

Decision for dispute CAC-UDRP-105380

Case number CAC-UDRP-105380

Time of filing 2023-04-20 09:42:28

Domain names boursorama-bnk.com

Case administrator

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

Complainant

Organization BOURSORAMA

Complainant representative

Organization NAMESHIELD S.A.S.

Respondent

Name EUROPE ANFRAGE

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 has provided evidence of ownership of the following trademark registrations:

- European Union trademark registration No. 001758614 for BOURSORAMA (word mark), filed on July 13, 2000 and registered on October 19, 2001, in classes 09, 16, 35, 36, 38, 41 and 42;
- French trademark registration No. 3676762 for BOURSORAMA BANQUE (figurative mark), filed on September 16, 2009 and registered on February 19, 2010, in classes 35, 36 and 38.

FACTUAL BACKGROUND

The Complainant is an online brokerage, banking and financial information provider founded in France in 1995.

The Complainant is the owner of the domain name <boursorama.com>, which was registered on March 1, 1998 and is used by the Complainant in connection with its financial and economic information website as well as its banking platform.

The disputed domain name <boursorama-bnk.com>, was registered on April 17, 2023 and currently does not resolve to an active website. According to the screenshot submitted as annex to the Complaint, the disputed domain name was previously pointed to a

registrar parking page. According to the screenshot provided in annex to the Complaint, the disputed domain name had mail exchanger records (MX records) configured.

PARTIES CONTENTIONS

COMPLAINANT

The Complainant states that the disputed domain name is confusingly similar to its trademark BOURSORAMA, as it reproduces the trademark in its entirety with the sole deletion of the first letter “r” of the Complainant’s trademark, the addition of a hyphen and the three-letter term “bnk” (which would be an abbreviated version of “bank”) and the generic TLD “.com”.

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name because the Respondent i) is in no way affiliated with the Complainant ii) does not carry out any activity or has any business with the Complainant, iii) is neither licensed nor authorized by the Complainant to make any use of the trademark BOUSORAMA in any way, including via the registration of the disputed domain name; iv) is not commonly known by the disputed domain name; and v) has not made any use of disputed domain names since its registration.

Moreover, the Complainant submits that, considering the disputed domain name resolves to a registrar parking page, the Respondent failed to make any use of the disputed domain name, and has made no demonstrable plan to use the disputed domain name in connection with a bona fide offering of goods or services or for a legitimate non-commercial or fair use.

With reference to the circumstances evidencing bad faith, the Complainant highlights that, considering its trademark BOURSORAMA is highly distinctive and widely known in its field, it is highly unlikely that the Respondent was unaware of the mark at the time of registering the disputed domain name. The Complainant also submits that the misspelling of the Complainant’s trademark in the disputed domain name was intentionally designed to be confusingly similar with the Complainant’s trademark.

The Complainant also submits that, considering the disputed domain name resolved to a parking page, the Respondent has not demonstrated any activity in respect to the disputed domain name. The Complainant also contends that it is impossible to conceive of any plausible actual or contemplated active use of the disputed 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 further underlines that the disputed domain name had also been set up with MX records, a circumstance which suggests that the disputed domain name may have been actively used for email purposes. Such circumstance would indicate bad faith registration and use since any email emanating from the disputed domain name could in no way be used for any good faith purpose.

RESPONDENT

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

1. The Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark BOURSORAMA as it reproduces the trademark in its entirety with the mere deletion of the first letter "r" of the Complainant's trademark and the addition of a hyphen, the three-letter term "bnk" (which can be interpreted as an abbreviation for "bank") and the generic TLD ".com", which are not sufficient to prevent a finding of confusing similarity under paragraph 4(a)(i) of the Policy.

2. With reference to the Respondent's rights or legitimate interests in the disputed domain name, the Panel finds that the Complainant has made a prima facie case and that the Respondent, by not submitting a Response, has failed to provide any element from which a Respondent's right or legitimate interest in the disputed domain name could be inferred.

The Panel notes that, based on the records, the Complainant has not authorized the Respondent to register and use its trademark BOURSORAMA. Moreover, there is no evidence that the Respondent might be commonly known by the disputed domain name or a name corresponding to the disputed domain name. Furthermore, in view of the fact that the disputed domain name, currently not resolving to any active webpage, was previously pointed to a mere registrar parking page, the Panel finds that the disputed domain name was not used in connection with a bona fide offering of goods or services or a legitimate non-commercial or fair use without intent for commercial gain to misleadingly divert consumers or to tarnish the Complainant's trademark.

3. As to bad faith at the time of the registration, the Panel finds that, in light of i) the distinctiveness of the Complainant's trademark BOURSORAMA; ii) of the prior use of such trademark in connection with the Complainant's online information portal at <boursorama.com> and the Complainant's banking services; iii) the fact that the disputed domain name incorporates a clear misspelling of the Complainant's trademark BOURSORAMA in combination with the three-letter term "bnk", which may be interpreted as an abbreviation for "bank", thus referring to the Complainant's field of activity, the Respondent very likely registered the disputed domain name having the Complainant's trademark in mind.

Moreover, the disputed domain name, previously pointed to a registrar parking page and currently not resolving to any active webpage, has been passively held. As established in a number of prior cases, the concept of "bad faith use" in paragraph 4(b) of the Policy includes not only positive action but also passive holding, especially in cases of domain name registrations corresponding to distinctive and well-known trademarks.

Furthermore, the Complainant has shown that the disputed domain name had MX records configured and, therefore, it might have been used for e-mail communication purposes. The Panel finds that, when domain names are identical or confusingly similar to the trademarks of banks or other operators in the financial sector, the potential risks posed by phishing must be considered an additional circumstance of bad faith evidence, since phishing e-mails received from email accounts based on the disputed domain name could be even more misleading to recipients.

Therefore, the Panel finds that the Respondent's registration and use of the disputed domain name amounts to bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

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

PANELLISTS

Name	Luca Barbero
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DATE OF PANEL DECISION 2023-05-25

Publish the Decision
