

Decision for dispute CAC-UDRP-105577

Case number CAC-UDRP-105577

Time of filing 2023-06-28 10:09:45

Domain names **bourso-france.com**

Case administrator

Name **Olga Dvořáková (Case admin)**

Complainant

Organization **BOURSORAMA**

Complainant representative

Organization **NAMESHIELD S.A.S.**

Respondent

Name **Dominique Toreto**

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 (the "Domain Name").

IDENTIFICATION OF RIGHTS

The Complainant is the owner of owner of French registered trade mark n° 3009973 for BOURSO as a word mark file on 22 February 2000 in classes 9, 35, 36, 38, 41 and 42.

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT

The Complainant is a pioneer and leader in its three core businesses; i.e. online brokerage, the provision of financial information on the Internet and online banking.

The Complainant has over 4.9 million customers in France and operates a website from the URL www.boursorama.com, which was the "first French online banking platform".

Although the full name of the Complainant is Boursorama, it is frequently referred to by its French customers as "Bourso".

The term "Bourso" is also used in a number of ways by the Complainant in addition to being part of the Complainant's full name.

These uses include:

- The customer section of the Complainant's website is named "MON BOURSO"
- The Complainant offers products using the name "BOURSOMARKETS"; and
- The Complainant offers a product named "Livret Bourso +"

The Domain Name <boursos-france.com> was registered on 30 December 2022 and resolves to a registrar parking page with commercial links. MX servers have been configured for the Domain Name.

The Registrar, in response to a registrar verification request, provided details that would suggest that the respondent is an individual located in France.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the Domain Name is identical or confusingly similar to a trade mark 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 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 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

Initially, the Complaint filed by the Complainant was inadequate in that, although it referred to a previous UDRP cases in which the term "Bourso" had been arguably held to be distinctive (i.e. Boursorama S.A. v. Ibraci Links, Ibraci Links SAS WIPO Case No. D2022-4646), no evidence or argument was provided that supported that conclusion or to even suggest that the term "Bourso" had at any time been independently used by the Complainant. As a consequence, on 20 July 2023 the Panel issued a Procedural Order (the "Procedural Order") requesting that the Complainant file a supplemental submission containing argument and supporting evidence limited to the questions of (a) whether the mark BOURSO is distinctive, (b) whether and to what extent the Complainant has used the mark BOURSO, and (c) whether and to what extent the Respondent was aware of the Complainant's mark at the time that it registered the Domain Name. A supplemental submission directed to those issues was filed by the Complainant with the Czech Arbitration Court on 28 July 2023. Relevant aspects of that submission are recorded in the Factual Background section of this decision.

The Procedural Order gave the Respondent an opportunity to indicate whether he wished to file a supplemental submission in respect of the issues covered by the Procedural Order but the Respondent did not do so.

The Procedural Order also recorded the Panel's determination pursuant to paragraph 1(a) of Annex A of the Supplemental Rules that given the making of the Procedural Order it was appropriate for the Complainant to pay Additional UDRP Fees of €300 having regard to the complexity of the proceeding. In so doing, the Panel referred to the reasoning of the Panel in ECCO Sko A/S v zhoyiming CAC-UDRP-100389. The Complainant has paid these additional fees within the period provided for by the Supplemental Rules.

In the circumstances, 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

The Panel is satisfied that the Complainant is the owner of a registered trade mark rights in the term BOURSO. In order to satisfy the first element of the Policy it is usually sufficient for a complainant to show that the relevant mark is "recognizable within the disputed domain name"; see section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (the "WIPO Overview 3.0"). The Domain Name can only be sensibly read as the term "bourso" in combination with the country name "France" and the ".com" generic Top-Level Domain. The mark relied upon by the Complainant is, therefore, clearly recognisable in the Domain Name.

The Complainant has, therefore, satisfied the Panel that the Domain Name is confusingly similar to a trade mark in which it has rights and has thereby made out the requirements of paragraph 4(a)(i) of the Policy.

The Complainant contends that given the distinctiveness and reputation of the Complainant's trade mark, it is reasonable to infer that the Respondent has registered the Domain Name with full knowledge of the Complainant's trade mark. Although the evidence provided by the Complainant of the extent to which the term "Bourso" is distinctive of the Complainant is limited (even taking into account the Complainant's additional submission filed pursuant to the Procedural Order), the Panel has been persuaded on the balance of probabilities that this is correct. Particular factors here are the undisputed assertions of the Complainant that it is frequently referred to its French customers as "Bourso" and that "Bourso" has no independent meaning in any language, as well as the facts that the Respondent appears to be located in France and the Domain Name itself includes the name of that country. The Complainant has also provided Google search results for the term "Bourso" where all the links displayed refer to the Complainant.

Why the Respondent has registered the Domain Name is not exactly clear. Nevertheless, the Panel is persuaded that the registrant of the Domain Name is, for whatever reason, seeking to impersonate the Complainant (as to which see also the reasoning in *Johnson & Johnson v. Ebubekir Ozdogan* WIPO Case No. D2015-1031, which also involved a domain name comprising a mark and a geographical term).

There is no right or legitimate interest in holding a domain name for the purpose of impersonation and the registration and use of a domain name for such a purpose is registration and use of a domain name in bad faith. It follows that the Complainant has also satisfied the requirements of paragraph 4(a)(ii) and (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. **bourso-france.com**: Transferred

PANELLISTS

Name	Matthew Harris
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DATE OF PANEL DECISION **2023-08-03**

Publish the Decision
