

Decision for dispute CAC-UDRP-105567

Case number	CAC-UDRP-105567
Time of filing	2023-06-27 09:59:21
Domain names	compte-clients-boursorama.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	fg gfgs
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OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

The Complainant relies upon the following registered trade mark:

- EU trade mark registration no. 001758614, registered on 19 October 2001, for the word mark BOURSORAMA, in classes 9, 16, 35, 36, 38, 41 and 42 of the Nice Classification.

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

The disputed domain name was registered on 20 June 2023 and, at the time of writing this decision, it resolves to a web page which features the following warning notice:

'Deceptive site ahead

Attackers on compte-clients-boursorama.com may trick you into doing something dangerous like installing software or revealing your personal information (for example, passwords, phone numbers or credit cards).'

The particulars of the above warning notice are discussed further below, under the section 'Principal reasons for the decision' ('the Respondent's website').

FACTUAL BACKGROUND

The Complainant's contentions can be summarised as follows:

A. Background history

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 bearing the term 'boursorama', such as the domain name <boursorama.com> (registered in 1998) ('the Complainant's domain names').

By way of relief, the Complainant seeks to obtain the ownership of the disputed domain name <compte-clients-boursorama.com> on the grounds advanced in section B below.

B. Legal Grounds

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 BOURSORAMA and the Complainant's domain name. The addition of the French language generic terms 'compte' ('account' in the English language) and 'clients' ('customers' in the English language) is insufficient to escape the finding of confusingly similar to the Complainant's trade mark BOURSORAMA.

In addition, 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 BOURSORAMA. Hence, the gTLD does not prevent the likelihood of confusion between the disputed domain name and both the Complainant's trade mark BOURSORAMA 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 BOURSORAMA, or to apply for registration of the disputed domain name on the Complainant's behalf.

Furthermore, the Respondent is not known by the disputed domain name, and the Respondent's website appears to be aimed at collecting personal data of the Complainant's customers, and such use 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 BOURSORAMA.

The Complainant further avers that, given the distinctiveness and reputation of the Complainant's trade mark it is reasonable to infer that the Respondent has registered the disputed domain name with full knowledge of the Complainant's trade mark BOURSORAMA.

Use

The Complainant claims that the disputed domain name is not used for any bona fide offerings in so far as it is connected to a website which mimics the Complainant's official customer portal. The Respondent's main purpose with the disputed domain name is to unduly collect sensitive data from the Complainant's customers. The Respondent's behaviour would therefore fall within the remit of paragraph 4(b)(iv) of the UDRP Policy).

On these bases, the Complainant concludes that the Respondent has registered and is using the disputed domain name in bad faith.

PARTIES CONTENTIONS

The Complainant's contentions are set out above.

The Respondent has failed to serve a Response within the deadline prescribed under Rule 5 of the UDRP Rules, or at all.

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 Panel is satisfied that the Complainant owns trade mark rights in 'BOURSORAMA' since 2001.

The disputed domain name wholly incorporates the Complainant's trade mark BOURSORAMA. The joint French language words in the disputed domain name string, namely 'compte' and 'clients', have the meaning of 'account' and 'customers' respectively in the English language. Furthermore, and as rightly asserted by the Complainant, the gTLD <.com> is typically disregarded by UDRP panels under this UDRP Policy ground given that the gTLD is part of the domain name's anatomy

The Panel takes the view that the presence of the joint words 'compte' and 'clients' enhances the confusion with the Complainant's trade mark BOURSORAMA. This is because these words evoke the interface between online banking service providers and customers.

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.

Furthermore, and compellingly, the Respondent's website contains a warning notice likely to be connected with a fraudulent activity, which is plainly not bona fide.

In view of the above reasons, the Panel finds that the Complainant has made prima facie showing of the Respondent's lack of rights or legitimate interests in the disputed domain name under paragraph 4(a)(ii) of the UDRP Policy.

D. Registered and Used in Bad Faith

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 has been using the trade mark BOURSORAMA since at least 2001, whereas the disputed domain name <compte-clients-boursorama.com> was registered in 2023;
- The disputed domain name incorporates the Complainant's trade mark BOURSORAMA in its entirety. The joint French language words 'compte' and 'clients' in the disputed domain name string enhances the confusion with the Complainant's trade mark BOURSORAMA, given that they evoke the interface between online banking service providers and customers;
- The Complainant offers online services using domain names which resemble the disputed domain name, namely <boursorama.com> (registered in 1998). The Panel notes that the Complainant also uses French words in their domain name strings presumably to relate to francophone based customers, for instance <boursoramamabanque.com> (registered in 2005);
- UDRP panels have consistently found 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 Panel Views on Selected UDRP Questions, Third Edition ('WIPO Jurisprudential Overview 3.0')), and the Panel accepts that the Complainant's trade mark is widely known in its segment of business;
- The Respondent's lack of participation in the course of these UDRP proceedings; and
- The Panel additionally views the provision of false contact information as an indication of bad faith. In this instance, the Respondent appears to have adopted a false name.

Use in bad faith

The Complainant claims that the Respondent has engaged in a conduct which would fall within the remit of paragraph 4(b)(iv) of the UDRP Policy:

'(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.'

In order to determine this UDRP Policy ground, the Panel has consulted paragraph 3.1.4 (divert Internet users for commercial gain) 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 Panel considers the most conducive factors to a finding in favour of the Complainant under this UDRP Policy ground to be: (i) the actual confusion between the Complainant's trade mark BOURSORAMA and the disputed domain name; (ii) the lack of the Respondent's own rights to, or legitimate interests in, the disputed domain name; (iii) the Respondent's use of false contact details (in breach of its registration agreement); (iv) the Respondent's attempt to gain reputational advantage by redirecting Internet users for a likely fraudulent purpose; and (v) the implausibility of any good faith use to which the disputed domain name may be put.

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. compte-clients-boursorama.com: Transferred

PANELLISTS

Name	Yana Zhou
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DATE OF PANEL DECISION 2023-07-21

Publish the Decision
