Decision for dispute CAC-UDRP-106277

Case number	CAC-UDRP-106277
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Domain names	bursoram.site

Case administrator

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

Complainant

Organization	BOURSORAMA

Complainant representative

Organization	NAMESHIELD S.A.S.

Respondent

Name	Iliasse Loukili

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 Union trademark BOURSORAMA with registration No.001758614, registered on 19 October 2001 for goods and services in International Classes 9, 16, 35, 36, 38, 41 and 42 (the “BOURSORAMA trademark”).

FACTUAL BACKGROUND

The Complainant has three core businesses - online brokerage, financial information on the Internet and online banking, and has over 6 million customers in France. It operates the domain name <boursorama.com>, registered on 1 March 1998. The Complainant’s online portal at www.boursorama.com is the first national financial and economic information website and the first online banking platform in France.

The disputed domain name <bursoram.site> was registered on 16 February 2024. It resolves to a parking webpage and has mail exchange (“MX”) servers configured for it.

PARTIES CONTENTIONS

COMPLAINANT:

The Complainant contends that the disputed domain name is confusingly similar to its BOURSORAMA trademark, because it represents an obvious misspelling of the same trademark, created through the deletion of the letters “o” and “a”, which is characteristic of a typosquatting practice intended to create confusing similarity between the Complainant’s trademark and the disputed domain name.

The Complainant asserts that the Respondent has no rights or legitimate interests in respect of the disputed domain name, as it is not commonly known under it and is not affiliated to the Complainant, who has not given any authorization to the Respondent to use the BOURSORAMA trademark. The Complainant adds that the fact that the disputed domain name is a typosquatted version of the trademark BOURSORAMA cannot give rise to rights or legitimate interests, and notes that Respondent does not use the disputed domain name, as it is inactive.

The Complainant contends that the disputed domain name was registered and is being used in bad faith. According to the Complainant, its BOURSORAMA trademark is distinctive and well-known, so the Respondent must have known it when it registered the disputed domain name, which is intentionally designed to be confusingly similar with the same trademark. The Complainant maintains that the Respondent has not demonstrated any activity in respect of the disputed domain name and that it is not possible to conceive of any plausible actual or contemplated active use of it 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 points out that the disputed domain name has been set up with MX records, which suggests that it may be actively used for email purposes, and any e-mail messages emanating from the disputed domain name could not be used for any good faith purpose.

RESPONDENT:

The Respondent did not submit a Response in this proceeding.

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

Pursuant to the Policy, paragraph 4(a), a complainant must prove each of the following to justify the transfer of a domain name:

(i) the domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights;

(ii) the respondent has no rights or legitimate interests in respect of the domain name; and

(iii) the domain name was registered and is being used in bad faith.

In this case, the Provider has employed the required measures to achieve actual notice of the Complaint to the Respondent, and the

Respondent was given a fair opportunity to present its case.

By the Rules, paragraph 5(c)(i), it is expected of a respondent to: "[r]espond specifically to the statements and allegations contained in the complaint and include any and all bases for the Respondent (domain name holder) to retain registration and use of the disputed domain name …"

In this proceeding, the Respondent has not used the opportunity provided to it under the Rules and has not submitted a substantive Response addressing the contentions of the Complainant and the evidence submitted by it.

Identical or confusingly similar

The Complainant has provided evidence and has thus established its rights in the BOURSORAMA trademark.

The Panel notes that a common practice has emerged under the Policy to disregard in appropriate circumstances the general Top-Level Domain ("gTLD") section of domain names for the purposes of the comparison under the Policy, paragraph 4(a)(i). The Panel sees no reason not to follow the same approach here, so it will disregard the ".site" gTLD section of the disputed domain name.

The relevant part of the disputed domain name is therefore the sequence "bursoram", which indeed represents a misspelling of the BOURSORAMA trademark with the removal of the letters "o" and "a". As discussed in section 1.9 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (the "WIPO Overview 3.0"), a domain name which consists of a common or obvious misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element.

Taking the above into account, the Panel finds that the disputed domain name is confusingly similar to the BOURSORAMA trademark in which the Complainant has rights.

Rights and legitimate interests

While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often-impossible task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.

The Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name, because it was not authorized to use the BOURSORAMA trademark and is not commonly known under the disputed domain name. The Complainant adds that the disputed domain name is a typosquatted version of the Complainant's trademark. Thus, the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name.

The Respondent has not submitted a Response and has not provided an explanation of the reasons why it has registered the disputed domain name and how it intends to use it.

In the Panel's view, the circumstances of this case do not support a finding that the Respondent has rights and legitimate interests in the disputed domain name. It appears as a confusingly similar misspelling of the distinctive BOURSORAMA trademark, and this may create an impression in Internet users that it is related to the Complainant. In the lack of any arguments or evidence to the contrary, the above leads the Panel to the conclusion that it is more likely than not that the Respondent, being aware of the goodwill of the Complainant's BOURSORAMA trademark, has registered the disputed domain name targeting this trademark in an attempt to exploit its goodwill by confusing Internet users that the disputed domain name is affiliated to the Complainant. The Panel does not regard such conduct as giving rise to rights or legitimate interests in the disputed domain name.

Therefore, the Panel finds that the Respondent does not have rights or legitimate interests in the disputed domain name.

Bad faith

Paragraph 4(b) of the Policy lists four illustrative alternative circumstances that shall be evidence of the registration and use of a domain name in bad faith by a respondent, namely:

"(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or

(ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product or service on your website or location."

The registration of the distinctive BOURSORAMA trademark predates by 23 years the registration of the disputed domain name. It represents a misspelling of the BOURSORAMA trademark, which may lead Internet users to believe that it is affiliated to the Complainant, and the Respondent has not provided any plausible explanation of its choice of a domain name and its plans how to use it. The Panel is therefore of the view that the Respondent is more likely to have registered the disputed domain name with knowledge of the Complainant's trademark rights, with the intention of taking advantage of its goodwill.

As noted by the Complainant, the Respondent is not using the disputed domain name for a website, but has configured MX records for it, so it may be used for e-mail communications. Recipients of such communications may well wrongly understand them as originating from the Complainant. Therefore, given the circumstances of this case, the Panel is not aware of any good faith use, including for e-mail communications, to which the disputed domain name may be put without the consent of the Complainant.

This satisfies the Panel that the disputed domain name has been registered and used in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **bursoram.site**: Transferred

PANELLISTS

Name	**Assen Alexiev**

DATE OF PANEL DECISION 2024-03-19

Publish the Decision