

Decision for dispute CAC-UDRP-105323

Case number	CAC-UDRP-105323
Time of filing	2023-04-20 10:58:58
Domain names	boursorama-soutien.com

Case administrator

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

Complainant

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

Complainant representative

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

Respondent

Name	lanet gane
------	-------------------

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 following European Union trademark (hereinafter "EUTM") registration:

- EUTM "BOURSORAMA" No. 001758614 for goods and services in Classes 9, 16, 35, 36, 38, 41 and 42 of the Nice Classification, with a filing date on July 13, 2000, and registration date on October 10, 2001.

The Complainant proved its ownership of the aforementioned trademark registration by the submitted extract from the WIPO Trademark Register.

FACTUAL BACKGROUND

The Complainant is a European company with business in e-commerce and the continuous expansion of the range of financial products online. It is the pioneer and leader in its three core businesses, online brokerage, financial information on the Internet and online banking. In France, the Complainant is the online banking reference with over 4,7 million customers. Its portal <boursorama.com> was the first national financial and economic information site and the first French online banking platform.

The Complainant is the owner of the EUTM "BOURSORAMA", registered, inter alia, in connection with financial affairs or financial information provided online.

The Complainant owns several registered domain names consisting of its trademark wording, such as <boursorama.com>, registered since March 1, 1998.

According to the Registrar, the Respondent is 'lanet gane'. The Respondent's provided address is being at London, Lincolnshire, the United Kingdom. The Respondent registered the disputed domain name <boursorama-soutien.com> on March 25, 2023 (hereinafter "disputed domain name"). The disputed domain name is redirecting to an error page and MX serves are configured.

PARTIES CONTENTIONS

COMPLAINANT:

1. The Complainant contends that the disputed domain name is confusingly similar to the Complainant's trademarks.

The Complainant states that the disputed domain name is confusingly similar to the Complainant's trademark "BOURSORAMA" and its domain names associated because the disputed domain name includes it in its entirety.

According to the Complainant, the addition of the generic term "SOUTIEN" (meaning "SUPPORT") is not sufficient to escape the finding that the disputed domain name is confusingly similar to the Complainant's trademark. The Complainant adds that 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. Vasiliy Terkin).

The Complainant contends that the addition of the suffix ".COM" does not change the overall impression of the designation as being connected to the trademark "BOURSORAMA" of the Complainant. It does not prevent the likelihood of confusion between the disputed domain names and the Complainant, its trademark and its domain names associated (see WIPO Case No. D2006-0451, F. Hoffmann-La Roche AG v. Macalve e-dominios S.A.).

Finally, the Complainant adds that its rights were confirmed by past Panels decisions, such as the CAC Case No. 102278, Boursorama SA v. yvette cristofoli; CAC Case No. 104433, BOURSORAMA SA v. 1337 Services LLC; CAC Case No. 101844, BOURSORAMA SA likid french.

1. The Complainant states that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

The Complainant states that the Respondent is not identified in the Whois database as the holder of the disputed domain name. Accordingly, the Complainant contends that 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 (Forum Case No. FA 1781783, Skechers U.S.A. Inc. v. Chad Moston / Elite Media Group).

The Complainant adds that the Respondent is not known by the Complainant and that it is not affiliated with nor authorized by the Complainant in any way. The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name. 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 "BOURSORAMA" or apply for registration of the disputed domain name.

Furthermore, the Complainant contends that the Respondent did not use the disputed domain name (when the disputed domain resolves to an error page), and it confirms that the Respondent has no demonstrable plan to use the disputed domain name (Forum Case No. FA 1773444, Ashley Furniture Industries, Inc. v. Joannet Macket / JM Consultants).

1. The Complainant contends that the domain name has been registered and is being used in bad faith.

The Complainant argues that the Respondent registered the disputed domain with full knowledge of the Complainant's trademark. The Complainant points out that past Panels have decided that the Complainant's trademark is well-known and has distinctive nature (CAC Case No. 101131, Boursorama SA v. PD Host Inc - Ken Thomas; WIPO Case No. D2017-1463, Boursorama SA v. Estrade Nicolas).

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

The Complainant contends that 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.

The Complainant adds that past Panels have decided that the incorporation of a famous mark into a domain name, coupled with an inactive website, may be evidence of bad faith registration and use (WIPO Case No. D2000-0003, Telstra Corporation Limited v. Nuclear Marshmallows and WIPO Case No. D2000-0400, CBS Broadcasting, Inc. v. Dennis Toeppen).

Finally, the Complainant asserts that the disputed domain name has been set up with MX records which suggests that it may be actively used for email purposes. This is also indicative of bad faith registration and uses because any email emanating from the disputed domain name could not be used for any good faith purpose. Please see for instance CAC Case No. 102827, JCDECAUX SA v. Handi

Hariyono.

RESPONDENT:

No administratively Complaint 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 UDRP).

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 UDRP).

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 UDRP).

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

In the present case, the Respondent has not submitted any Response and consequently has not contested any of the contentions made by the Complainant. The Panel proceeds therefore to decide only on the basis of the Complainant's factual statements and the documentary evidence provided in support of them (Paragraph 5(f) of The Rules).

1. CONFUSING SIMILARITY

The Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark "BOURSORAMA".

The WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (hereinafter referred to as "The WIPO Overview 3.0") in Paragraph 1.2.1 states: "Where the complainant holds a nationally or regionally registered trademark or service mark, this *prima facie* satisfies the threshold requirement of having trademark rights for purposes of standing to file a UDRP case".

The WIPO Overview 3.0 in Paragraph 1.7 states: "[...] in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing."

The WIPO Overview 3.0 in Paragraph 1.8 state: "Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element. The nature of such additional term(s) may however bear on assessment of the second and third elements."

In the WIPO Case No. D2003-0888, Dr. Ing. h.c. F. Porsche AG v. Vasily Terkin, the Panel stated that: "In numerous cases, it has been held that a domain name that wholly incorporates a Complainant's registered mark may be sufficient to establish confusing similarity for purposes of the UDRP."

In the WIPO Case No. D2006-0451, F. Hoffmann-La Roche AG v. Macalve e-dominios S.A., the Panel stated that: "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".

The Complainant has established that it owns a registered EUTM "BOURSORAMA", designated for the classes in connection with online financial products.

The Complainant's trademark is incorporated in its entirety and clearly recognizable in the disputed domain <boursorama-soutien.com>. The Complainant's trademark "BOURSORAMA" is accompanied by the French generic term "SOUTIEN" [i. e. "SUPPORT" in English]. The addition does not change the overall impression of the disputed domain name. Moreover, it adds to the confusion by leading consumers to believe that the Complainant operates the disputed domain name for its online financial business activities.

The addition of the gTLD <.com> does not change the overall impression of the disputed domain name either.

Therefore, the disputed domain name <boursorama-soutien.com>, as it reproduces the "BOURSORAMA" trademark in its entirety, with the addition of the generic term is considered to be confusingly similar to the relevant trademark.

As a result, the Panel finds that the Complainant has satisfied Paragraph 4(a)(i) of the UDRP.

1. THE RESPONDENT'S LACK OF RIGHTS OR LEGITIMATE INTERESTS IN THE DOMAIN NAME

The Panel finds that the Respondent lacks rights or legitimate interests in the disputed domain.

According to Paragraph 4(a)(ii) of the UDRP, the Complainant shall make a case that the Respondent lacks rights and legitimate interests in the disputed domain name. If the Complainant fulfills this demand the burden of proof shifts to the Respondent and so the Respondent shall demonstrate rights or legitimate interests in the disputed domain name. If the Respondent fails to prove its rights or legitimate interests, it is assumed that the Complainant satisfied the element of Paragraph 4(a)(ii) of the UDRP (CAC Case No. 102430, Lesaffre et Compagnie v. Tims Dozman). Moreover, past panels were of the view that it is difficult or sometimes impossible to prove negative facts, i.e., absence of rights or legitimate interest on the part of the Respondent. In this respect, past panels referred to the WIPO Case No. D2000-1769, Neusiedler Aktiengesellschaft v. Vinayak Kulkarni. Within the meaning of Paragraph 4(a)(ii) of the UDRP, once the complainant has made something credible (*prima facie* evidence), the burden of proof shifts to the Respondent to show that he has rights or legitimate interests in the domain name at issue by providing concrete evidence.

In the CAC Case No. 102279, FileHippo s.r.o. v. whois agent, the panel stated that "[i]n the absence of a response, the Panel accepts the Complainant's allegations as true that the Respondent has no authorization to use the Complainant's trademarks in the disputed domain name. Hence, as the Complainant has made out its *prima facie* case, and as the Respondent has not demonstrated any rights or legitimate interests as illustrated under Paragraph 4(c) of the Policy, nor has the Panel found any other basis for finding any rights or legitimate interests of the Respondent in the disputed domain name, the Panel concludes that the Complainant has satisfied the requirements of Paragraph 4(a)(ii) of the Policy."

In the Forum Case No. FA 1781783, Skechers U.S.A. Inc. v. Chad Moston / Elite Media Group, the panel stated that: "where a response is lacking, WHOIS information can support a finding that the respondent is not commonly known by the disputed domain name".

In the present case, the identification data about the registrant are not shown in the Whois database. Therefore, the Respondent is not identified in the Whois database as the disputed domain name holder as proven by the Complainant. However, according to the Registrar Verification, the registrant and the disputed domain name holder is the Respondent. To summarize, because of a lack of information about the identification of the registrant of the Whois database, the Respondent could not be known by the disputed domain name.

In addition, the Respondent is not related in any way to the Complainant and the Complainant has never granted any license or authorization to the Respondent to use the Complainant's trademark or apply for registration of the disputed domain name.

Moreover, the disputed domain name refers to an error web page (evidenced by Annex 5). Therefore, this Panel agrees with the Complainant that the Respondent has no demonstrable plan to use the disputed domain name.

The Respondent did not reply to the Complaint and so failed to demonstrate its rights or legitimate interests in the disputed domain name.

Therefore, the Panel finds that the Complainant has satisfied Paragraph 4(a)(ii) of the UDRP.

1. THE REGISTRATION AND USE OF THE DISPUTED DOMAIN NAME IN BAD FAITH

The Panel finds that the Respondent registered and used the disputed domain in bad faith.

The WIPO Overview 3.0 in Paragraph 3.1.4 states: "Panels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith."

The WIPO Overview 3.0 in Paragraph 3.3 states: "From the inception of the UDRP, panelists have found that 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."

In the WIPO Case No. D2006-1440, National Football League v. Thomas Trainer, the panel stated: "when a registrant, such as the Respondent here, obtains a domain name that is confusingly similar to a famous mark, with no apparent rights or legitimate interests in the name, and then fails to respond to infringement claims and a UDRP Complaint, an inference of bad faith is warranted."

In the WIPO Case No. D2015-1167, Valero Energy Corporation and Valero Marketing and Supply Company v. Sharad Bhat, the panel mentioned that: "In accordance with previous UDRP decisions, inactive or passive holding of a domain name, under the circumstances does not prevent a finding of bad faith use."

In the Forum Case No. FA 1773444, Ashley Furniture Industries, Inc. v. Joannet Macket / JM Consultants, the panel concluded that: “The Panel finds that Respondent’s lack of content at the disputed domain shows the lack of a bona fide offering of goods or services or a legitimate noncommercial or fair use per Policy ¶¶ 4(c)(i) and (iii).”

In the CAC Case No. 102827, JCDECAUX SA v. Handi Hariyono, the panel stated that: “There is no present use of the disputed domain name but there are several active MX records connected to the disputed domain name. It is concluded that it is inconceivable that the Respondent will be able to make any good faith use of the disputed domain name as part of an e-mail address.”

In the present case, the Complainant owns a EUTM “BOURSORAMA”, registered since 2001 (evidenced by an excerpt from the Trademark Register). Past panels have decided that the Complainant’s mark “BOURSORAMA” is well-known and has distinctive nature (see the CAC Case No. 101131, Boursorama SA v. PD Host Inc - Ken Thomas; WIPO Case No. D2017-1463, Boursorama SA v. Estrade Nicolas). Moreover, in France, the Complainant is the online banking reference with over 4,7 million customers and Its portal <boursorama.com> was the first national financial and economic information site and the first French online banking platform as proven by the Complainant.

Therefore, this Panel states that the Respondent must have been aware of the Complainant’s trademark and its reputation before the registration of the disputed domain name on March 25, 2023.

Additionally, the disputed domain name leads to an error page (evidenced by the print-screen provided by the Complainant). It is apparent that the Respondent is passively holding the disputed domain name and has no demonstrable plan of any activity in respect of the disputed domain name.

Furthermore, there are active MX records connected to the disputed domain name as evidenced by the print-screen furnished by the Complainant. Therefore, the disputed domain name might be used by the Respondent for e-mail activities. However, since the Respondent is not recognized under the disputed domain name, the disputed domain name cannot be used for good faith e-mail purposes by the Respondent.

Following the above-mentioned, the Panel finds that the Complainant has satisfied Paragraph 4(a)(iii) of the UDRP.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **boursorama-soutien.com**: Transferred

PANELLISTS

Name	Radim Charvát (Presiding Panelist)
------	---

DATE OF PANEL DECISION 2023-05-23

Publish the Decision
