

Decision for dispute CAC-UDRP-105787

Case number	CAC-UDRP-105787
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Time of filing	2023-09-15 09:50:55
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Domain names	bourso-pro.finance
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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

Organization	FinRedac
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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 is the owner of the European trademark "BOURSO" no. 3009973 registered since 22.02.2000. The Complainant also owns the domain names of <boursorama.com>, registered since 01.03.1998 and <bourso.com> registered since 11.01.2000.

FACTUAL BACKGROUND

The Complainant, BOURSORAMA S.A., was founded in 1995 and it deals with online financial products as its core business, in particular, with online brokerage, financial information on the Internet and online banking.

The Complainant is the owner of trademark BOURSO as well as domain names including said trademark, registered before the date of registration of the disputed domain name, which is September 9, 2023.

The disputed domain name is currently inactive.

PARTIES CONTENTIONS

COMPLAINANT:

THE DISPUTED DOMAIN NAME IS CONFUSINGLY SIMILAR

The Complainant states that the disputed domain name <boursopro.finance> is confusingly similar to its trademark "BOURSO" since it includes the trademark in its entirety. The Complainant claims that the addition of the generic term "PRO" is not sufficient to avoid the finding of confusing similarity.

Moreover, the Complainant contends that the addition of the suffix ".finance" does not change the overall impression and it does not prevent the likelihood of confusion between the disputed domain names and the Complainant, its trademark and its relevant domain names. The Complainant refers to the *F. Hoffmann-La Roche AG v. Macalve e-dominios S.A.*, WIPO Case No. D2006-0451, where it was stated that the specific top level of a domain name such as ".com", ".org" or ".net" does not affect the domain name for the purpose of determining whether it is identical or confusingly similar.

The Complainant also refers to the earlier UDRP decisions it obtained before CAC such as CAC Case No. 105572 (*BOURSORAMA v. Didier Jore* <boursopro-contact.com>) and CAC Case No. 104986 (*Boursorama SA v. Didier Jore* <supportboursopro.com>).

Consequently, the Complainant claims that the disputed domain name <boursopro.finance> is confusingly similar to the Complainant's trademark "BOURSO".

THE RESPONDENT HAS NO RIGHTS OR LEGITIMATE INTERESTS IN RESPECT OF THE DOMAIN NAME(S);

The Complainant asserts that the Respondent is not identified in the Whois database as the disputed domain name and that this was considered by the past panels before as being not commonly known by the disputed domain name. Also, the Respondent is not known by the Complainant. The Complainant states that Respondent is not affiliated with nor authorized by the Complainant in any way, as well as no authorization or license was given to the Respondent by the Complainant in order to make any use of the Complainant's "BOURSO" trademark including using and registering as domain name. The Complainant also claims that Respondent has no rights or legitimate interests with respect to the disputed domain name. The Complainant does not carry out any activity for, nor has any business with the Respondent.

Moreover, the Complainant states that the disputed domain name resolves to a parking page. The Complainant asserts that Respondent has not made any use of disputed domain name since its registration, and that it confirms the fact that Respondent has no demonstrable plan to use the disputed domain name. The Complainant contends that it shows a lack of legitimate interests regarding the disputed domain name.

Accordingly, the Complainant states that the Respondent has no rights or legitimate interests on the disputed domain name <boursopro.finance>.

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

The Complainant states that the term "BOURSO" has no meaning except in relation to the Complainant. Moreover, it was claimed that the association of the trademark "BOURSO" with the new GTLD ".FINANCE" cannot be coincidental, as this term directly refers to the Complainant's banking activities. The Complainant states that the disputed domain name <boursopro.finance.info> includes the Complainant's well-known and distinctive trademark "BOURSO". Thus, it is stated that given the reputation of the Complainant's trademark, it is reasonable to infer that the Respondent, who is a French company, has registered and used the domain name with full knowledge of the Complainant's trademark.

The Complainant also indicates that the disputed domain name resolves to a parking page and the Respondent has not demonstrated any activity in respect of the disputed domain name. It is also asserted by the Complainant that it is not possible to conceive of any plausible actual or contemplated active use of the domain name by the Respondent that would not be illegitimate, such as by being a passing off, an infringement of consumer protection legislation, an infringement of the Complainant's rights under trademark law, or an attempt to attract, for commercial gain, Internet users to his own website, by creating a likelihood of confusion with Complainant's trademark as to the source, sponsorship, affiliation or endorsement of Respondent's website. The following prior WIPO UDRP panels were provided as examples, where it was held that the incorporation of a famous mark into a domain name, coupled with an inactive website, may be evidence of bad faith registration and use:

- *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. D2000-0003
- *CBS Broadcasting, Inc. v. Dennis Toeppen*, WIPO Case No. D2000-0400

Consequently, the Complainant concludes that the Respondent has registered and is using the disputed domain name <boursopro.finance> in bad faith.

RESPONDENT:

No administratively compliant response has been filed. However, it must be noted that the Respondent has filed a Nonstandard Communication regarding the domain name after the deadline for filing a Response. In such communication, it was stated by the Respondent that the disputed domain name is cancelled and it will not be used. It was asserted by the Respondent that the email regarding the UDRP proceedings was regarded as a form of scam and therefore, it was not taken seriously.

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.

It must be noted here that it is not possible to delete the disputed domain name after the initiation of the Proceeding. Therefore, the Nonstandard Communication filed by the Respondent is not considered.

PRINCIPAL REASONS FOR THE DECISION

Paragraph 15 of the Rules provides that the Panel is to decide the Complaint on the basis of the statements and documents submitted and in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

In this context, the Panel also notes that the burden of proof is on the Complainant to make out its case and past UDRP panels have consistently said that a Complainant must show that all three elements of the Policy have been made out before any order can be made to transfer a domain name.

For the Complainant to succeed it must prove, within the meaning of paragraph 4(a) of the Policy, that:

1. the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
2. the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
3. the disputed domain name has been registered and is being used in bad faith.

The Panel will therefore deal with each of these requirements in turn.

1. IDENTICAL OR CONFUSINGLY SIMILAR

The Policy simply requires the Complainant to demonstrate that the disputed domain name is identical or confusingly similar to a trademark in which the Complainant has rights. The Panel is satisfied that the Complainant is the owner of registration of “BOURSO” trademark.

The Panel finds that the disputed domain name is confusingly similar to the Complainant’s “BOURSO” trademark and the addition of the generic word “PRO” is not sufficient to vanish the similarity, since it does not add any distinctiveness to the disputed domain name.

Moreover, the addition of the gTLD “.FINANCE” is not enough to abolish the identity.

The Panel recognizes the Complainant's rights and concludes that the disputed domain name is confusingly similar to the Complainant's trademark. Therefore, the Panel concludes that the requirements of paragraph 4(a)(i) of the Policy is provided.

1. NO RIGHTS OR LEGITIMATE INTERESTS

Under paragraph 4(a)(ii) of the Policy, the complainant has the burden of establishing that the respondent has no rights or legitimate interests in respect of the domain name.

It is open to a respondent to establish its rights or legitimate interests in a domain name, among other circumstances, by showing any of the following elements:

(i) before any notice to the respondent of the dispute, the use or making demonstrable preparations to use the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or

(ii) the respondent of the dispute (as an individual, business, or other organization) has been commonly known by the domain name, even if it has acquired no trademark or service mark rights; or

(iii) the respondent of the dispute is making a legitimate non-commercial or fair use of the domain name, without an intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

Thus, if the respondent proves any of these elements or indeed anything else that shows that it has a right or legitimate interest in the disputed domain name, the complainant will have failed to discharge its burden of proof and the complaint will fail. The burden is on the complainant to demonstrate a prima facie case that the respondent does not have rights or legitimate interests in the disputed domain name. Once the complainant has made out a prima facie case, then the respondent may, inter alia, by showing one of the above circumstances, demonstrate rights or legitimate interests in the disputed domain name.

It is understood from the explanations of the Complainant that the Respondent and the Complainant has no relationship or agreement on the use of the disputed domain name. In the absence of a compliant response, the Panel considers that the Respondent has no authorization to use the Complainant's trademarks in the disputed domain name.

Hence, as the Complainant has made out its prima facie case, and as the Respondent has not demonstrated any rights or legitimate interests as illustrated under paragraph 4(c) of the Policy, nor has the Panel found any other basis for finding any rights or legitimate interests of the Respondent in the disputed domain name, the Panel concludes that the Complainant has satisfied the requirements of paragraph 4(a)(ii) of the Policy.

1. BAD FAITH

The Panel concludes that the Complainant's “BOURSO” trademark is of distinctive character and has a certain reputation (see e.g. *Boursorama S.A. v. Ibraci Links, Ibraci Links SAS*, WIPO Case No. D2022-4646: “[...] As discussed above, Complainant's BOURSO mark is well established”).

The Panel is of the opinion that the Internet users will easily fall into false impression that the disputed domain name belongs to the Complainant, as the additional word “PRO” might be understood as adding the meaning of being an upper version of the website or the services of the Complainant under the trademark “BOURSO”. Additionally, since the Complainant operates in finance sector, the gTLD “.FINANCE” might even increase the likelihood of confusion, because it refers to the Complainant's services and activities.

Therefore, the Panel is of the opinion that due to the earlier rights of the Complainant in the “BOURSO” trademark, the Respondent was aware of the Complainant and its trademarks at the time of registration of the disputed domain name (see e.g., *Ebay Inc. v. Wangming*, WIPO Case No. D2006-1107). The Panel believes that the awareness of the Complainant's trademark at the time of the registration of the disputed domain name is to be considered an inference of bad faith registration.

Moreover, the link <boursopro.finance> is currently inactive. Regarding inactive domain names, section 3.3 of the WIPO Overview 3.0 provides the following: “From the inception of the UDRP, panelists have found that the non-use of a domain name (including a blank or ‘coming soon’ page) would not prevent a finding of bad faith under the doctrine of passive holding.”

Therefore, in light of the above-mentioned circumstances in the present case, the Panel finds that the disputed domain name has been registered and is being used in bad faith and that the Complainant has established the third element under paragraph 4(a)(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. **boursopro.finance**: Transferred

PANELLISTS

Name **Mrs Selma Ünlü**

DATE OF PANEL DECISION **2023-10-20**

Publish the Decision