

Decision for dispute CAC-UDRP-105729

Case number	CAC-UDRP-105729
Time of filing	2023-08-25 07:48:56
Domain names	clients-compte-boursorama-banque.com, bourrssoranna.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	Moihf
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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 names.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of the word trademark BOURSORAMA (Reg. No. 1758614). It is registered as EUTM since October 19, 2001, in classes 9, 16, 35, 36, 38, 41, 42. The Complainant also owns the domain name <boursorama.com> (registered since March 1, 1998).

FACTUAL BACKGROUND

The Complainant, BOURSORAMA, is a well-known online banking and financial information and services company in Europe. The portal www.boursorama.com is the first national financial and economic information site and first French online banking platform. In France, BOURSORAMA is the online banking reference with over 5 million customers. Its word trademark BOURSORAMA (Reg. No. 1758614) is registered as EUTM since October 19, 2001, in classes 9, 16, 35, 36, 38, 41, 42. The Complainant also owns the domain name <boursorama.com> (registered since March 1, 1998).

The disputed domain names <clients-compte-boursorama-banque.com> and <bourrssoranna.com> were registered on August 18, 2023. The domain name <clients-compte-boursorama-banque.com> resolves to a website copying the Complainant's official website <<https://clients.boursorama.com/connexion/>> and the domain name <bourrssoranna.com> resolves to the URL <<https://clients-compte-boursorama-banque.com/>>.

PARTIES CONTENTIONS

The Complainant submits that the requirements of the Policy have been met and that the disputed domain names should be transferred to it.

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain names are 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 names (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 names have been registered and are being used in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy).

PROCEDURAL FACTORS

The Complainant filed the Complaint in English rather than in French (i.e. the language of the registration agreement). Pursuant to paragraph 11(a) of the Rules, unless otherwise agreed by the parties, or otherwise specified in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding. Paragraph 10(b) and (c) of the Rules requires the Panel to ensure that the proceeding takes place with due expedition and that the parties are treated fairly and given a fair opportunity to present their respective cases.

The Complainant filed its Complaint in English and then requested that English be the language of the proceeding.

The Complainant noted the following factors supporting English as the fair language of the proceeding: (a) the identity of the Registrant "Moihf" is fanciful; (b) the postal address indicated "Rua do Breiner 262 Marseille" is false and does not correspond to an address in France; (c) the Registrant therefore gave false information to the Registrar when registering the domain names; (d) consequently, the Complainant considers that this false information has the effect of rendering the registration agreement invalid.

The Panel generally agrees with the accusation that the Respondent has made efforts to hide his (her) personal data and most probably provided non-existent address in France, however, these circumstances does not necessarily lead to the conclusion that the registration agreement is invalid and the French language should not apply to the proceedings.

Nevertheless, the Panel is of the view that there are additional important factors in favour of the Complainant's option of English language for this proceeding: (a) the Respondent has been given the opportunity to present its case in this proceeding and to respond formally to the issue of the language of the proceeding; (b) the Respondent has not responded to the Complainant's request for a change of the language from French to English; (c) the English language is the language most widely used in e-commerce and the <.com> TLDs are most commonly used for e-commerce; (d) in order to proceed in French, the Complainant would have to retain translation services and would, therefore, incur additional procedural costs which would impose a burden on the Complainant and the low cost policy of these proceedings would be unobserved.

Considering the above circumstances, the Panel finds that the choice of English as the language of the present proceeding is fair to both parties and is not prejudicial to either one of the parties in his or her ability to articulate the arguments for this case.

The Panel has also taken into consideration the fact that insisting the Complaint and all supporting documents to be re-filed in French would cause an unnecessary burden of cost to the Complainant and would unnecessarily delay the proceeding which would be contrary to Paragraph 10(b) and (c) of the Rules.

Having considered all the above matters, the Panel determines under paragraph 11(a) of the Rules that (i) it will accept the Complaint and all supporting materials as filed in English; and (ii) English will be the language of the proceeding and the decision will be rendered

in English.

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 agrees with the Complainant that the disputed domain name <clients-compte-boursorama-banque.com> is confusingly similar to the Complainant's trademark BOURSORAMA. The adding of the generic French words "clients", "compte" or "banque" does not change the fact that the disputed domain name and the registered trademark are confusingly similar as it does not change the overall impression of the designation as being connected to the Complainant's trademark and it does not prevent the likelihood of confusion between the disputed domain name and the Complainant, its trademark and domain names associated. On the contrary, the addition of the word "banque" increases the likelihood of confusion with the Complainant's trademarks and activity, because "banque" refers to the Complainant's financial services. It is well established in the UDRP case-law, that the addition of a generic term associated to a trademark does not create a new or different right to the mark or diminish confusing similarity (eg. see WIPO Case No. D2016-0239, LEGO Juris A/S v. Viktor Tkachev, Lego Town, <lego-town.com>; WIPO Case No. D2021-3735 <original-timberland.com>). Numerous UDRP panels have considered that the addition of other terms (whether descriptive, pejorative, meaningless or otherwise) to trademarks in a domain name is not sufficient to escape a finding of confusing similarity (see section 1.8 of the WIPO Overview 3.0).

The Panel agrees with the Complainant that the disputed domain name <bourrsoranna.com> is confusingly similar to the Complainant's trademark BOURSORAMA. The adding of the letter "R" and letter "S" (i.e. doubling these letters) as well as replacing "M" with double "NN" in the trademark BOURSORAMA does not set aside the confusing similarity between the disputed domain name and the Complainant's trademark (section 1.9 of WIPO Overview 3.0 states: "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.").

The Panel acknowledges that the Complainant presented prima facie evidence that the Respondent is not sponsored by or affiliated with Complainant in any way. Furthermore, Complainant has not licensed, authorized, or permitted Respondent to use Complainant's trademarks in any manner, including in domain names. The Respondent's name "Moihf" does not resemble the disputed domain names in any manner. Respondent's use of the disputed domain names does not constitute a bona fide offering of goods or services or a legitimate non-commercial or fair use (Policy Para. 4(c)).

As no administratively compliant response has been provided to the Panel and the prima facie evidence was not challenged by the Respondent, the Panel, having additional regard to the notoriety of the Complainant's trademark BOURSORAMA, concludes that the Respondent, when he/she registered the disputed domain names, meant nothing else except the Complainant's trademark BOURSORAMA and Complainant's famous website <www.boursorama.com>.

The domain name <clients-compte-boursorama-banque.com> resolves to a website copying the Complainant's official website <https://clients.boursorama.com/connexion/> and the domain name <bourrsoranna.com> resolves to the URL <https://clients-compte-boursorama-banque.com/>. The Respondent's website does not contain any information about the Respondent and it is most likely used for phishing purposes (possible collection of personal information through this website, namely passwords). Therefore, by using the disputed domain names, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to his website, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of his websites (par. 4(b)(iv) of the Policy).

Accordingly, the Panel in this case finds that the disputed domain names were both registered and used in bad faith (Policy Para. 4(b)(iv)).

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **clients-compte-boursorama-banque.com**: Transferred
2. **bourrsoranna.com**: Transferred

PANELLISTS

Name	Darius Sauliūnas
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DATE OF PANEL DECISION 2023-09-28
