

Decision for dispute CAC-UDRP-105358

Case number	CAC-UDRP-105358
Time of filing	2023-04-17 10:05:01
Domain names	bienvenueprofilbourso.com, conseildesprofilbourso.com, devenirprofilbourso.com, etablissementgroupebourso.com

Case administrator

Name	Olga Dvořáková (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	Mondesir Perco
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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 names.

IDENTIFICATION OF RIGHTS

The Complainant owns several trade marks including the names BOURSO and BOURSORAMA, including the French national trade mark BOURSO, registration number 3009973, first registered on 22 February 2000 in international classes 9, 35, 36, 38, 41 and 42; and the European trade mark BOURSORAMA, registration number 1758614, first registered on 19 October 2001 in international classes 9, 16, 35, 36, 38, 41 and 42. The Complainant's trade mark registrations predate the registration of the disputed domain names.

Furthermore, the Complainant owns multiple domain names consisting of the names BOURSO and BOURSORAMA, including <bourso.com> and <boursorama.com>, which connect to the Complainant's official website through which it informs Internet users and customers about its products and services.

FACTUAL BACKGROUND

The Complainant was one of the first online financial platforms in Europe. It grew with the emergence of e-commerce and the continued expansion of the range of financial products offered online. The Complainant's three core business areas are: online

brokerage, financial information and online banking. The Complainant has more than 4.7 million customers in France and is a leading provider of online banking services.

The disputed domain names <bienvenueprofilbourso.com>, <conseildesprofilbourso.com>, <devenirprofilbourso.com> and <etablissementgroupebourso.com> were registered by the Respondent on 10 and 11 April 2023. At the time of the Amended Complaint, the disputed domain names resolved to error pages; as at the date of this decision, they connect to the homepage of Interac, a digital payment company based in Canada.

PARTIES CONTENTIONS

The Complainant contends that the requirements of the Policy have been met and that the disputed domain names 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 names are identical or confusingly similar to a trade mark 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 Amended Complaint relates to four different disputed domain names registered by the same Respondent. The Panel considers it appropriate for the disputed domain names to be dealt with in a single UDRP proceeding. In determining this issue, the Panel respectfully adopts the reasoning of other Panels in relation to consolidation requests: paragraph 4(f) of the Policy provides that “[i]n the event of multiple disputes between [a respondent] and a complainant, either [the respondent] or the complainant may petition to consolidate the disputes before a single Administrative Panel....” This is permissible where it “promotes the shared interests of the parties in avoiding unnecessary duplication of time, effort and expense, reduces the potential for conflicting or inconsistent results arising from multiple proceedings, and generally furthers the fundamental objectives of the Policy.” (See, for example, WIPO Case No D2009-0985, MLB Advanced Media, The Phillies, Padres LP -v- OreNet, Inc). Furthermore, paragraph 3(c) of the Rules provides that “[t]he complaint may relate to more than one domain name, provided that the domain names are registered by the same domain-name holder.”

In view of the fact that the disputed domain names all incorporate the name element BOURSO, were registered within two days of each other, and are held by the same Respondent, the Panel finds that it would be fair and equitable, as well as procedurally efficient, to permit the consolidation of the disputed domain names into this single case.

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

With regard to the first UDRP element, the Panel finds that the disputed domain names are confusingly similar to the Complainant's trade mark BOURSO. Indeed, the disputed domain names incorporate the Complainant's trade mark in its entirety. The Panel follows in this respect the view established by numerous other decisions that a domain name which wholly incorporates a complainant's registered trade mark may be sufficient to establish confusing similarity for purposes of the UDRP (for example, WIPO Case No

D2003-0888, Dr. Ing. h.c. F. Porsche AG -v- Vasily Terkin <porsche-autoparts.com>). Furthermore, the addition of the French generic and descriptive terms "BIENVENUE PROFILS" (meaning "welcome profiles"), "CONSEIL DES PROFILS" (meaning "profile board"), "DEVENIR PROFILS" (meaning "become profiles"), "ETABLISSEMENT" (meaning "establishment"), or "GROUPE" (meaning "group") is not sufficient to alter the overall impression of the designation as being connected to the Complainant's trade marks. The Panel notes in this connection that these generic and descriptive terms are all closely related to the Complainant's business activities as a financial services provider offering online banking services. The addition of these generic and descriptive terms does not prevent the likelihood of confusion between the disputed domain names and the Complainant, its trade marks, and its associated domain names; rather to the contrary, it increases the likelihood of confusion by suggesting that the disputed domain names provide access to a client portal or registration page for service users of the Complainant's online business.

With regard to the second UDRP element, there is no evidence before the Panel to suggest that the Respondent has made any use of, or demonstrable preparations to use, the disputed domain names in connection with a bona fide offering of goods or services before notice of the dispute. Neither is there any indication that the Respondent is making legitimate non-commercial or fair use of the disputed domain names. Indeed, at the time of the Amended Complaint, the disputed domain names were not being used for any active website but resolved to error pages. A lack of content at the disputed domains has in itself been regarded by other panels as supporting a finding that the Respondent lacked a bona fide offering of goods or services and did not make legitimate non-commercial or fair use of the disputed domain name (see, for example, Forum Case No. FA 1773444, Ashley Furniture Industries, Inc v. Joannet Macket/JM Consultants). The fact that the disputed domain names now, at the time of this decision, resolve to the website of Interac, has no bearing on the finding that the Respondent has not made any use of, or demonstrable preparations to use, the disputed domain name in connection with a bona fide offering of goods or services. First, there is no suggestion that Interac is aware of or has consented to the disputed domain names being used to resolve to its own website; and, secondly, such conduct would otherwise be likely to constitute an attempt to divert Internet users for commercial gain to other sites that are not related to the Complainant and to switch them to other goods and services. This would not of course constitute a bona fide offering of goods or services. The Panel further finds that the Respondent is not affiliated with or related to the Complainant in any way and is neither licensed nor otherwise authorised to make any use of the Complainant's trade marks, or to apply for or use the disputed domain names. In addition, the Whois information does not suggest that the Respondent is commonly known by any of the disputed domain names. Against this background, and absent any response from the Respondent, or any other information indicating the contrary, the Panel concludes that the Respondent has no rights or legitimate interests in respect of the disputed domain names.

With regard to the third UDRP element, it is reasonable to infer that the Respondent either knew, or should have known, that the disputed domain names would be confusingly similar to the Complainant's trade marks, and that he registered the disputed domain names in full knowledge of the Complainant's trade marks. Indeed, it is likely that the disputed domains would not have been registered if it were not for the Complainant's trade marks (see, for example, WIPO Case No D2004-0673 Ferrari Spa -v- American Entertainment Group Inc). Furthermore, it is difficult to conceive of any plausible actual or contemplated active use of the disputed domain names by the Respondent that would not be illegitimate on the grounds that it would constitute passing off, an infringement of consumer protection legislation, or an infringement of the Complainant's rights under trade mark law under circumstances where the disputed domain name is confusingly similar to the Complainant's trade mark currently used by the latter to promote its goods and services. Finally, numerous other UDRP decisions have taken the view, which this Panel shares, that the passive holding of a domain name with knowledge that the domain name infringes another party's trade mark rights may in itself be regarded as evidence of bad faith registration and use (see, for example, WIPO Case No. D2000-0003, Telstra Corporation Limited v. Nuclear Marshmallows; and WIPO Case No. D2004-0615, Comerica Inc. v. Horoshiy, Inc.). Absent any response from the Respondent, or any other information indicating the contrary, the Panel therefore also accepts that the Respondent has registered and is using the disputed domain names in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **bienvenueprofilbourso.com**: Transferred
2. **conseildesprofilbourso.com**: Transferred
3. **devenirprofilbourso.com**: Transferred
4. **etablissementgroupebourso.com**: Transferred

PANELLISTS

Name	Gregor Kleinknecht LLM MCI Arb
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DATE OF PANEL DECISION 2023-05-25

Publish the Decision
