Decision for dispute CAC-UDRP-106120

Case number	CAC-UDRP-106120
Time of filing	2023-12-29 09:38:00
Domain names	boursobak.com

Case administrator

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

Complainant

Organization	BOURSORAMA

Complainant representative

Organization	NAMESHIELD S.A.S.

Respondent

Name	tyson fury

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 states that is a pioneer and leader in three core businesses as, online brokerage, financial information on the Internet and online banking, which operates under the name of BOURSORAMA; that in France, is the online banking reference with over 5,4 million customers; that the portal www.boursorama.com is the first national financial and economic information site and first French online banking platform.

The Complainant owns the following Trademark:

- French Trademark for BOURSO (word mark), Reg. No. 3009973, in ICs 9, 35, 36, 38, 41 and 42, registered on February 22, 2000 and in force until February 22, 2030.

The disputed domain name <**boursobak.com**> was registered on **October 23, 2023**. The disputed domain name resolved to a parking page website, which it has been used for phishing activity. By the time of rendering this Decision, the disputed domain name resolves to an inactive website.

FACTUAL BACKGROUND

The Complainant states that is a pioneer and leader in three core businesses as, online brokerage, financial information on the

Internet and online banking, which operates under the name of BOURSORAMA; that in France, is the online banking reference with over 5,4 million customers; that the portal www.boursorama.com is the first national financial and economic information site and first French online banking platform.

The Complainant also owns the following domain names: <boursorama.com>, registered since March 1, 1998; <bourso.com>, registered since January 11, 2000, and <boursobank.com> registered since November 23, 2005.

According with the evidence submitted before this Panel, the disputed domain name **<boursobak.com>** was registered on **October 23, 2023**; and by December 27, 2023, resolved to a parking page website. The disputed domain name has been used in a phishing scheme. By the time of rendering this Decision, the disputed domain name resolves to an inactive website.

PARTIES CONTENTIONS

Complainant's Contentions:

- The Complainant asserts that the disputed domain name is confusingly similar to its trademark BOURSO and its domain names associated; the addition of the term "BAK" is not sufficient to escape the finding of being confusingly similar to the trademark and branded goods BOURSO; that it does not change the overall impression of the designation as being connected to the Complainant's trademark BOURSO; that it does not prevent the likelihood of confusion between the disputed domain name and the Complainant, its trademark and the domain names associated; that on the contrary, the addition of the term "BAK" worsens the likelihood of confusion between the disputed domain name and the Complainant's trademark BOURSO, as it directly refers to the Complainant new corporate name and website.

- The Complainant asserts that the Respondent has no rights or legitimate interests in respect of the disputed domain name, since it is not known as the disputed domain name, citing Skechers U.S.A., Inc. and Skechers U.S.A., Inc. II v. Chad Moston / Elite Media Group, Forum Case No. FA 1781783, where the WhoIs information differs from the respondent, as in this case.

- The Complainant asserts that the Respondent is not affiliated with nor authorized by the Complainant in any way; that the Complainant does not carry out any activity for, nor has any business with the Respondent; that neither license nor authorization has been granted to the Respondent to make any use of the Complainant's trademark BOURSO, or apply for registration of the disputed domain name.

- The Complainant asserts that the disputed domain name resolves to a parking page and that has been used in a phishing scheme; that the Respondent uses the disputed domain name to pass itself off as one of the Complainant's employees, with it, using the domain name in this manner is neither a bona fide offering of goods or services under Policy 4(c)(i), nor a non-commercial or fair use pursuant to Policy 4(c)(iii).

- The Complainant contends that it and its trademark BOURSO, which has been in use since 1995, have a significant reputation in France and abroad in connection with online financial services; that several experts have confirmed the reputation of the trademark BOURSO, citing Boursorama S.A. v. Contact Privacy Inc. Customer 1249617786 / Marcou, WIPO Case No. D2021-0671; that the disputed domain name is not used for any bona fide offerings; that by using the disputed domain name, the Respondent 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 of his website (par. 4(b)(iv) of the Policy); that the addition of the term "BAK", a misspelled version of the term "BANK", to the trademark BOURSO cannot be coincidental, as it directly refers to the Complainant new corporate name and website https://www.boursobank.com/; that all the results of a search of the term "BOURSOBAK" refers to the Complainant; that given the distinctiveness of the Complainant's trademarks and reputation, it is reasonable to infer that the Respondent has registered the domain name with full knowledge of the Complainant's trademarks.

- The Complainant contends that the disputed domain is being used in bad faith, since it resolves to a parking page and that has been used in a phishing scheme; that the Respondent attempted to pass of as one of the Complainant's employees; that as it is well-established that using a domain name for purposes of phishing or other fraudulent activity constitutes solid evidence of bad faith use, citing Accor v. SANGHO HEO / Contact Privacy Inc., WIPO Case No. D2014-1471 and Qatalyst Partners LP and Qatalyst Partners LLP v. Alyna Devimore / N/A, FA Case No. 1393436.

Respondent

The Respondent did not reply to any of the Complainant's contentions.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name is 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

In relation to the first element of the Policy, this Panel notes that the Complainant contends that the disputed domain name is confusingly similar to its Trademark BOURSO and its domain names associated.

According with the Domain Name Jurisprudence:

> "(…) The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the complainant's trademark and the disputed domain name.
>
> This test typically involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name." (underlined added) (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, "WIPO Overview 3.0", section, 1.7).

Therefore, this Panel performs the test for identity or confusing similarity under the first element of the Policy, between the Complainant's Trademark BOURSO and the disputed domain name <boursobak.com>, only.

The Complainant has proved before the Panel, that owns Trademark Rights over the term BOURSO since February 22, 2000.

The disputed domain name <boursobak.com> registered on October 23, 2023, clearly includes the trademark BOURSO, in addition of the letters "BAK", perceived by this Panel as an intentional misspelling of the word "BANK" [which is intrinsically related to the Complainant's business activity], on an attempt to increase the confusion among the Internet users, which do not prevent a finding of confusing similarity under the first element (see WIPO Overview 3.0, section 1.8; Boursorama S.A. v. Julien, CAC Case No. UDRP-105205).

It is well established by the UDRP Jurisprudence that for the purposes of the analysis of the first element of the Policy, in this case, the gTLD ".com", is considered "as a standard registration requirement and as such is disregarded under the first element confusing similarity test" (see WIPO Overview 3.0, section 1.11.1).

Therefore, this Panel concludes that the disputed domain name <**boursobak.com**> is confusingly similar to Complainant's Trademark BOURSO.

Concerning the second element of the Policy, and having reviewed the evidence submitted, to this Panel it is clear that:

(1) the Respondent use of the disputed domain name is far to be considered in connection with a bona fide offering of goods or services and/or a legitimate noncommercial or fair use; due to the Respondent has selected the Complainant's Trademark to incur in such a serious digital risk for any Internet user, as phishing. Multiple UDRP panelists have agreed that "phishing can never confer rights or legitimate interests on a respondent" (see WIPO Overview 3.0, section 2.13.1).

(2) there is no evidence that the Respondent corresponds or has become commonly known by the term "boursobak.com".

(3) the Respondent is not affiliated with nor authorized by the Complainant in any way; neither carry out any activity for, nor has the Complainant any business with the Respondent; any license or authorization has been granted to the Respondent to make any use of the Complainant's trademark BOURSO, or apply for its registration as a domain name.

According to the evidence submitted before this Panel, the Complainant has made out its prima facie case and the Respondent did not submit any response or any communication during the entire proceeding rebutting Complainant's arguments.

Therefore, this Panel concludes that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

In relation to the third element of the Policy, this Panel analyses the following:

Registration in Bad Faith:

The Panel notes that the Complainant asserts that the term BOURSO has been in use since 1995, however such evidence was not provided by the Complainant in this case. Also, very little has been produced to the Panel in this case, in terms of evidence in relation to the distinctiveness and reputation of the terms BOURSO and BOURSORAMA.

However, this Panel, in accordance to paragraph 10 of the Rules and section 4.8 of the WIPO Overview 3.0, has conducted limited factual research into matters of public record, and have found that certainly previous UDRP panelists have confirmed the significant reputation of the Trademark BOURSO and BOURSORAMA in connection with online financial services (Boursorama v. OPUSM OPUSM, OPUSM, WIPO Case No. D2023- 4419; Boursorama v. BrooklynOnline, Brooklyn Dickerson, WIPO Case No. D2023-4167; Boursorama v. rssry - hrtsrhs rthtrsh et al., CAC Case No. UDRP-105950; Boursorama v. hermano sanchez, CAC Case No. UDRP-105903; Boursorama v. Dominique Toreto, CAC Case No. UDRP-105577).

The Complainant acquired its Trademark rights over the term BOURSO on February 22, 2000, meaning 23 years before the Respondent registered the disputed domain name on October 23, 2023, giving an extraordinary amount of time to the Respondent to learn about the Complainant's business activity and Trademark's value.

Considering that the Respondent has selected a recognized Trademark as BOURSO, added an intentional misspelled word as "bak", registered as a domain name to incur in phishing, to this Panel, and in line with the Domain Name Jurisprudence, "phishing can never confer rights, such behavior is manifestly considered evidence of bad faith." (see Auchan Holding SA v. WhoisGuard Protected, WhoisGuard, Inc. / Name Redacted, WIPO Case No. Case No. D2021-0986) it is sufficient to this Panel to determine that the Respondent registered the disputed domain name with the Complainant in mind.

Therefore, this Panel concludes without hesitation that the disputed domain name has been registered in bad faith.

Use in Bad Faith:

The Complainant has provided consistent evidence in relation to the Respondent´s use of the disputed domain name to incur in illegitimate activity as phishing. Despite the disputed domain name by the time of this Decision, resolves in an inactive website, such fact, does not safe the Respondent, in contrary, to this Panel, emphasizes its bad faith.

The fact that the disputed domain name resolves to an inactive website, doesn´t necessarily prevent the continuing use of the corresponding e-mail to keep incurring in phishing, as in this case: 'alain.berthier@boursobak.com'; neither a finding of bad faith under the doctrine of passive holding (see WIPO Overview 3.0, section 3.3).

As multiple UDRP panelists have stated in relation to phishing: "(…) given that the use of a domain name for per se illegitimate activity such as the sale of counterfeit goods or phishing can never confer rights or legitimate interests on a respondent, such behavior is manifestly considered evidence of bad faith" (emphasized added) (see WIPO Overview 3.0, section 3.1.4; and as e.g.: Boursorama v. Domain Privacy (Above.com Domain Privacy), CAC Case No. UDRP-106001; Migros-Genossenschafts-Bund v. Ezeckiel DOSSOU, CAC Case No. UDRP-106075).

Therefore, this Panel, based on the preponderance of the evidence, concludes that the Respondent is using 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. **boursobak.com**: Transferred

PANELLISTS

Name	**María Alejandra López García**

DATE OF PANEL DECISION 2024-02-01

Publish the Decision