Decision for dispute CAC-UDRP-106092

Case number	CAC-UDRP-106092
Time of filing	2023-12-21 10:31:23
Domain names	boursorama-finance.com

Case administrator

Name	Olga Slanařová (Case admin)

Complainant

Organization	BOURSORAMA

Complainant representative

Organization	NAMESHIELD S.A.S.

Respondent

Name	Christophe Reussite

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 <boursorama-finance.com>.

IDENTIFICATION OF RIGHTS

The Complainant states and provides evidence to support that it is the owner of several trademarks BOURSORAMA, such as the European trademark n° 1758614 registered since October 19, 2001, predating the date of registration of the disputed domain name <boursorama-finance.com>.

The Complainant also owns several domain names, including the same distinctive wording BOURSORAMA, such as the domain name <boursorama.com>, registered since March 1, 1998.

The disputed domain name <boursorama-finance.com> was registered on December 15, 2023, and resolves to a parking page.

FACTUAL BACKGROUND

Founded in 1995, BOURSORAMA (the Complainant) is one of the very first online financial platforms in Europe. It grew into a pioneer and market leader in its three core businesses: online brokerage, financial information on the Internet, and online banking. BOURSORAMA based its growth on innovation, commitment and transparency. In France, BOURSORAMA is the online banking reference with over 5,4 million customers. The portal www.boursorama.com is the first national financial and economic

information site and first French online banking platform.

PARTIES CONTENTIONS

COMPLAINANT:

• The disputed domain name is confusingly similar to the protected mark

According to the Complainant, the disputed domain name <boursorama-finance.com> is confusingly similar to its trademark BOURSORAMA. The trademark is included in its entirety. The Complainant contends that the addition of the generic term “FINANCE” is not sufficient to escape the finding that the disputed domain name is confusingly similar to the trademark and branded goods BOURSORAMA. On the contrary, the term “FINANCE” worsens the risk of confusion as it directly refers to the Complainant’s activity.

Moreover, the Complainant contends that the addition of the gTLD “.COM” does not change the overall impression of the designation as being connected to the trademark BOURSORAMA of the Complainant. It does not prevent the likelihood of confusion between the disputed domain name and the Complainant, its trademark, and its domain names associated.

• Respondent does not have any rights or legitimate interest in the disputed domain name

The Respondent is not known by the Complainant. The Complainant states that the Respondent is not affiliated with nor authorized by the Complainant in any way. The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name. 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 BOURSORAMA or apply for registration of the disputed domain name <boursorama-finance.com>.

The Complainant further provides that the disputed domain name resolves to a parking page . The Complainant contends that the Respondent did not make any use of disputed domain name, and it confirms that Respondent has no demonstrable plan to use the disputed domain name. It proves a lack of legitimate interests in respect of the disputed domain name except in order to create a likelihood of confusion with the Complainant and its trademark.

• The disputed domain name has been registered and is being used in bad faith

According to the Complainant, the Respondent has registered the disputed domain name with full knowledge of the Complainant's trademark and is using it in bad faith. The Complainant contends that the disputed domain name <boursorama-finance.com> is confusingly similar to its well-known trademark BOURSORAMA.

Moreover, the Complainant contends the addition of the term “FINANCE” to the trademark BOURSORAMA cannot be coincidental, as it directly refers to the Complainant activities .

The Complainant further states that the disputed domain name resolves to a parking page. The Complainant argues that the Respondent has not demonstrated any activity in respect of the disputed domain name, and 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, or an infringement of the Complainant’s rights under trademark law.

Finally, the Complainant states that the disputed domain name has been set up with MX records, which suggests that it may be actively used for e-mail purposes. This is also indicative of bad faith registration and use because any e-mail emanating from the disputed domain name could not be used for any good-faith purpose.

RESPONDENT:

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

The UNIFORM DOMAIN NAME DISPUTE RESOLUTION POLICY (UDRP) of the Internet Corporation for Assigned Names and Numbers (ICANN) (the “Policy”) provides that complainant must prove each of the following to obtain transfer or cancellation of the domain name:

1. that respondent’s domain name is identical or confusingly similar to a trademark or service mark in which complainant has rights; and

2. that respondent has no rights or legitimate interests in respect of the domain name; and

3. the domain name has been registered and is being used in bad faith.

1) The disputed domain name is confusingly similar to a trademark in which the Complainant has rights

The Complainant has provided evidence and proved to be the owner of the European trademark BOURSORAMA. Essentially, the Respondent has appropriated the trademark BOURSORAMA by adding the generic term "FINANCE" to lead consumers to believe that it is affiliated with the Complainant. In the view of the Panel, the addition of this term does not detract from the confusing similarity of the disputed domain name to the trademark. On the contrary, the Panel agrees with the Complainant, that the term “FINANCE” worsens the risk of confusion as it directly refers to the Complainant’s activity.

Moreover, the Respondent appropriated the trademark BOURSORAMA by adding the gTLD “.COM” which, according to the Panel, does not prevent the likelihood of confusion between the disputed domain name and the Complainant, its trademark and its domain names associated.

The disputed domain name is confusingly similar to the Complainant's trademark BOURSORAMA since it fully incorporates the Complainant’s trademark BOURSORAMA despite the addition of the generic term "FINANCE" and despite the addition of the gTLD “.COM” which the Panel finds does not eliminate any confusing similarity. It is well-established that “a domain name that wholly incorporates a Complainant’s registered trademark may be sufficient to establish confusing similarity for purposes of the UDRP”. See WIPO Case No. D2003-0888, Dr. Ing. h.c. F. Porsche AG v. Vasiliy Terkin. This is especially true where, as here, the trademark is “the dominant portion of the domain name,” LEGO Juris A/S v. Domain Tech Enterprises, WIPO Case No. D2011-2286, or where the trademark in the domain name represents “the most prominent part of the disputed domain name[] which will attract consumers’ attention.” Kabushiki Kaisha Toshiba dba Toshiba Corporation v. WUFACAI, WIPO Case No. D2006-0768., and since the term, BOURSORAMA is fully distinguishable with respect to the additional component of the domain name, either because it is placed at the beginning of the domain name, which is where consumers mainly focus their attention, or because the additional element of the domain name is deprived of a distinctive character.

Therefore, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark BOURSORAMA.

2) The Respondent lacks rights or legitimate interests in the disputed domain name

Under the Policy, a complainant is required to make out a prima facie case that the respondent lacks rights or legitimate interests. Once such a prima facie case is made, the burden of production shifts to the respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such appropriate allegations or evidence, a complainant is generally deemed to have satisfied paragraph 4(a)(ii) of the UDRP (see WIPO Overview 2.0, paragraph 2.1).

The Panel finds that the Respondent does not have a legal right to use the term BOURSORAMA as part of its domain name. The Respondent is not in any way connected with the Complainant, nor is it authorized to register the disputed domain name or use its

intellectual property rights for its operations. The Respondent is not known by the Complainant. 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 BOURSORAMA.

The Respondent has no right or legitimate interests in the disputed domain name resolving to a parking page at the time of the decision in the present case (see, e.g., Philip Morris USA Inc. v. Daniele Tornatore, WIPO Case No. D2016-1302). Past panels have held that the lack of use of a domain name is considered an important indicator of the absence of legitimate interests by the Respondent. See Forum Case No. FA 1773444, Ashley Furniture Industries, Inc. v. Joannet Macket / JM Consultants ("The Panel finds that Respondent's lack of content at the disputed domain shows the lack of a bona fide offering of goods or services or a legitimate noncommercial or fair use per Policy 4(c)(i) and (iii).").

In a present case, the Respondent failed to file a Response in which it could have provided evidence in support of its rights or legitimate interests. Therefore, all these circumstances are sufficient to establish a prima facie case that the Respondent lacks rights and legitimate interests in the disputed domain name.

The Panel thus takes the view that the Respondent lacks rights or legitimate interests in the disputed domain name.

3) The disputed domain name has been registered and is being used in bad faith

The Panel finds that the disputed domain name <boursorama-finance.com> is confusingly similar to the Complainant's well-known trademark BOURSORAMA. It is reasonable to infer that the Respondent has registered the domain name with full knowledge of the Complainant's trademark. The Complainant's use and registration of the trademark BOURSORAMA largely precede the registration date of the disputed domain name. The fact that the Respondent has registered a domain name that includes the term BOURSORAMA, with the addition of the generic term "FINANCE", and despite the addition of the gTLD ".COM", clearly indicates that the Respondent had knowledge of the Complainant's trademark at the time of registration of the disputed domain name. It is reasonable to conclude that this is evidence of registration of the domain name in bad faith.

The disputed domain name redirects to a parking page. According to the Panel, a passive holding of the disputed domain name may amount to bad faith when it is difficult to imagine any plausible future active use of the disputed domain name by the Respondent that would be legitimate and not infringing the Complainant's well-known mark or unfair competition and consumer protection legislation (See Inter-IKEA v Polanski, WIPO Case No. D2000 1614; Inter-IKEA Systems B.V. v. Hoon Huh, WIPO Case No. D2000 0438; Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003). Countless UDRP decisions also confirmed that the passive holding of a domain name with the knowledge that the domain name infringes another party's trademark rights is evidence of bad faith registration and use (see, in this regard, Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003).

The fact that a complainant's trademark has a strong reputation and is widely used and the absence of evidence whatsoever of any actual or contemplated good faith use are further circumstances that may evidence bad faith registration and use in the event of passive use of domain names (see section 3.3, WIPO Overview 3.0).

In the present case, the Panel is of the opinion that the Complainant's BOURSORAMA trademark is distinctive and well-known, which makes it difficult to conceive any plausible legitimate future use of the disputed domain name by the Respondent.

For all reasons stated above, the Panel is satisfied that the Complainant has proven the third element of the Policy that is that the Respondent's registration and use of the disputed domain name in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **boursorama-finance.com**: Transferred

PANELLISTS

Name	**Barbora Donathová**

DATE OF PANEL DECISION 2024-01-22

Publish the Decision