

Decision for dispute CAC-UDRP-105548

Case number	CAC-UDRP-105548
Time of filing	2023-06-20 08:42:24
Domain names	login-clients-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 GFSG
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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 name.

IDENTIFICATION OF RIGHTS

The Complainant bases its Complaint on the following trademarks:

- BOURSORAMA, European trademark registration No. 1758614, filed on 13 July 2000 and registered on 19 October 2001, duly renewed, claiming protection for goods and services in classes 9, 16, 35, 36, 38, 41 and 42;
- BOURSORAMA, French registration No. 3676762 registered since 16 September 2009, for services in classes 35, 36 and 38.

The Complainant is also the owner of the domain name <boursorama.com>, registered on the 1st of March 1998, and <boursoramabanque.com> registered on 26 May 2005.

FACTUAL BACKGROUND

The Complainant operates in the online brokerage, financial information on the Internet, and online banking fields. In France, BOURSORAMA is the online banking reference with over 4,9 million customers. The online portal of the Complainant at "www.boursorama.com" is the first national financial and economic information site and first French online banking platform.

The disputed domain name was registered on 14 June 2023 and resolves to a login page copying the Complainant's official

customer access at "https://clients.boursorama.com/connexion/".

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

Complainant

According to the Complainant, the disputed domain name is confusingly similar to the Complainant's BOURSORAMA trademark because it incorporates this trademark entirely and the addition of the words "login", "clients" and "banque" cannot prevent a finding of confusing similarity.

The Complainant further maintains that the Respondent does not have rights or legitimate interests in the disputed domain name. The Respondent is not known by the disputed domain name. The Complainant does not know the Respondent. The Respondent is not affiliated with, nor authorized by, the Complainant to make use of the BOURSORAMA trademark in any way. The Complainant does not carry out any activity for, nor has any business with the Respondent. The Respondent is not a licensee of the Complainant. The disputed domain name resolves to a login page copying the Complainant's official customer access. Thus, the Respondent's website cannot be considered as a bona fide offering of services or fair use of the disputed domain name, since the website can mislead the consumers into believing that they are accessing the Complainant's website.

In respect of the registration and use of the disputed domain name in bad faith, the Complainant contends that its BOURSORAMA trademark enjoys extensive reputation. As such, and considering that the disputed domain name is used to resolve to a login page copying the Complainant's official customer access, it is reasonable to infer that the Respondent was well aware of the Complainant's trademark when it registered the disputed domain name. The use of the disputed domain name to resolve to a login page copying the Complainant's official customer access and not containing any information about the Respondent is evidence of the fact that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent website. Furthermore, through the login link displayed on the login page of the disputed domain name, the Respondent could collect personal information, such as passwords.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name is 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 name (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 has been registered and is 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

Identical or Confusingly Similar

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name is confusingly similar to the Complainant's trademark.

The Complainant is the owner of the European and French registrations for the trademark BOURSORAMA, which predate the disputed domain name. The disputed domain reflects the Complainant's trademark entirely preceded by the words "login" and "clients" and followed by the word "banque". The addition of these words to the trademark BOURSORAMA in the disputed domain name cannot prevent a finding of bad faith. Section 1.8 of the WIPO Overview 3.0 states that where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element. In the instant case, the trademark BOURSORAMA is clearly recognizable in the disputed domain name.

Therefore, the Panel is satisfied that the first condition under the Policy is met.

Rights or Legitimate Interests

While the overall burden of proof rests with the complainant, UDRP panels have recognized that this could result in the often impossible task of proving a negative, requiring information that is often primarily within the knowledge of the respondent. As such, where a complainant makes a prima facie case that the respondent lacks rights or legitimate interests, the burden of production shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain names.

In the instant case, the Complainant maintains that it never authorised the Respondent to make use of its BOURSORAMA trademark. The Respondent is not a licensee of the Complainant and has no relationship with it. Furthermore, the Respondent does not appear to be commonly known by the disputed domain name. The disputed domain name consists of the Complainant's trademark coupled with terms that can be associated with the Complainant, such as "login", "clients" and "banque". Therefore, already the disputed domain name by itself cannot constitute fair use as it effectively impersonates or suggests sponsorship or endorsement by the Complainant. Moreover, the disputed domain name resolves to a login page copying the Complainant's official customer access, which also displays the BOURSORAMA trademark and logo and the characteristic purple and light blue colours adopted by the Complainant. It is therefore highly likely that the Internet users, looking for the Complainant, will perceive the webpage associated with the disputed domain name as originating from the Complainant and not from an unrelated third party.

Accordingly, the Panel finds that the Complainant has made at least a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent could have rebutted the Complainant's arguments, but chose not to do so by not filing a Response.

Thus, the Panel concludes that also the second condition under the Policy is met.

Registration and use in Bad Faith

In relation to bad faith, the Panel notes that the Complainant's trademark consists of a fanciful and distinctive term exclusively associated with the Complainant. The addition of the word "banque" referring to the Complainant's activity, and of the words "login" and "clients", referring to the contents of the webpage associated with the disputed domain name, are further indications that the Respondent had full knowledge of the Complainant and of its trademark and activity when it registered the disputed domain name. This is even more so considering that the Respondent is a French entity located in Paris. The registration of a domain name incorporating a third party's well-known trademark without rights or legitimate interests amounts to registration in bad faith.

With respect to use in bad faith, the fact that the disputed domain name resolves to a misleading login page, displaying the Complainant's BOURSORAMA trademark and logo and the same colors and graphics as the Complainant's official login page, amounts to use in bad faith. Internet users searching for the Complainant are induced to believe that the Respondent's login page belongs to the Complainant. In order to access what the Complainant's customers may consider to be their user area within the Complainant's platform, they are required to type their password. Thus, the Complainant's customers would hand over confidential information to the Respondent and would become vulnerable to any possible misuse that the Respondent might make of this information.

Accordingly, the Panel concludes that the Respondent registered and used the disputed domain in bad faith, presumably to intentionally attempt to attract, for commercial gain, Internet users to the Respondent's 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 service on the Respondent's website or location.

In light of the foregoing, the Panel is satisfied that also the third and last condition under the Policy has been satisfied.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **login-clients-boursorama-banque.com**: Transferred

PANELLISTS

Name **Angelica Lodigiani**

DATE OF PANEL DECISION **2023-07-28**

Publish the Decision
