

Decision for dispute CAC-UDRP-105455

Case number	CAC-UDRP-105455
Time of filing	2023-05-25 11:40:43
Domain names	boursorama-appli.com, boursorama-application.com, secu-bourso.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	Yamamoto Isoroku
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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 is the trademark owner of the following rights:

- 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 a leader in the online banking and financial sectors active in France since 1995.

The Complainant is also the owner of a number of domain names such as <boursorama.com>, which was registered on March 1, 1998 and <bourso.com> registered since January 11, 2000.

The disputed domain names <boursorama-appli.com>, <boursorama-application.com> and <secu.bourso.com> were registered on

April 17, 2023 and currently do not resolve to any active websites.

PARTIES CONTENTIONS

COMPLAINANT

The Complainant states that the disputed domain names are confusingly similar to its trademarks BOURSORAMA and BOURSO, as they reproduce the trademarks in their entirety with the adding of generic or descriptive terms such as appli; application and secu.

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 trademarks BOURSORAMA or BOURSO iv) is not commonly known by the disputed domain names; and v) has not made any use of disputed domain names since its registration.

Moreover, the Complainant submits that, considering the disputed domain names are not actively used, the Respondent has made no plan to use the disputed domain names 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 trademarks BOURSORAMA and BOURSO are highly distinctive and widely known in its field, it is highly unlikely that the Respondent was unaware of the marks at the time of registering the disputed domain names.

The Complainant also submits that, considering the disputed domain names resolved in non active web sites, the Respondent has not demonstrated any activity in respect to the disputed domain names. 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.

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 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 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 name have been registered and are 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

The Panel finds that the disputed domain names are confusingly similar to the Complainant's trademark.

The Complainant's trademarks BOURSORAMA and BOURSO registered by the Complainant as following:

- 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; and
- 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 3 are entirely included and recognizable in all three disputed domain names

In the absence of any response, or any other information from the Respondent indicating the contrary, the Panel further holds that the Complainant successfully presented its prima facie case and that the Respondent has no rights or legitimate interests in respect of the disputed domain names.

In particular, the Respondent is not affiliated with nor authorized by the Complainant in any way, and it is not related to the Complainant's business. In addition, the Panel does not dispose of any elements that could lead the Panel to the conclusion that the Respondent is commonly known by the disputed domain names or that it has acquired trademark rights pursuant to paragraph 4(c)(ii) of the Policy. Finally, no content is displayed on the website to which the disputed domain names resolve. Such use can neither be considered a bona fide offering of goods or services nor a legitimate noncommercial or fair use of the disputed domain names, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue in the sense of paragraph 4(c)(i) and (iii) of the Policy. In addition, the Respondent's hiding of its identity behind a privacy service is also taken in consideration, and this Panel finds that it most likely that the Respondent selected the disputed domain names with the intention to take advantage of the Complainants' registered trademark by registering domain names consisting of those two trademarks with the intent to attract Internet users for commercial gain.

Finally, the Panel finds that the disputed domain names have been registered and are being used in bad faith.

According to the Complainants' undisputed allegations, the Respondent does not actively use the disputed domain names. With comparative reference to the circumstances set out in paragraph 4(b) of the Policy deemed to establish bad faith registration and use, prior UDRP panels have found that the apparent lack of active use (e.g., to resolve to a website) of a domain name without any active attempt to sell or to contact the trademark holder (passive holding), does not as such prevent a finding of bad faith (see *Actelion Pharmaceuticals, Ltd v. Whois Agent, Whois Privacy Protection Service, Inc / Jean-Paul Clozel*, WIPO Case No. D2016-0068; *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. D2000-0003).

In the case at hand, the Panel finds that the further circumstances surrounding the registration - as above described - suggest that the Respondent was aware that it has no rights or legitimate interests in the disputed domain names, and that the disputed domain names have been registered and are being used in bad faith (see *Actelion Pharmaceuticals, Ltd v. Whois Agent, Whois Privacy Protection Service, Inc / Jean-Paul Clozel*, supra; *America Online, Inc. v. Antonio R. Diaz*, WIPO Case No. D2000-1460):

Disputed domain names combining the Complainant's entire trademarks with descriptive terms - which are commonly used words especially in the Complainant's field of activity, Respondent's failure to reply to the Complaint and furthermore hiding its identity behind a privacy shield are proofs of bad faith. Complainant's registered trademarks has existed for quite a lot of time on the market being the Complainant a leader in the financial operations. No Respondent's plausible legitimate active use is conceivable with the disputed domain names.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **boursorama-appli.com**: Transferred
2. **boursorama-application.com**: Transferred
3. **secu-bourso.com**: Transferred

PANELLISTS

Name	Massimo Cimoli
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DATE OF PANEL DECISION 2023-07-03

Publish the Decision
