Decision for dispute CAC-UDRP-106260

Case number	CAC-UDRP-106260
Time of filing	2024-02-14 13:43:04
Domain names	boursobnak.com

Case administrator

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

Complainant

Organization	BOURSORAMA

Complainant representative

Organization	NAMESHIELD S.A.S.

Respondent

Name	loui rapiens

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 submitted evidence that it is the owner of the French word trademark “BOURSO”, registration no. 3009973, registered on February 22, 2000, valid in France, for a list of goods and services in classes 9, 35, 36, 38, 41 and 42 (Nice) (hereinafter the “Trademark”).

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:

The Complainant claims to operate under the name ‘BOURSOBANK’ in Europe and to be a leader in its three core businesses: online brokerage, financial information on the internet, and online banking. The Complainant declares it has over 6 million customers in France in online banking. The Complainant also states that its portal www.boursorama.com is the first national financial and economic information website and the first online banking platform in France.

The Complainant provided evidence that it is the owner of the Trademark and of several domain names, including <boursorama.com> since March 1, 1998, <bourso.com> since January 11, 2000, and <boursobank.com> since November 23, 2005.

The disputed domain name <boursobnak.com> was registered on February 12, 2024. The Complainant claims that the disputed

domain name resolves to a parking page.

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

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

1. **Confusing similarity**

The disputed domain name consists of the Complainant's Trademark “BOURSO” with the addition of the word element “bnak” (which seems to be a misspelling of the word “bank”).

According to the Complainant, the addition of the term “bnak” is not sufficient to avoid a likelihood of confusion with the Complainant’s registered Trademark. Furthermore, the Complainant argues that the gTLD “.com” should be disregarded when comparing the disputed domain name and the registered Trademark.

The Panel notes that the disputed domain name incorporates the entirety of the Complainant’s “BOURSO” Trademark, with the addition of the term “bnak”.

The Panel remarks that Section 1.7 of WIPO Overview 3.0, clearly states that, "in cases where a domain name contains the whole of a trademark, or where at least one dominant feature of the relevant trademark is recognisable in the domain name, the domain name shall normally be considered confusingly similar to that trademark for the purposes of UDRP status".

The Panel is of the opinion that the addition of the term “bnak” does not prevent a finding of confusing similarity under the first element of paragraph 4(a) of the Policy, since the term “bnak” seems to be a misspelling of the term “bank” which describes the activities/sector of the Complainant and thus reinforces the likelihood of confusion with the Complainant and its Trademark.

This is supported by section 1.8 of WIPO Overview 3.0, which clearly states: "Where the relevant mark is recognisable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless or otherwise) would not preclude a finding of confusing similarity under the first element".

It is well-established that the gTLD ".com" may be disregarded when it comes to considering whether a domain name is confusingly

similar to a trademark in which the Complainant has rights. Moreover, section 1.11.1 of WIPO Overview 3.0 clearly states: "The applicable Top Level Domain ("TLD") in a domain name (e.g., ".com", ".club", ".nyc") is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test.".

For these reasons, the Panel concludes that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights within the meaning of paragraph 4(a)(i) of the Policy.

2. **Rights or legitimate interests**

As regards paragraph 4(a)(ii) of the Policy, while the overall burden of proof rests with the Complainant, it is commonly accepted that this should not result in an often-impossible task of proving a negative. Therefore, numerous previous panels have found that the complainant is required to make out a prima facie case that the respondent lacks rights or legitimate interests. Once such 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 disputed domain name. If the respondent fails to come forward with such appropriate allegations or evidence, the complainant is generally deemed to have satisfied paragraph 4(a)(ii) of the Policy. If the respondent does come forward with some allegations or evidence of relevant rights or legitimate interests, the panel then must weigh all the evidence, with the burden of proof always remaining on the complainant.

The Complainant argues that:

- The Respondent is not known under the disputed domain name.
- The Respondent is not known by the Complainant and is not affiliated with, nor authorized by the Complainant. The Respondent does not carry out any activity for nor has any business with the Complainant.
- No license or authorisation was granted to the Respondent to make use of the Complainant's Trademark or to apply for registration of the disputed domain name.
- The disputed domain name resolves to a parking page. The Respondent does not use the disputed domain name and there are no demonstrable plans to use the disputed domain name.

The Respondent did not file an administratively compliant (or any) response. The Respondent did not provide evidence that it has rights or legitimate interests in the disputed domain name (the Respondent could, inter alia, have provided evidence of the factors mentioned in paragraph 4(c) of the Policy, but failed to do so).

The Panel finds that the Respondent does not appear to have any rights or legitimate interests associated with the Trademark from the following facts:

- There is no evidence that the Respondent is or has been commonly known, by the disputed domain name or by the term "BOURSO". The WHOIS information does not provide any information that might indicate any rights to use of the term "BOURSO".
- The Complainant's Trademark has been used well before the registration date of the disputed domain name. The disputed domain name was registered on February 12, 2024, whereas the Trademark of the Complainant was registered on February 22, 2000.

- There is no evidence to show that the Respondent is making a legitimate non-commercial or fair use of the disputed domain name, without intent for commercial gain or to misleadingly divert consumers.
- The Respondent did not show to have any trademark rights or other rights regarding the term "BOURSO".
- The Respondent does not seem to have any consent or authorisation to use the Trademark or variations thereof and does not seem to be related in any way to the Complainant.

In sum, on the balance of probabilities, and in the absence of any evidence to the contrary or any administratively compliant response being put forward by the Respondent, the Panel finds that the Complainant has made a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name.

The Panel concludes that the Respondent does not have rights or legitimate interests in the disputed domain name.

3. **Bad faith**

The Complainant argues that the Respondent has registered the domain name with full knowledge of the Complainant and its Trademark, given the distinctiveness and reputation of the Trademark and given the fact that the Complainant has more than 6 million customers in France. The Complainant emphasises that the Respondent is based in France.

The Complainant further argues that the addition of the term "bnak", a misspelled version of the term "bank", to the Trademark in the disputed domain name, is not coincidental, as it directly refers to the Complainant's new corporate name and its website available via the domain name <boursobank.com>. The Complainant submitted evidence that at least a significant number of the results of a search of the term "BOURSOBNAK" on the Google search engine refers to the Complainant.

The Complainant also mentions that the disputed domain name resolves to a parking page. The Complainant contends 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 argues that MX servers are configured, which suggests that it may be actively used for e-mail purposes.

The Panel weighs these arguments and facts as follows:

First, as mentioned already, the disputed domain name reproduces the Complainant's Trademark "BOURSO" entirely, with the addition of the term “bnak”, which the Panel considers to be a misspelling or typo of the word “bank”. Given the fact that the Complainant is a bank and that the Trademark is registered for banking services, the Panel is convinced that it is no coincidence that the Respondent uses the registered Trademark of the Complainant in combination with a misspelled version of the word “bank”. The Panel considers this case to be a typical case of “cybersquatting”.

Second, the Complainant’s Trademark predates the registration of the disputed domain name with more than 20 years.

Third, the Trademark covers the territory of France, i.e., the Respondent’s home country.

It is therefore inconceivable that the Respondent would have come up with a domain name consisting of the term “BOURSO” in combination with the term “bnak” (a misspelled version of “bank”) without having prior knowledge of the Complainant and its Trademark and activities. On the balance of probabilities, it is evident that the Respondent had knowledge of the existence of the Complainant and its activities, and of the existence of the Complainant's Trademark and the scope of the Trademark at the time of registration and use of the disputed domain name.

The Panel did not need to consider the Complainant’s arguments regarding the disputed domain name resolving to a parking page and regarding MX servers. The Panel is convinced that it can take a decision on paragraph 4(a)(iii) of the Policy based on the above-mentioned factors.

The Respondent did not contest any of the Complainant’s arguments and did not provide any explanation concerning its choice for registering and/or using a domain name that includes the Complainant’s registered Trademark in combination with the term “bnak”.

The Panel concludes that the Respondent had the Trademark of the Complainant in mind when registering and using the disputed domain name.

Given the above, the Panel finds that the disputed domain name is not being used for a bona fide offering of goods or services.

For all the reasons set out above, the Panel concludes that the disputed domain name was registered and is being used in bad faith within the meaning of 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. **boursobnak.com**: Transferred

PANELLISTS

Name	**Bart Van Besien**

DATE OF PANEL DECISION 2024-03-09

Publish the Decision