available to the Panel - which is not the case here.

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).

The Complainant has shown that the mark BOURSORAMA is distinctive and well-known, especially in France, and so is likely to have been known by the Respondent at the point of registration. Without any other relevant evidence, the Panel can find that the Respondent is likely to have registered the disputed domain name in bad faith.

Regarding use in bad faith, the Panel recalls the above-mentioned submission in respect of the Respondent's publication of a web page, at the disputed domain name, closely resembling a login page from the Complainant's own website. It is also noted that there is no attempt to provide information to end users regarding the Respondent or its activities. On this basis, the Panel can find that the Respondent is intentionally attempting to attract, for commercial gain, Internet users to its website, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website (paragraph 4(b)(iv) of the Policy). The possibility of the use of the disputed domain name to collect personal information from and in respect of the Complainant's customers is also relevant in this regard.

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 reasons for the decision are as set out above. In the absence of any Response from the Respondent, or any other information indicating the contrary, the Panel concluded that the Respondent has no rights or legitimate interests in respect of the disputed domain name. On the other hand, it is clear that the Complainant has rights in respect of the trade mark BOURSORAMA, and that the presence of descriptive terms in the disputed domain name (CONTROLE and CLIENT) does not prevent a finding of confusing similarity with the Complainant's marks. It is likely, in light of the nature of the Complainant's mark and activities, including its presence in France, that the Respondent would have been aware of the Complainant and its particular activities, and that the Respondent is intentionally using the disputed domain name to attract Internet users to its online activities, which appear to include the direct copying of a login page on the Complainant's website. The Panel takes into account the evidence supplied by the Complainant, and the well-known nature of its mark. The Panel can find for these reasons that the disputed domain name was registered and is being operated in bad faith, and that the Respondent, through its failure to participate in these proceedings and on the basis of the strength of the Complainant's evidence, has not pointed to any rights, legitimate interests, or the absence of bad faith registration or use. The requirements for the acceptance of a Complaint under paragraph 4 of the Policy have therefore been met, and the Panel ordered that the disputed domain name be transferred to the Complainant.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **controle-clientboursorama.com**: Transferred

PANELLISTS

Name **Daithi Mac Sithigh**

DATE OF PANEL DECISION **2023-05-19**

Publish the Decision