

Decision for dispute CAC-UDRP-105487

Case number	CAC-UDRP-105487
Time of filing	2023-05-30 08:40:57
Domain names	boursorama-clean.com

Case administrator

Name	Olga Dvořáková (Case admin)
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Complainant

Organization	BOURSORAMA SA
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Complainant representative

Organization	NAMESHIELD S.A.S.
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Respondent

Organization	My Store
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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 the European Union trademark BOURSORAMA with registration No.001758614, registered on 19 October 2001 for goods and services in International Classes 9, 16, 35, 36, 38, 41 and 42 (the "BOURSORAMA trademark").

FACTUAL BACKGROUND

The Complainant has three core businesses - online brokerage, financial information on the Internet and online banking, and has over 4,9 million customers in France. It operates the domain names <boursorama.com>, registered on 1 March 1998, and <boursoramabanque.com>, registered on 26 May 2005. The Complainant's online portal at www.boursorama.com is the premier national financial and economic information website and the premier French online banking platform, being the No.17 most visited digital media in France with 54.7 million visits and nearly 500 million page views.

The disputed domain name <boursorama-clean.com> was registered on 25 May 2023. It is inactive.

PARTIES CONTENTIONS

COMPLAINANT:

The Complainant contends that the disputed domain name is confusingly similar to its BOURSORAMA trademark, which it includes in its entirety. The Complainant asserts that the addition of the dictionary word "clean" is not sufficient to exclude the confusing similarity between the disputed domain name and the BOURSORAMA trademark.

The Complainant asserts that the Respondent has no rights or legitimate interests in respect of the disputed domain name, as it is not commonly known under it and is not affiliated to the Complainant, who has not given any authorization to the Respondent to use the BOURSORAMA trademark. The Complainant contends that Respondent does not use the disputed domain name as it is inactive.

The Complainant contends that the disputed domain name was registered and is being used in bad faith. According to the Complainant, its BOURSORAMA trademark is distinctive and well-known, so the Respondent must have known it when it registered 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 it 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.

RESPONDENT:

The Respondent did not submit a Response in this proceeding.

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

Pursuant to the Policy, paragraph 4(a), a complainant must prove each of the following to justify the transfer of a domain name:

- (i) the domain name 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 respect of the domain name; and
- (iii) the domain name was registered and is being used in bad faith.

In this case, the Provider has employed the required measures to achieve actual notice of the Complaint to the Respondent, and the Respondent was given a fair opportunity to present its case.

By the Rules, paragraph 5(c)(i), it is expected of a respondent to: "[r]espond specifically to the statements and allegations contained in the complaint and include any and all bases for the Respondent (domain name holder) to retain registration and use of the disputed domain name ..."

In this proceeding, the Respondent has not used the opportunity provided to it under the Rules and has not submitted a substantive

Response addressing the contentions of the Complainant and the evidence submitted by it.

Identical or confusingly similar

The Complainant has provided evidence and has thus established its rights in the BOURSORAMA trademark.

The Panel notes that a common practice has emerged under the Policy to disregard in appropriate circumstances the general Top-Level Domain (“gTLD”) section of domain names for the purposes of the comparison under the Policy, paragraph 4(a)(i). The Panel sees no reason not to follow the same approach here, so it will disregard the “.com” gTLD section of the disputed domain name.

The relevant part of the disputed domain name is therefore the sequence “boursorama-clean”, which incorporates the BOURSORAMA trademark entirely with the addition of the dictionary word “clean”, and these two elements are separated by a hyphen. The BOURSORAMA trademark is easily recognizable within the disputed domain name. As discussed in section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (the “WIPO Overview 3.0”), 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.

Taking all the above into account, the Panel finds that the disputed domain name is confusingly similar to the BOURSORAMA trademark in which the Complainant has rights.

Rights and legitimate interests

While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often-impossible task of “proving a negative”, requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.

The Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name, because the Respondent was not authorized to use the BOURSORAMA trademark and is not commonly known under the disputed domain name. According to the Complainant, the Respondent is not using the disputed domain name. Thus, the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name.

The Respondent has not submitted a Response and has not provided an explanation of the reasons why it has registered the disputed domain name and how it intends to use it.

In the Panel’s view, the circumstances of this case do not support a finding that the Respondent has rights and legitimate interests in the disputed domain name. It is confusingly similar to the distinctive BOURSORAMA trademark, which may create an impression in Internet users that it is related to the Complainant. In the lack of any arguments or evidence to the contrary, the above leads the Panel to the conclusion that it is more likely than not that the Respondent, being aware of the goodwill of the Complainant’s BOURSORAMA trademark, has registered the disputed domain name targeting this trademark in an attempt to exploit its goodwill by confusing Internet users that the disputed domain name is affiliated to the Complainant. The Panel does not regard such activities as giving rise to rights or legitimate interests in the disputed domain name.

Therefore, the Panel finds that the Respondent does not have rights or legitimate interests in the disputed domain name.

Bad faith

Paragraph 4(b) of the Policy lists four illustrative alternative circumstances that shall be evidence of the registration and use of a domain name in bad faith by a respondent, namely:

“(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or

(ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your website or other online location, by creating a likelihood of confusion with the complainant’s mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product or service on your website or location.”

The registration of the distinctive BOURSORAMA trademark predates by 22 years the registration of the disputed domain name. It reproduces the BOURSORAMA trademark entirely with the addition of the dictionary word “clean”, which may lead Internet users to believe that it is affiliated to the Complainant. The Panel is therefore of the view that the Respondent is more likely to have registered the disputed domain name with knowledge of the Complainant’s trademark rights and with the intention of taking advantage of its goodwill.

The Respondent has not provided any plausible explanation of its choice of domain name, and given the circumstances of this case, the Panel is not aware of any good faith use to which the disputed domain name may be put without the consent of the Complainant.

This satisfies the Panel that the disputed domain name has been registered and 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. **boursorama-clean.com**: Transferred

PANELLISTS

Name	Assen Alexiev
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DATE OF PANEL DECISION **2023-06-27**

Publish the Decision
