

Decision for dispute CAC-UDRP-105480

Case number	CAC-UDRP-105480
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Time of filing	2023-05-30 08:41:30
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Domain names	bourso-authenty.com
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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	Gabriel Ange
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OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings which are pending or decided and relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant relies on the following French trademark, for which it has adduced evidence of registration and validity: No. 3009973 "BOURSO", registered on 22 February 2000 in Nice Classification List classes 9, 35, 36, 38, 41 and 42.

According to proof adduced by the Complainant, the Complainant is the registrant of the domain name <boursorama.com>, registered on 1 March 1998, and of the domain name <bourso.com>, registered on 11 January 2000.

The Respondent registered the disputed domain name <bourso-authenty.com> on 24 May 2023, according to the Registrar Verification obtained by the CAC Case Administrator.

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:

The Complainant, Boursorama, is a French company that is a pioneer and leader in its three core business areas: online brokerage, online financial information, and online banking. The Complainant has close to 5 million customers in France for online banking, making it the point of reference in the market for this service nationally.

The Complainant has adduced evidence to show that the disputed domain name resolves to a test web page generated by the Respondent's internet service provider.

ADDITIONAL PERTINENT FACTUAL CIRCUMSTANCES REVEALED TO THE PANEL FROM THE CASE FILE AND ITS SUBSEQUENT INQUIRIES UNDER THE PANEL'S GENERAL POWERS

- The Respondent's name is given as "Gabriel Ange" (i.e. "Gabriel Angel" if rendered in English).
- The Respondent's address as given within the Paris area does not exist.
- The Respondent's telephone number as given is for an Andorra mobile number.
- The Complaint in this proceeding and the CAC's Registrar Verification were filed on 25 May 2023, i.e. within 24 hours from the Respondent's registration of the disputed domain name.
- The character string <authenty> that appears in the disputed domain name is similar to that employed internationally by commercial providers of one-time password (OTP) or other online authentication services.
- The Complainant's online trading brand is BOURSORAMA as contained in <boursorama.com>.
- The Complainant's domain name <bourso.com> adduced in evidence does not resolve to an active domain name.

PARTIES CONTENTIONS

COMPLAINANT:

The disputed domain name is confusingly similar to its trademark BOURSO and domain names associated with it. Indeed, the domain name includes this trademark in its entirety. The Complainant asserts that the addition of the generic term "AUTHENTY" is not sufficient to escape a finding that the disputed domain name is confusingly similar to the trademark BOURSO. It is well established that "a domain name that wholly incorporates a Complainant's registered trademark may be sufficient to establish confusing similarity for purposes of the UDRP". Moreover, the Complainant contends that the addition of the suffix ".COM" does not change the overall impression of the designation as being connected to the trademark BOURSO or prevent the likelihood of confusion between the disputed domain name and the Complainant, its trademark and its associated domain names. Finally, many UDRP decisions have also confirmed the Complainant's rights such as WIPO Case No. D2022-3936, BOURSORAMA S.A. v. Laetitia Dramais, bourso pret immo <bourso-pret-immo.com> and CAC Case No. 104986, BOURSORAMA SA v. Didier Jore <supportbourso.com>.

The Complainant contends that it is required to make out a prima facie case that the Respondent lacks rights or legitimate interests. Once such prima facie case is made, the Respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(a) (ii) of the UDRP. The Complainant further asserts that the Respondent is not known as the disputed domain name. Past panels have held that a Respondent was not commonly known by a disputed domain name if the Whois information was not similar to the disputed domain name. Nor is the Respondent known to or affiliated with or authorized by the Complainant in any way. Moreover, the disputed domain name resolves to a test page. The Respondent did not make any use of the disputed domain name, and it affirms that the Respondent has no demonstrable plan to use the disputed domain name. This proves a lack of legitimate interests in respect of the disputed domain name, whose purpose is instead to create a likelihood of confusion with the Complainant and its trademark. Accordingly, the Respondent has no rights or legitimate interests on the disputed domain name.

With its 4.9 million customers, BOURSORAMA is the French online banking reference. The disputed domain name includes the well-known and distinctive trademark BOURSO as confirmed by the decision WIPO Case No. D2022-4646 Boursorama S.A. v. Ibraci Links, Ibraci Links SAS ("On the balance of the probabilities, the Panel determines that Respondent was aware of Complainant and its BOURSO trademark, and targeted that mark when registering the Domain Name Complainant's BOURSO mark is well established"). On those facts, given the distinctiveness of the Complainant's trademarks and reputation, it is reasonable to infer that the Respondent has registered the domain name with full knowledge of the Complainant's trademarks. The disputed domain name <bourso-authenty.com> resolves to a test page. 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 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. Based on this information, previous panels have held that the mere registration of a domain name that is identical or confusingly similar to a well-known or widely-known trademark by an unaffiliated entity may be sufficient to create a presumption of bad faith. In addition, the domain name is not used or does not indicate any information about a development project. Such a practice, defined in many previous decisions as "passive holding", is considered as a bad faith use. On these bases, the Complainant concludes that the Respondent has registered and is using the disputed domain name in bad faith.

RESPONDENT:NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant failed in its contentions adequately to show the disputed domain name to be 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). However, the Case File as a whole, together with consequent inquiries made by the Panel under its general powers, disclosed sufficient circumstances to enable the Panel to ascertain that confusing similarity was indeed present.

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 failed in its contentions adequately to show that the disputed domain name was registered and is being used in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy). However, the Case File as a whole, together with consequent inquiries made by the Panel under its general powers, disclosed sufficient circumstances to enable the Panel to ascertain that bad faith was indeed present.

PROCEDURAL FACTORS

The Panel is satisfied that all procedural requirements under the UDRP were met and that there is no other reason why it would be inappropriate to provide a decision.

The Panel notes that:

(1) as indicated under Factual Background, it exercised its general powers under Paragraph 10 of the Rules to check certain of the Respondent's registration details during the Panel's scrutiny of the Case File;

(2) in its résumé of the Parties' contentions, citation of some Decisions of past Panels contained in the Amended Complaint has not been repeated because those Decisions add little to the essential elements of the case, whereas others that are pertinent to the present Decision have been repeated in full;

(3) the Complainant made a procedural contention that it needed only make a prima facie case regarding the Respondent's lack of rights or a legitimate interest. The Panel considers this contention to warrant no consideration in this uncontested case but notes that the circumstances of this case required, by contrast, consideration of the whole Case File;

(4) the Panel observes that the Complainant failed to substantiate its case sufficiently in its contentions regarding the factual circumstances of this proceeding in particular. Nevertheless, references in the Complaint to certain Decisions of past Panels (namely, WIPO Decision BOURSORAMA S.A. contre Laetitia Dramais, boursor pret immo No. D2022-3936 and CAC-UDRP-104986 <supportboursor.com> (2022)) supplied considerations which assisted the Panel to perform a closer examination of pertinent factors that also apply in this case.

PRINCIPAL REASONS FOR THE DECISION

1. General remarks on application of the UDRP test in this proceeding and of its first element in particular

Whereas a trademark affords its holder limited monopoly rights on a country-to-country basis, the primary purpose of the Domain Name System according to ICANN's website is to make <.com> and other generic Top-Level Domains "available for registration by Internet users across the globe". ICANN recognizes that disputes may arise "from registrations allegedly made abusively" and has provided the UDRP procedure for them.

Yet it did so in a manner that sets a high bar for Complainants to surmount, thereby protecting the generality of users from excessive claims by rights holders. UDRP Paragraph 4(a)(i) requires that "In the administrative proceeding, the complainant must prove that each of ... three elements are present", namely that the Respondent's "domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights", that the Respondent lacks rights or a legitimate interest in the disputed domain name, and that the Respondent registered and is using it in bad faith.

In relation to the first element, it will be noted from the UDPR wording cited that it refers not to mere parts of a domain name as being "identical or confusingly similar" to a Complainant's mark but to the domain name as such. Thus, despite incorporation of the string <boursor> in the disputed domain name, the additional characters of <authentic> render it non-identical. The Panel accepts on the other hand that the technically imposed TLD extension <.com> has no bearing in this case.

This leaves the question of "confusing similarity" between the disputed domain name <boursor-authentic.com> and the Complainant's trademark BOURSOR. And it is this which poses the central issue in this case and introduces some complexity that the Panel has resolved as set out below.

2. Application of the "confusing similarity" notion to the disputed domain name

The Panel notes that previous Panels have taken the view that “where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing” (WIPO Jurisprudential Overview 3.0, section 1.7). And it has no hesitation in finding that the Complainant has indeed established its rights here for these purposes (see Identification of Rights).

But merely surmounting the threshold for standing does not satisfy the Panel as to the substantive question of whether the domain name's containing the string <bourso> makes it confusingly similar to the Complainant's trademark.

Rather, the Panel finds at first glance, and without further explanation of the context, that the disputed domain name's inclusion of the string <authenty> tends to distance the disputed domain name as a whole from the business areas in which the Complainant declares it is active -- and to which, importantly, the trademark's scope applies (cf. the reference to the Nice classes under which it was registered in France under Identification of Rights).

Thus, an internet user might wonder why <bourso> is included at all, because the more strongly distinctive term <authenty> seems dominant and thus dissociative -- not similar.

One is here necessarily in the realm of subjective appreciation. And it is thus precisely on this point that the Panel would have expected the Complaint to examine, rather than merely dismiss out of hand, the semantic significance or likely impression on internet users of the <authenty> component in the disputed domain name, especially considering that the string <bourso> precedes and thus tends to qualify the <authenty> component lexically.

Were this the end of the matter, the Panel might have been obliged to deny the Complaint, for lack of sufficient proof under the first UDRP element.

However, the Complaint contains significant -- albeit scattered -- indications that, combined with the Panel's own inquiries arising from scrutiny of the Case File, allow further explanation of the context behind the combination of the disputed domain name's components.

These are in particular revealed upon consideration now of the second and third UDRP elements in this case. (As to the procedural aspect concerned here, see Procedural Factors.)

3. The second and third UDRP elements in this case and their relation to the issue of confusing similarity

The Case File's only data on the Respondent give the highly dubious registrant identity of “Gabriel Ange” with a non-existent Parisian address in connection with registration of a domain name that includes a protected brand owned by France's leading online bank.

As to the second UDRP element, there can hence in this uncontested case be much question of the Respondent having a right or legitimate interest in the disputed domain name. To the contrary, the behaviour just indicated is entirely consistent with the kind of overtly false registration profile that this and other Panellists regularly see in UDRP cases and which is often associated with registrants aiming to conduct unlawful activities, such as phishing. Indeed, phishing is a rampant problem currently for precisely the online financial services sector, as pointed out by the Panellist in the WIPO D2022-3936 case referred to in the Complaint (a case brought by the same Complainant as in the present proceeding).

As to the third UDRP element of alleged bad faith registration and use, the Complainant claims that the presence of a server test page indicates lack of use of the disputed domain name or preparation for it and thereby evidence of bad faith.

The Panel rejects this argument as specious, since the Respondent had registered the disputed domain name scarcely 24 hours before the Complainant lodged its Complaint.

The Complainant places itself on only slightly thinner ice by imputing knowledge of the Complainant's brand. But this reasoning too is defective. It would apply to the BOURSORAMA but not convincingly to the much less well known mark BOURSO or to the <bourso.com> domain name, which, significantly, is not at the time of preparing this Decision associated with any active web site.

Nor does the Complainant consider under this third UDRP element the obvious factual factor of what role the <authenty> component of the disputed domain name may play against a background of what appears to be a highly suspicious registration, as elucidated above.

Given, however, that background and the self-evident possibility that the <authenty> component of the disputed domain component is dominant in the name, as also mentioned earlier, the Respondent's intention becomes clearer and is confirmed by rudimentary inquiries the Panel performed into the aspect of authentication <authenty> suggests. These quickly reveal many service denominators (and several trademarks and domain names) that truncate the last part of “authentication” or “authenticate”, one denominator in use being “authenty” in relation to a one-time password authentication service.

Taking, as one must when suspicion is aroused of a possible scam, the position of an internet banking user, it is then not difficult to see the implications for misuse of combining a signifier for authentication with an online banking mark, since authentication of online customers' identities can be needed for them to access their bank or related accounts. In this scenario, inclusion of <bourso> in the disputed domain name is suggestive of a connection to the Complainant's well-known BOURSORAMA services in particular.

It follows that a credible risk is posed to the Complainant's customers by the potential for misuse that the disputed domain name opens up in the hands of a registrant whose identity is concealed. More particularly, the ingredients for concocting a backstory are readily apparent from the two components of the disputed domain name's stem, use of one of which, <bourso>, is dependent on violating the Complainant's trademark.

Doubtless, other material drawing on the Complainant's BOURSORAMA brand might be employed to reinforce such a backstory, while it is difficult to conceive of another scenario in this case's circumstances that would involve legitimate use of a domain name so constructed.

In conclusion, the connection between the second and third UDRP elements indicates to the Panel not only the presence of bad faith but also factors which confirm confusing similarity for the purposes of the first UDRP element

4. Final finding and order

Upon closer examination of the three elements of the UDRP test taken together, and taking account of observations made in certain past Decisions involving the same Complainant, the Panel finds that all elements of the UDRP test are satisfied.

The Panel therefore orders the disputed domain name to be transferred to the Complainant.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

- 1. **bourso-authenty.com**: Transferred

PANELLISTS

Name	Kevin Madders
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DATE OF PANEL DECISION 2023-07-06

Publish the Decision