

Decision for dispute CAC-UDRP-105471

Case number CAC-UDRP-105471

Time of filing 2023-05-26 09:25:33

Domain names securitebourso.com

Case administrator

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

Complainant

Organization BOURSORAMA

Complainant representative

Organization NAMESHIELD S.A.S.

Respondent

Name Frederique Sender

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 owns the French trademark BOURSO, registered number 3009973, which was registered on 22 February 2000 in classes 9, 35, 36, 38, 41 and 42.

FACTUAL BACKGROUND

The Complainant's core businesses are online brokerage, financial information on the Internet and online banking. In France it has over 4.9 million customers.

The Complainant owns the trademark BOURSO, which predates the registration of the disputed domain name. The Complainant also owns the domain names <boursorama.com>, registered 1 March 1998, and <bourso.com>, registered 11 January 2000.

The disputed domain name was registered on 22 May 2023. It resolves to an error page.

PARTIES CONTENTIONS

COMPLAINANT:

In summary, the Complainant asserts that the disputed domain name is confusingly similar to its trademark, BORSO. It asserts that the disputed domain name wholly incorporates its trademark and the addition of the generic term "securite" is not sufficient to escape the disputed domain name being found confusingly similar its trademark.

The Complainant also asserts that the Respondent has no rights or legitimate interests in the disputed domain name and states:

- i. the Respondent is not known as the disputed domain name, is not affiliated with nor authorised by the Complainant in any way nor licensed to use its trademark BOURSO or to apply for registration of the disputed domain name;
- ii. the Complainant does not carry out any activity for nor has any business with the Respondent; and
- iii. the disputed domain name resolves to an error page and the Respondent does not use nor have demonstrable plans to use it.

The Complainant asserts that the disputed domain name was registered and used in bad faith and states:

- i. the disputed domain name includes its well-known trademark BOURSO and given the distinctiveness of the Complainant's trademarks and reputation, it is reasonable to infer that the Respondent 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;
- ii. the disputed domain name resolves to an error page and 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;
- iii. previous panels have held that the mere registration of a domain name that is identical or confusingly similar to a well-known trademark by an unaffiliated entity may be sufficient to create a presumption of bad faith (WIPO Summary, version 3.0, section 3.1.4); and
- iv. the disputed domain name is not used or does not indicate any information about a development project and previous UDRP decisions have considered this "passive holding" as a bad faith use.

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.

Paragraph 4(a) of the Policy requires the Complainant to prove each of the following three elements:

- i. the disputed domain is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- ii. the Respondent has no rights or legitimate interests in the disputed domain name; and
- iii. the disputed domain name has been registered and used in bad faith.

IDENTICAL OR CONFUSINGLY SIMILAR

The top level domain, such as “.com” is a standard registration requirement and can be disregarded when assessing whether the disputed domain name is confusingly similar to the Complainant’s trademark.

The disputed domain name <securiteborso.com> includes the whole of the Complainant’s registered trademark, BORSO, which is clearly recognisable in the disputed domain name. A domain name that wholly incorporates a Complainant’s registered mark 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. Vasily Terkin). Adding the word “securite” to the Complainant’s trademark is insufficient to avoid a finding of confusingly similarity to the Complainant’s mark.

The Panel finds that the disputed domain name is confusingly similar to the Complainant’s trademark BORSO, and that the requirements of paragraph 4(a)(i) of the Policy have been met.

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant has made out a prima facie case that the Respondent lacks rights or legitimate interest in the disputed domain name. The burden of proof now shifts to the Respondent to show that he has relevant rights.

The Respondent has not filed a Response, nor challenged any of the Complainant’s assertions. The Respondent is not commonly known as the disputed domain name. The Panel accepts that the Complainant does not know or carry out any business with the Respondent and has not authorised him to use its trademark. The disputed domain name resolves to an error page and there is no evidence to show that the Respondent has any relevant rights or legitimate interest in the disputed domain name.

Considering these factors, the Panel finds that the Respondent has no rights or legitimate interest in the disputed domain name and that the requirements of paragraph 4(a)(ii) of the Policy have been met.

REGISTERED AND BEING USED IN BAD FAITH

The disputed domain name is confusingly similar to the Complainant’s distinctive and well-known trademark BORSO. That trademark pre-dates the registration of the disputed domain name by over twenty years. It is improbable that the Respondent did not know of the Complainant and its trademark when he registered the disputed domain name.

The disputed domain name resolves to an error page. The Respondent has failed to submit a Response and has not provided any evidence of any actual or contemplated good-faith use. The Respondent has used a privacy service to conceal his identity. The Respondent is not affiliated with the Complainant and there appears no reason to register a domain name that is confusingly similar to the Complainant’s distinctive and well-known trademark other than to create a likelihood of confusion with that mark. The Respondent has not demonstrated any legitimate activity in respect of the disputed domain name, and it is impossible to conceive of any plausible actual or contemplated use of the disputed domain name by the Respondent that would not infringe the Complainant’s rights.

Taking these factors into account, the Panel concludes that the disputed domain name was both registered and is being used in bad faith and that the requirements of paragraph 4(a)(iii) of the Policy have been met.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. securitebourso.com: Transferred

PANELLISTS

Name	Veronica Bailey
------	-----------------

DATE OF PANEL DECISION 2023-06-22

Publish the Decision
