

Decision for dispute CAC-UDRP-105572

Case number	CAC-UDRP-105572
-------------	-----------------

Time of filing	2023-06-27 09:59:36
----------------	---------------------

Domain names	bourso-contact.com
--------------	--------------------

Case administrator

Name	Olga Dvořáková (Case admin)
------	-----------------------------

Complainant

Organization	BOURSORAMA
--------------	------------

Complainant representative

Organization	NAMESHIELD S.A.S.
--------------	-------------------

Respondent

Name	Marie Kauffman
------	----------------

OTHER LEGAL PROCEEDINGS

The Panel is unaware of any other pending or decided legal proceedings in respect of the domain name <bourso-contact.com> ('the disputed domain name').

IDENTIFICATION OF RIGHTS

The Complainant relies upon the following registered trade mark:

- French trade mark registration no. 3009973, registered on 22 February 2000, for the word mark BOURSO, in classes 9, 35, 36, 38, 41, and 42 of the Nice Classification.

(hereinafter, 'the Complainant's trade mark'; 'the Complainant's trade mark BOURSO'; or 'the trade mark BOURSO' interchangeably).

The disputed domain name was registered on 21 June 2023 and, at the time of writing this decision, it resolves to a parked page featuring pay-per-click (PPC) advertisement for goods and services related to the Complainant's business segment ('the Respondent's website').

FACTUAL BACKGROUND

A. Complainant's Factual Allegations

The Complainant's contentions can be summarised as follows:

The Complainant is a pioneer and leader in three core businesses, namely online brokerage, financial information on the Internet and online banking. The Complainant is the online banking reference in France, providing services for over 4.9 million customers. The Complainant's portal at <www.boursorama.com> is the first national financial and economic information website and the first French online banking platform.

In addition to the trade mark mentioned above, the Complainant is the owner of numerous domain names, such as the domain name <boursorama.com> (registered in 1998) and <boursocom.com> (registered in 2000) ('the Complainant's domain names').

B. Respondent's Factual Allegations

The Respondent has failed to serve a Response in this UDRP administrative proceeding, the result of which being that the Complainant's factual allegations are uncontested.

PARTIES CONTENTIONS

A. Complainant's Submissions

The Complainant's submissions can be summarised as follows:

I. The disputed domain name is confusingly similar to a trade mark in which the Complainant has rights

The Complainant avers that the disputed domain name is confusingly similar to the Complainant's trade mark BOURSO and the Complainant's domain names. The addition of the generic term 'contact' is insufficient to escape the finding of confusingly similar to the Complainant's trade mark BOURSO.

Moreover, the Complainant contends that the generic Top-Level Domain (**gTLD**) suffix <.com> does not change the overall impression of the designation as being connected to the Complainant's trade mark BOURSO. Hence, the gTLD does not prevent the likelihood of confusion between the disputed domain name and both the Complainant's trade mark BOURSO and the Complainant's domain names.

II. The Respondent has no rights or legitimate interests in respect of the disputed domain name

The Complainant asserts that the Respondent has no rights in the disputed domain name, and that the Respondent is not affiliated with, nor authorised by, the Complainant in any way. The Complainant does not carry out any activity for, nor has any business with, the Respondent. The Respondent has not been authorised or licensed by the Complainant to make any use of the Complainant's trade mark BOURSO, or to apply for registration of the disputed domain name on the Complainant's behalf.

The Complainant further asserts that the Respondent is not known by the disputed domain name, and that the Respondent's PPC website is neither bona fide nor legitimate non-commercial or fair use.

In view of the above factors, the Complainant argues that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

III. The Respondent registered and is using the disputed domain name in bad faith

Registration

The Complainant avers that the disputed domain name incorporates the well-known and distinctive trade mark BOURSO.

The Complainant further avers that, given the distinctiveness and reputation of the trade mark BOURSO, it is inconceivable that the Respondent could have registered the disputed domain name without actual knowledge of the Complainant's trade mark BOURSO.

Use

The Complainant asserts that the Respondent has intentionally used the disputed domain name to attract, for commercial gain, Internet users to the Respondent's website by creating a likelihood of confusion with the Complainant as to the source, sponsorship, affiliation, or endorsement of the Respondent's website (paragraph 4(b)(iv) of the UDRP Policy).

Furthermore, the disputed domain name has been set up with MX records, a factor which indicates that the disputed domain name may be actively used for email purposes.

The Complainant therefore concludes that the Respondent has registered and is using the disputed domain name in bad faith.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name is identical or confusingly similar to a trade mark in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the UDRP 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 UDRP 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 UDRP 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

A. UDRP Threshold

Pursuant to Rule 15 of the UDRP Rules, the Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the UDRP Policy, the UDRP Rules, and any rules and principles of law that the Panel deems applicable.

Paragraph 4(a) of the UDRP Policy sets out the following threshold for the Complainant to meet for the granting of the relief sought (transfer of the disputed domain name):

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

It is incumbent on the Complainant the onus of meeting the above threshold. The evidentiary standard under the UDRP proceedings is the balance of probabilities and, on that basis, the Panel will now proceed to determine each of the three UDRP Policy grounds in turn.

B. Identical or Confusingly Similar

The Complainant has established registered rights in the mark BOURSO, in France, since 2000.

The disputed domain name <boursos-contact.com> was registered in 2023, and is composed of the joint terms 'boursos' and 'contact'.

Paragraph 1.8 of the WIPO Panel Views on Selected UDRP Questions, Third Edition ('WIPO Jurisprudential Overview 3.0') provides that, where the relevant trade mark is recognisable within the disputed domain name, the addition of other terms in the string, whether descriptive or otherwise, would not prevent a finding of confusing similarity under the first UDRP Policy ground.

The Complainant's trade mark BOURSO is readily recognisable within the disputed domain name. The contiguous term 'contact' does not prevent a finding of confusing similarity as per the above reasons. Furthermore, and as rightly asserted by the Complainant, the gTLD <.com> is typically disregarded by UDRP panels under this Policy ground given that the gTLD is part of the domain name's anatomy.

The Panel therefore finds that the Complainant has met the requirement under paragraph 4(a)(i) of the UDRP Policy.

C. Rights or Legitimate Interests

The Respondent has defaulted in this UDRP proceeding. Nevertheless, the Panel is empowered to draw adverse inferences from the Respondent's silence (Rule 14 (b) of the UDRP Rules).

The Panel notes that the Respondent does not appear to carry out any activity for, or have any business or relationship of any nature with, the Complainant. There is no evidence of any contractual arrangement/endorsement/sponsorship between the parties to that effect, nor has the Complainant otherwise authorised the Respondent to make any use of the Complainant's trade mark or to register the disputed domain name on the Complainant's behalf. In addition, nothing on the record suggests that the Respondent (as an individual, business, or other organisation) has been commonly known by the disputed domain name.

The Panel is likewise unconvinced that, before any notice of the dispute, the Respondent's use of, or demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services. On the contrary, the presence of PPC links on the Respondent's website is a testament to the Respondent's lack of bona fide use of the disputed domain name under paragraph 4 (c) of the UDRP Policy.

The Respondent has failed to refute the Complainant's prima facie case that the Complainant has met its burden under the second UDRP Policy ground.

In view of the above, the Panel finds that the Complainant has succeeded under paragraph 4(a)(ii) of the UDRP Policy.

D. Registered and Used in Bad Faith

D.1 Registration in bad faith

The following facts are compelling evidence to this Panel that the disputed domain name was registered in bad faith:

- The Complainant's trade mark has been registered since 2000, in France, where the Respondent appears to reside;
- The disputed domain name is composed of the joint terms 'bourso' and 'contact', and the Complainant operates its activities through a nearly identical domain name <bourso.com>, which was registered in 2000;
- The disputed domain name <bourso-contact.com> was registered in 2023;
- The lack of any credible evidence-backed rationale for the Respondent's choice of the disputed domain name;
- UDRP panels have consistently held that the mere registration of a domain name that is identical or confusingly similar to a famous or widely-known trade mark can by itself create a presumption of bad faith (paragraph 3.1.4 of the WIPO Jurisprudential Overview 3.0), and the Panel accepts that the Complainant's trade mark is widely known in its segment of business; and
- The Respondent's default in this UDRP proceeding.

D.2 Use in bad faith

The Complainant alleges that the Respondent has engaged in the conduct described in paragraph 4(b)(iv) of the UDRP Policy, which provides as follows:

(iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other on-line 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.'

As mentioned in the above section 'Identification of Rights', the disputed domain name resolves to a parked page featuring PPC advertisement for goods and services related to the Complainant's business segment.

In order to determine this UDRP Policy ground, the Panel takes stock of paragraph 3.1.4 of the WIPO Jurisprudential Overview 3.0, according to which panels have found various types of evidence to support a presumption of bad faith under the above circumstances. The most compelling factors in the present matter are: (i) the actual confusion between the Complainant's trade mark BOURSO and the disputed domain name; (ii) the Respondent's attempt to cause such confusion (which is enhanced by the presence of the contiguous term 'contact' in the disputed domain name string); (iii) the lack of the Respondent's own rights to, or legitimate interests in, the disputed domain name; and (vi) the absence of any conceivable good faith use of the disputed domain name, particularly in view of the Respondent's website hosting PPC commercial links related to the Complainant's business area.

The Panel therefore finds that the Complainant has succeeded under paragraph 4(a)(iii) of the UDRP Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

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

PANELLISTS

Name **Gustavo Moser**

DATE OF PANEL DECISION **2023-07-20**

