

Decision for dispute CAC-UDRP-105741

Case number	CAC-UDRP-105741
Time of filing	2023-08-31 11:00:22
Domain names	onlinedashboardborsorama.online

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	Victor Hugo
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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

In this proceeding the Complainant relies on the following trademark registration:

- The EU trademark registration No. 001758614 "BOURSORAMA" (word), registered on October 19, 2001, filed on July 13, 2000.

The Complainant also refers to various domain names that incorporate the "BOURSORAMA" trademark, including <boursorama.com>, registered since February 28, 1998.

FACTUAL BACKGROUND

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

THE DISPUTED DOMAIN NAME IS IDENTICAL OR CONFUSINGLY SIMILAR TO A TRADEMARK OR SERVICE MARK IN WHICH THE COMPLAINANT HAS RIGHTS

The Complainant states that it is a pioneer and leader in its three core businesses: online brokerage, financial information on the Internet and online banking.

The Complainant claims that its online banking business in France has over three (3) million customers and operates the first French

online banking platform.

The disputed domain name was registered on August 25, 2023. It resolves to a website in French with content related to the Complainant and also contains some links unrelated to the Complainant.

The Complainant states that the disputed domain name is confusingly similar to its trademark and is an example of typosquatting.

The domain name is composed of terms "ONLINE DASHBOARD" and a typosquatted version of "BOURSORAMA" - "BORSORAMA". The Complainant refers to previous UDRP decisions that found that the slight spelling variations does not prevent a disputed domain name from being confusingly similar to the Complainant's trademark.

The <.online> gTLD is not relevant in the appreciation of confusing similarity as it does not change the overall impression of the designation as being connected to the Complainant's trademark.

Thus, the Complainant contends the disputed domain name is confusingly similar to the Complainant's trademark.

THE RESPONDENT HAS NO RIGHTS OR LEGITIMATE INTERESTS IN RESPECT OF THE DISPUTED DOMAIN NAME

The Complainant asserts that the Respondent is not identified in the Whois database by the disputed domain name, is not related or affiliated in any way with the Complainant and the Complainant does not carry out any activity for, nor has any business with the Respondent.

Neither license nor authorization has been granted to the Respondent to make any use of the Complainant's trademark, or apply for registration of the disputed domain name.

The Complainant contends that the Respondent used the disputed domain name in a way that fails to confer rights and legitimate interests, as it redirects to a French content related to the Complainant and is also used to promote unrelated services.

THE DISPUTED DOMAIN NAME WAS REGISTERED AND BEING USED IN BAD FAITH

The Complainant's submissions on the bad faith element of the UDRP can be summarized as follows:

1. The Complainant asserts that the disputed domain name is confusingly similar to its well-known trademark "BOURSORAMA". It is reasonable to infer that the Respondent has registered the disputed domain name with full knowledge of the Complainant's trademark.
2. The Complainant states that the misspelling of the "BOURSORAMA" mark by the Respondent was intentionally designed to be confusingly similar with the Complainant's trademark. Previous UDRP Panels have considered such actions as evidence of bad faith.
3. The Complainant contends that the Respondent uses its trademark "BOURSORAMA" to promote unrelated services. The Complainant asserts that the Respondent is using the disputed domain name intentionally to attempt to attract, for commercial gain, Internet users to his website by creating a likelihood of confusion with Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of Complainant.

Therefore, the Complainant claims the disputed domain name was registered and being used in bad faith.

PARTIES CONTENTIONS

The Complainant's contentions are summarized in the Factual Background section above.

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

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

A. Identical or confusingly similar

The Complainant provides evidence of the EU trademark registration referred to above.

As confirmed by the “WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition” (“WIPO Overview 3.0”): “where the complainant holds a nationally or regionally registered trademark or service mark, this prima facie satisfies the threshold requirement of having trademark rights for purposes of standing to file a UDRP case” (see par. 1.2.1).

The disputed domain name represents a misspelling of the Complainant’s mark and the descriptive terms “ONLINE DASHBOARD”.

As stated in the WIPO Overview 3.0: “Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, or otherwise) would not prevent a finding of confusing similarity under the first element” (par. 1.8) and “a domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element” (see par. 1.9).

In the present case, the Complainant’ trademark “BOURSORAMA” is recognizable within the disputed domain name despite the addition of the descriptive terms and the misspelling.

The gTLD “.online” is to be disregarded under the confusing similarity test as it does nothing to eliminate confusion.

Therefore, the Panel finds that the first requirement of the Policy has been satisfied.

B. Rights or Legitimate Interests

The general rule is the following:

- (i) a complainant is required to make out a prima facie case that the respondent lacks rights or legitimate interests; and
- (ii) once such prima facie case is made, the burden shifts to the respondent who has to demonstrate his rights or legitimate interests in respect of the domain name under paragraph 4 (c) of the Policy.

If the respondent fails to do so, the second element of the Policy is satisfied, see Julian Barnes v. Old Barn Studios, WIPO Case No. D2001-0121; Belupo d.d. v. WACHEM d.o.o., WIPO Case No. D2004-0110.

The disputed domain name was registered on August 25, 2023. On the date of this decision, it does not resolve to an active website. According to the evidence provided by the Complainant, the disputed domain name previously contained the French language content with references to Complainant’s mark BOURSORAMA” and banking services.

The Respondent did not respond.

Failure to respond does not per se demonstrate that the Respondent does not have rights or legitimate interests, however it allows the Panel to draw such inferences as it considers appropriate, see paragraph 14(b) of the Rules and CAC Case No. 101284: “A respondent is not obliged to participate in a proceeding under the Policy, but if it fails to do so, reasonable inferences may be drawn from the information provided by the complainant”.

The Complainant has made a prima facie case of Respondent’s lack of rights or legitimate interests.

The Respondent is not known by the disputed domain name and has no apparent connection to the Complainant’s business or the disputed domain name.

The Complainant has not granted any license or authorization to use its trademark to the Respondent and the Complainant is not doing any business with the Respondent.

The disputed domain name represents a misspelling of the Complainant’s trademark with the addition of the descriptive terms.

Typosquatting does not create any rights or legitimate interests of the Respondent.

Previous UDRP panels noted that in such circumstances respondent does not have rights or legitimate interests, see e.g. CAC Case No. 104715: “These circumstances suggest to the Panel that the Respondent is seeking to capitalize deliberately on a predictable pattern of mistyping of the Complainant’s mark by such users...” and “the Respondent has engaged in typosquatting, which means that it has deliberately altered the spelling of the trademark to deceive and trick internet users into thinking that the domain name is an official domain name of the Complainant and that it will lead to an official website of the Complainant, neither of which is true...” (CAC Case No.

105473).

The fact that the disputed domain name was previously used for providing content in French language with the use of the Complainant's "BOURSORAMA" mark and references to Complainant's business on the website (e.g. "BOURSORAMA banque") does not create rights or legitimate interest of the Respondent. It actually indicates Respondent's intent to create confusion and impersonate the Complainant. As provided in the WIPO Overview 3.0: "Panels have categorically held that the use of a domain name for illegal activity (e.g. impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent" (see par. 2.13.1).

Therefore, the Panel finds that the Complainant has satisfied the second element of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy lists non-exhaustive circumstances indicating registration and use in bad faith. These circumstances are non-exhaustive and other factors can also be considered in deciding about the bad faith element.

It is well established that bad faith under the UDRP is broadly understood to occur where a respondent takes unfair advantage of or otherwise abuses a complainant's mark (see par. 3.1 of the WIPO Overview 3.0). Targeting is important in establishing bad faith under the UDRP.

The Panel finds that the Complainant provided sufficient evidence that the disputed domain name was registered and is being used in bad faith based on the following:

1. The nature of the disputed domain name ("typosquatting" plus the descriptive terms) and the timing of the registration of the disputed domain name – August 25, 2023, many years after the Complainant obtained protection for its "BOURSORAMA" trademark and start of Complainant's business. The nature of the disputed domain name indicates that the Respondent was aware of the Complainant and its trademark when he registered the disputed domain name. As noted in the leading treatise on UDRP and domain disputes by Gerald Levine in relation to typosquatting: "where intent to take advantage of the trademark is evident knowledge is implied" (see "Domain Name Arbitration", Gerald M. Levine, 2019, Second edition, "Legal Corner Press", page 496).

2. The strength of the Complainant's trademark. The Panel notes that the Complainant provided only limited evidence of well-known character of the "BOURSORAMA" trademark (information from the Complainant's own website: Company profile with figures, historic information about its business and services description and citations from previous UDRP decisions). More extensive evidence is required to establish that a trademark is well-known (e.g. evidence of awards, publications by independent sources, media reports, etc.).

However, this is not fatal to the Complainant in the present dispute taking into account other evidence available as well as facts of the dispute, including previous UDRP decisions in Complainant's favor related to the "BOURSORAMA" trademarks, the content of the website by the disputed domain name that indicates targeting, the nature of the disputed domain name and geographic proximity of the parties: both are from France.

3. The nature of use of the disputed domain name and content of the website indicate an intent to target, impersonate the Complainant and possibly deceive visitors. As noted by Gerald M. Levine in "Domain Name Arbitration": "knowledge of a complainant's mark, if not directly evident or denied, can be inferred or rebutted from website content, strength of the mark- a mark's reputation and presence in registrant's market, and respective timing of a mark's use in commerce and registration of the domain name" (page 235) and content can be a "smoking gun" (page 264). In the present dispute the Complainant provided evidence that the website by the disputed domain name used to have some content in French referring to the Complainant's "BOURSORAMA" trademark and banking services.

4. The Respondent's failure to respond and provide explanations for his choice of the disputed domain name confusingly similar with the Complainant's trademark registered many years prior to registration date of the disputed domain name. In the absence of a response and based on the facts of this case, the Panel does not see any plausible explanation for the Respondent's registration and use of the disputed domain name other than taking advantage of the Complainant's trademark.

Based on the above, the Panel finds that Respondent's behavior falls within, at least, par. 4 b (iv) of UDRP and the Respondent by using the disputed domain name has intentionally attempted to attract, for commercial gain, Internet users to his web site, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement and that the Respondent takes unfair advantage of the Complainant's mark.

The Panel holds that the third requirement of 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. **onlinedashboardborsorama.online**: Transferred

PANELLISTS

Name	Igor Motsnyi
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DATE OF PANEL DECISION 2023-09-23

Publish the Decision
