

Decision for dispute CAC-UDRP-105903

Case number CAC-UDRP-105903

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Domain names boursorama.com

Case administrator

Organization Iveta Špiclová (Czech Arbitration Court) (Case admin)

Complainant

Organization BOURSORAMA

Complainant representative

Organization NAMESHIELD S.A.S.

Respondent

Name hermano sanchez

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 International Registration no. 3009973 "BOURSO", registered on July 28, 2000.

The Complainant registered the domain names <boursorama.com> and <boursorama.com> on March 1, 1998 and January 11, 2000, respectively.

The Respondent registered the disputed domain name on October 17, 2023. Currently, the disputed domain name resolves to a parked webpage.

FACTUAL BACKGROUND

Boursorama was established in France and provides a range of online financial products including its three core businesses: online brokerage, financial information on the Internet and online banking. In France, the Complainant has over 5 million customers. The Complainant's website, www.boursorama.com is the first French national financial and economic information site and first French online banking platform.

PARTIES CONTENTIONS

The Complainant contends that the requirements of the Policy have been met and that the disputed domain name 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 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

On 4 December 2023, in view of certain deficiencies in Complainant's pleadings and evidence, the Panel issued Procedural Order No. 1 inviting the Complainant to amend its pleadings and serve additional evidence in regard to the disputed domain name <bourso-epargne.com> within 5 days. The Panel made the case Special given the additional complexity and also invited the Complainant to pay the Additional Fees.

On 4 December 2023 the Complainant filed additional evidence. On 6 December 2023 the Complainant paid the Additional Fee and on 11 December 2023, the Complainant filed its Amended Complaint. On 14 December 2023, the deadline for issuing the decision was extended until 18 December 2023.

With the Complainant fulfilling Procedural Order No. 1, 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

Paragraph 4(a)(i) of the Policy requires a complainant to show that a domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights.

A registered trademark provides a clear indication that the rights in the mark shown on the trademark certificate belong to its respective owner. The Complainant has provided evidence that it owns the trademark registration of the BOURSO mark.

In this case, the disputed domain name contains the Complainant's trademark in its entirety with the addition of the generic descriptive suffix "-epargne". The term "epargne" means "savings" in the French language. It is trite that the addition/omission of hyphens to a distinctive trademark would not prevent a finding of confusing similarity. It is well-established 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. (see WIPO Overview 3.0, section 1.8).

In addition, the disputed domain name comprises the Complainant's BOURSO mark in its entirety and the generic Top-Level Domain ("gTLD") ".com". It is well established that the addition of a gTLD ".com" does not avoid confusing similarity between the Complainant's trademark and the disputed domain name (see WIPO Overview 3.0, section 1.11.1).

Consequently, the Panel finds that the Complainant has shown that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights.

B. Rights or Legitimate Interests

Once the complainant establishes a prima facie case that the respondent lacks rights or legitimate interests in the disputed domain name, the burden of production shifts to the respondent to show that it has rights or legitimate interests in respect to the disputed domain name (see WIPO Overview 3.0, section 2.1).

In the present case, the Complainant has demonstrated prima facie that the Respondent lacks rights or legitimate interests in respect of the disputed domain name and the Respondent has failed to assert any such rights or legitimate interests.

The Complainant has provided evidence that it owns trademark registrations of the BOURSO mark long before the date that the disputed domain name was registered and that it is not affiliated with nor has it licensed or otherwise permitted the Respondent to use the Complainant's trademark (see LEGO Juris A/S v. DomainPark Ltd, David Smith, Above.com Domain Privacy, Transure Enterprise Ltd, Host master, WIPO Case No. D2010-0138).

The Complainant also provided evidence that the Respondent is not commonly known by the disputed domain name. See WIPO Overview 3.0, section 2.3. The Complainant has not consented to the use of its BOURSO trademark in the disputed domain name.

Further, the Respondent did not submit a Response in the present case and did not provide any explanation or evidence to show rights or legitimate interests in the disputed domain name which would be sufficient to rebut the Complainant's prima facie case.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

C. Registered and Used in Bad Faith

The complainant must also show that the respondent registered and is using the disputed domain name in bad faith (see Policy, paragraph 4(a)(iii)). Paragraph 4(b) of the Policy provides circumstances that may evidence bad faith under paragraph 4(a)(iii) of the Policy.

The Complainant provided evidence that the disputed domain name resolves to a non-active website. It has been held by prior panels that in circumstances such as the present case the passive holding of the disputed domain name is sufficient evidence of bad faith. (See Telstra Corporation Limited. v. Nuclear Marshmallows, WIPO Case No. D2000-0003; Intesa Sanpaolo S.p.A. v. Kara Turner; WIPO Case No. D2018-0639; WIPO Overview 3.0, section 3.3).

Given the passive holding of the disputed domain name, panelist will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put. (See WIPO Overview 3.0, section 3.3).

The Complainant has submitted evidence which shows that the term BOURSO is not a word in the French language and therefore enjoys a measure of distinctiveness. In addition, the Complainant has provided evidence showing that the mark is distinctive through reference to Google search. The Panel notes that the search was conducted in the English language and is short of evidence which should have been provided to show reputation in the mark. However, the evidence does show that the mark has been registered and has been used in France for the past 20+ years. This long-term use indicates that the Complainant has gained sufficient reputation for the purpose of the analysis under Telstra in this particular case.

Moreover, the Respondent failed to submit a response and did not provide any explanation for registering the disputed domain name not evidence of good-faith use. The Panel finds that under the specific circumstances of this case, it is also implausible that the Respondent could put the disputed domain name into a good faith use.

Accordingly, given the particular circumstances of this case, the reputation of the Complainant's trademark, and based on the evidence presented to the Panel, including (1) the registration of the disputed domain name long after the registration of the Complainant's trademark, (2) the incorporation of the Complainant's trademark in its entirety in the disputed domain name, (3) the reputation of the Complainant in the BOURSO trademark, and, (4) the failure of the Respondent to submit a response, the Panel draws the inference that the disputed domain name was registered and is being used in bad faith.

Accordingly, having regard to the circumstances of this particular case, the Panel finds that the Complainant has met its burden 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. boursopargne.com: Transferred

PANELLISTS

Name	Jonathan Agmon
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DATE OF PANEL DECISION 2023-12-17

Publish the Decision
