

Decision for dispute CAC-UDRP-105557

Case number	CAC-UDRP-105557
Time of filing	2023-06-22 09:06:42
Domain names	espace-clients-boursorma.com, clients-login-boursorama-banque.com

Case administrator

Organization	Iveta Špiclová (Czech Arbitration Court) (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	fg gfgs
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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 owner of a large portfolio of trademarks. In particular, BOURSORAMA SA owns the EU Registration No. 1758614 "BOURSORAMA" registered on October 19, 2001 (and duly renewed) for classes 9, 16, 35, 36, 38, 41 and 42.

FACTUAL BACKGROUND

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

The Complainant informs that Boursorama is pioneer and leader in its three core businesses, (i) online brokerage, (ii) financial information on the Internet and (iii) online banking. In France, according to the Complainant, Boursorama is the leading online banking provider with over 4,9 million customers and the portal www.boursorama.com is the first national financial and economic information site and first French online banking platform.

The Complainant notes that the disputed domain names were registered on June 17, 2003 and on June 18, 2023.

The Complainant assumes that the disputed domain names are confusingly similar to its registered trademark "BOURSORAMA" as

the disputed domain names contains the Complainant's trademark in its entirety or with the mere omission of the letter "A". The addition of hyphens and of generic terms such as "clients", "espace", "login", "banque" does not alter the finding of similarity between the signs.

Furthermore, according with the Complainant's statement, the Respondent lacks rights or legitimate interest in the domain name in dispute since the Respondent is not affiliated with it nor authorized by it in any way and the Complainant does not carry out any activity for, nor has any business with, the Respondent. In addition, according to the Whois information connected to the domain names in disputes, the Respondent is not commonly known with the terms Boursorama, Boursorma, <espace-clients-boursorama> or <clients-login-boursorama-banque>.

The Complainant also contends that, given the distinctiveness of the Complainant's trademark and reputation, it is reasonable to infer that the Respondent has registered the domain names in dispute with the full knowledge of the Complainant's trademark. In addition, the websites in relation with the domain names in disputes resolve in one case in a login page copying the Complainant's official customer access and in the other case in a simple parking page. Therefore, according to the Complainant, the domain name are used in bad faith since in the first case the Respondent has intentionally attempted to attract, for commercial gain, internet users to his website, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation or endorsement of his website, while, in the other case, the incorporation of a famous mark into a domain name coupled with an inactive website is evidence of bad faith registration and use.

PARTIES CONTENTIONS

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 names 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

Paragraph 4(a) of the Policy provides that to obtain the transfer of the domain name, the Complainant must prove that each of the following elements is present:

- (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 has been registered and is being used in bad faith.

A.1) <clients-login-boursorama-banque.com>

The Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark because it wholly incorporates "BOURSORAMA". The Panel notes that the addition of the generic terms "clients" "login" "banque" and of the hyphens to the only distinctive part of the domain name consisting of the Complainant's registered and well-known mark neither affects the attractive power of such trademark, nor is sufficient to negate the confusing similarity between the disputed domain name and the Complainant's mark (see *Boursorama SA v. spawn ablecat*, CAC Case No. 101620, *Intesa San Paolo S.p.A. v. Albert Formosa*, CAC Case No. 105008, *Boursorama SA v. Lucie Dupont*, CAC Case No. 104277). The Panel's view is that the elements "clients" "login" and "banque" used in the disputed domain name, were clearly chosen by the Respondent to mislead Internet users into believing they are accessing an official Boursorama's client portal. In such circumstances the inclusion of these elements only increases, not decreases, the likelihood of confusion (see *Boursorama SA v. Technology Vavalle*, CAC Case No. 102331). Finally, the Panel notes that the consensus view in previous UDRP panel decisions is that in determining confusing similarity under paragraph 4(a) of the Policy, the generic Top-Level Domain ("gTLD") suffix (".com" in this particular instance) should be disregarded.

A.2) <espace-clients-boursorma.com>

The Panel agrees with the Complainant's submission that the disputed domain name differs from its registered "BOURSORAMA" mark only by the omission of the letter "A" and by the addition of the common terms "espace" and "clients" between hyphens. The Panel finds that the omission of the letter "A" and the addition of the above-mentioned elements does not change the overall impression given by the disputed domain name as having a connection with the Complainant and its distinctive BOURSORAMA mark and does not prevent a finding of confusing similarity (see *Boursorama SA v. Fundacion Comercio Electronico*, CAC Case No. 104791). Finally, the Panel notes that the consensus view in previous UDRP panel decisions is that in determining confusing similarity under paragraph 4(a) of the Policy, the generic Top-Level Domain ("gTLD") suffix (".com" in this particular instance) should be disregarded.

Accordingly, the Panel finds that the Complainant has satisfied paragraph 4(a)(i) of the Policy.

B) The Complainant has long standing rights in the mark "BOURSORAMA". The Complainant provided prima facie evidence that the Respondent does not have rights or legitimate interests in respect of the disputed domain names as it is not commonly known under the disputed domain names and as the Respondent was never authorized or licensed or otherwise permitted by the Complainant to use the disputed domain names. The Respondent, in the absence of any response, has not shown any facts or elements to justify legitimate rights or interests in the disputed domain names. Therefore, on the basis of the evidences submitted and in the absence of a response the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain names. Accordingly, the Panel finds that the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

C) Paragraph 4(b) of the Policy provides a non-exclusive list of circumstances that evidence registration and use of a domain name in bad faith. Any one of the following is sufficient to support a finding of bad faith:

(i) circumstances indicating that the Respondent has registered or acquired the disputed domain name primarily for the purpose of selling, renting, or otherwise transferring the disputed domain name registration to the Complainant who is the owner of the trademark or service mark or to a competitor of that the Complainant, for valuable consideration in excess of the Respondent's documented out-of-pocket costs directly related to the disputed domain name; or

(ii) the Respondent has registered the disputed 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 the Respondent has engaged in a pattern of such conduct; or

(iii) the Respondent has registered the disputed domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its 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 the Respondent's website or location or of a product or service on the Respondent's website or location.

C.1) <clients-login-boursorama-banque.com>

The "BOURSORAMA" trademark is distinctive and well known and the date of its registration significantly precedes the date of registration of the disputed domain name. Moreover, given the use of the disputed domain name, the Panel concludes that the Respondent knew that the disputed domain name would be confusingly similar to the Complainant's trademark. Actually, the fact that the disputed domain name resolves to a login page copying the Complainant's official customer access, indicates that the Respondent targeted the Complainant when registering the disputed domain name. The above conduct constitutes opportunistic bad faith registration (see *Amundi Asset Management v. Bonnie faber*, WIPO Case No. D2022-0947) as well as bad faith use of the disputed domain name under the Policy. Internet users who encounter the web page to which the disputed domain name resolve may believe that they are accessing the Complainant's website (see *Boursorama S.A. v. moic chems, michel* WIPO Case No. D2023-1266). In light of the above, the Panel finds that the disputed domain name was registered and has been used in bad faith by the Respondent, with a deliberate intent to create an impression of an association with the Complainant, and to attract Internet users for commercial gain, by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of the Respondent's websites or of the services offered on the Respondent's website.

C.2) <espace-clients-boursorma.com>

The Complainant's trademark "BOURSORAMA" is distinctive and well-known. It is uncontroverted that Complainant's use and registration of the "BOURSORAMA" mark largely precede the registration date of the disputed domain name. The fact that the Respondent has registered a domain name that includes "BOURSORAMA", with the mere omission of the letter "A" and by the addition of the common terms "espace" and "clients" between hypen, clearly indicates that the Respondent had knowledge of the Complainant's trademark at the time of registration of the disputed domain name. This is clear evidence of registration of the domain name in bad faith. The disputed domain name is linked to a page without any substantial content (passive holding). Countless UDRP decisions confirmed that the passive holding of a domain name with knowledge that the domain name infringes another party's trademark rights is evidence of bad faith registration and use (see, in this regard, Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003). The consensus view of UDRP panelists is that passive holding of a domain name may, in appropriate circumstances, be consistent with a finding of bad faith. In particular, previous panels have tended to make such findings in circumstances in which, for example, a Complainant's mark is well-known, and there is no conceivable use that could be made of the domain name that would not amount to an infringement of the Complainant's trade mark rights. As regards to the first aspect, the Complainant has already extensively proved the renowned of its trademark. For what concern the second circumstance, it must be underlined that it is objectively not possible to understand what kind of use the Respondent could make with a domain name which includes the Complainant's trademark (with the mere omission of the letter "A" and by the addition of the common terms "espace" and "clients" between hyphens) currently extensively used by the same Complainant. In the light of the above, the present case completely matches to the above requirements and the passive holding of the disputed domain name has to be considered a use in bad faith. In this respect it is important also to consider the decision in case Comeria Inc. v. Horoshiy, Inc. WIPO Case No. D2004-0615 according to which "The very act of having acquired [the domain name] raises the probability of Respondent using [it] in a manner that is contrary to Complainant's legal rights and legitimate interests. [...] To argue that Complainant should have to wait for some future use of the disputed domain names to occur in order to demonstrate Respondent's bad faith use is to render intellectual property law into an instrument of abuse by the Respondent. The result would be the likelihood of the accumulation and use of disputed domain names for the implicit, if not explicit, purpose of misappropriating or otherwise unlawfully undermining Complainant's goodwill and business. The fact that this misappropriation may occur in any as yet undetermined manner at an uncertain future date does not negate Respondent's bad faith. On the contrary, it raises the spectrum of continuing bad faith abuse by Respondent of Complainant's mark, name and related rights and legitimate business interests". The Panel is therefore convinced that, even though the disputed domain name has not yet been actively used, the Respondent's non-use of the disputed domain name equals to use in bad faith (see also Amundi Asset Management v. Amundi, CAC Case No. 102288 and Accor v. VNT Corporation, CAC Case No. 100004).

In the light of the above, the Panel considers that also the third and final element necessary for finding that the Respondent has engaged in abusive domain name registration and use has been established. Accordingly, the Panel finds that the Complainant has satisfied paragraph 4(a)(iii) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **espace-clients-boursorma.com**: Transferred
2. **clients-login-boursorama-banque.com**: Transferred

PANELLISTS

Name	Guido Maffei
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DATE OF PANEL DECISION 2023-07-20

Publish the Decision
