

Decision for dispute CAC-UDRP-105388

Case number	CAC-UDRP-105388
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Time of filing	2023-04-26 09:41:28
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Domain names	bourso-info.com
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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	Thierry Bloch
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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 several trademarks including the terms “BOURSO” and “BOURSORAMA” such as the trademark “BOURSO” no. 3009973 registered on February 22, 2000 and the European trademark “BOURSORAMA” no. 001758614 registered on October 19, 2001.

The Complainant also owns a number of domain names, including the same distinctive wordings “BOURSORAMA” and “BOURSO”, such as the domain name <boursorama.com> registered since March 1, 1998, and <bourso.com> registered since January 11, 2000.

FACTUAL BACKGROUND

The Complainant is a pioneer and leader in its three core businesses, online brokerage, financial information on the Internet and online banking. It grows in Europe with the emergence of e-commerce and the continuous expansion of the range of financial products online. It bases its growth on innovation, commitment, and transparency.

In France, the Complainant is the online banking reference with over 4.7 million customers. The portal www.boursorama.com is the first national financial and economic information site and first French online banking platform.

The disputed domain name <bourso-info.com> was registered on April 20, 2023 which resolves to a registrar parking page with

commercial links.

PARTIES CONTENTIONS

The Complainant's contentions are summarised below.

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).

The Panel accepts the Complainant's rights arise by reason of its ownership of the registered trademarks "BOURSORAMA" and "BOURSO". The Panel also accepts that the Complainant's rights over its trademarks have been confirmed by previous Panels.

The question is whether the disputed domain name is identical or confusingly similar to the Complainant's trademarks.

The Complainant asserts that the disputed domain name is confusingly similar to its trademarks "BOURSORAMA" and "BOURSO" and its associated domain names.

Determining whether a disputed domain name is identical or confusingly similar to a trademark involves comparing them side by side. An exact character-for-character match makes a disputed domain name identical to the trademark. However, if the disputed domain name incorporates non-distinctive or generic terms with the dominant part of the trademark, it may be found to be confusingly similar.

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". See WIPO Case No. D2003-0888, Dr. Ing. h.c. F. Porsche AG v. Vasiliy Terkin.

Here, the trademark "BOURSO" is used in its entirety with the hyphen "-" and the generic term "INFO" added form the disputed domain name. Adding a non-distinctive term does not alter the overall impression in the eyes of internet consumers and does not avoid a finding of confusing similarity. See UEFA v Wei Wang easy king CAC-UDRP 104875.

Further, the Complainant contends the term "INFO" means "INFORMATION", and its addition to the Complainant's trademark "BOURSO" to form the disputed domain name is not sufficient to escape the finding that the disputed domain name is confusingly similar to the trademarks "BOURSORAMA" and "BOURSO".

The Panel accepts this contention, and further considers that the "BOURSO" trademark appears to be the dominant element in the disputed domain name that seeks to create the impression that it is associated with the Complainant. This will also likely create confusion.

The Panel also accepts the contention that the addition of the gTLD ".COM" does not add any distinctiveness to the disputed domain name and will be disregarded for the purposes of considering this ground.

Accordingly, the Panel considers that this ground is made out, and that the disputed domain name is confusingly similar to the Complainant's trademark "BOURSORAMA" and "BOURSO".

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).

A complainant is required to make out a prima facie case that the respondent lacks rights or legitimate interests. Once such a prima facie case is made, the respondent carries the burden of demonstrating rights or legitimate interests in the disputed domain name. If the respondent fails to do so, the complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy. See WIPO Case No. D2003-0455, Croatia Airlines d.d. v. Modern Empire Internet Ltd.

The Complainant asserts that the Respondent is not known as the disputed domain name.

A respondent is not commonly known by a disputed domain name if the WHOIS information is not similar to the disputed domain name. See Forum Case No. FA 1781783, Skechers U.S.A., Inc. and Skechers U.S.A., Inc. II v. Chad Moston / Elite Media Group.

The Panel accepts the WHOIS record adduced in evidence that supports the Complainant's assertion.

The Complainant further asserts that the Respondent is not known by the Complainant, and contends as follows:

- The Respondent is not affiliated with nor authorized by the Complainant in any way;
- 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 trademarks "BOURSORAMA" and "BOURSO", or apply for registration of the disputed domain name.

Finally, the Complainant contends that the disputed domain name resolves to a registrar parking page with commercial links, and adduces evidence to support this contention.

The Panel is satisfied that the evidence adduced shows that the Respondent is not commonly known by the disputed domain name, nor the Respondent has legitimate interest over the disputed domain name. Further the Panel infers from the evidence that the Respondent is not making a legitimate commercial or fair use of the disputed domain name but rather it is riding on the reputation of the Complainant to best serve its own unauthorised activity for commercial gain or otherwise using the disputed domain name. See Forum Case No. FA 970871, Vance Int'l, Inc. v. Abend; WIPO Case No. D2007-1695, Mayflower Transit LLC v. Domains by Proxy Inc./Yariv Moshe; NAF Case FA2206002001717 Comme Des Garcons, Ltd. and Comme Des Garcons Co., Ltd. v. Lina543 Valen354345cia.

No challenge has been made by the Respondent to the Complainant's contentions and assertions as it has not filed any administrative compliant response.

Accordingly, the Panel considers that this ground is made out, and that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

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).

There are two elements that must be satisfied – registration and use in bad faith.

Registration in bad faith

The Complainant relies on the evidence of its reputation in the online banking sector and cites previous panel decisions where those panels were satisfied that its trademarks are well-known and distinctive. See CAC Case No. 101131, BOURSORAMA v. PD Host Inc - Ken Thomas; WIPO Case No. D2022-4646 Boursorama S.A. v. Ibraci Links, Ibraci Links SAS.

The evidence shows, and the Panel accepts, that the Complainant's trademarks are well-known all around the world. The Complainant's trademarks were clearly registered prior to the registration of the disputed domain name. In addition, the Complainant has never authorized the Respondent to use its trademarks nor to register the disputed domain name.

The Complainant contends that given the distinctiveness of the Complainant's trademarks and its reputation that it is reasonable to infer that the Respondent has registered the disputed domain name with full knowledge of the Complainant's trademarks. See WIPO Case No. D2004-0673, Ferrari S.p.A v. American Entertainment Group Inc.

The Panel is prepared to infer that the Respondent registered the disputed domain name with full knowledge of the Complainant's rights to the trademarks. This amounts to registration in bad faith.

Use in bad faith

The Panel has already accepted the Complainant's well-known reputation in its trademarks. The disputed domain name resolves to a registrar parking page with commercial links. The Complainant contends that the Respondent is attempting to attract internet users for his own commercial gain by directing them to his own website. See WIPO Case No. D2018-0497, StudioCanal v. Registration Private, Domains By Proxy, LLC / Sudjam Admin, Sudjam LLC.

The Complainant further contends that the disputed domain name has been set up with MX records which suggests that it may be actively used for e-mail purposes. This, the Complainant contends, is also indicative of bad faith registration and use because any e-mail emanating from the disputed domain name could not be used for any good faith purpose. See CAC Case No. 102827, JCDECAUX SA v. Handi Hariyono.

The Panel accepts that the Respondent is using the disputed domain name to benefit his own commercial interests which are not authorized by the Complainant. Using the Complainant's trademarks in the disputed domain name to capitalize on the Complainant's goodwill is evidence of bad faith.

No challenge has been made by the Respondent to the Complainant's contentions and assertions as it has not filed any administrative compliant response.

Accordingly, the Panel accepts that the disputed domain name was registered and used by the Respondent in bad faith.

PROCEDURAL FACTORS

Notification of proceedings to the Respondent

When forwarding a Complaint, including any annexes, electronically to the Respondent, paragraph 2 of the Rules states that CAC shall employ reasonably available means calculated to achieve actual notice to the Respondent.

Paragraphs 2(a)(i) to (iii) set out the sort of measures to be employed to discharge CAC's responsibility to achieve actual notice to the Respondent.

On May 17, 2023 the CAC by its Nonstandard Communication stated as follows (omitting irrelevant parts):

That neither the written notice of the Complaint nor the advice of delivery thereof was returned to the Czech Arbitration Court.

As far as the e-mail notice is concerned, CAC received a notification that the e-mail notice was sent to postmaster@bourso-info.com and to thierrybloch@proton.me but CAC never received any proof of delivery or notification of undelivery. No further e-mail address could be found on the disputed site.

The Respondent never accessed the online platform.

Given the reasonable measures employed by CAC as set out in the above Nonstandard Communication, 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 Complainant owns the trademarks "BOURSORAMA" and "BOURSO", and the domain names <boursorama.com> and <bourso.com> which are used in connection with its goods or services.

The Respondent registered the disputed domain name <bourso-info.com> on April 20, 2023 which resolves to a registrar parking page with commercial links and appears to be set up with MX records.

The Complainant challenges the Respondent's registration of the disputed domain name under paragraph 4(a)(i) of the Uniform Dispute Resolution Policy and seeks relief that the disputed domain name be transferred to the Complainant.

The Respondent failed to file any administratively compliant response.

For the reasons articulated in the Panel's reasons above, the Complainant has satisfied the Panel of the following:

(a) The disputed domain name is confusingly similar to the Complainant's widely known "BOURSORAMA" and "BOURSO" trademarks.

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

(c) The disputed domain name has been registered and is being used in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **bourso-info.com**: Transferred

PANELLISTS

Name	William Lye OAM KC
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DATE OF PANEL DECISION	2023-05-25
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Publish the Decision
