Decision for dispute CAC-UDRP-106262

Case number	CAC-UDRP-106262
Time of filing	2024-02-15 09:59:22
Domain names	boursobunk.com

Case administrator

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

Complainant

Organization	BOURSORAMA

Complainant representative

Organization	NAMESHIELD S.A.S.

Respondent

Name	marc toulin

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 owns several trademark registrations inter alia the French trademark registration No. 3009973 "BOURSO", registered on February 22, 2000 (hereinafter referred to as the "Trademark").

FACTUAL BACKGROUND

The Complainant is a French company, founded in 1995, which became a leader in its three core businesses, i.e. online brokerage, financial information on the Internet and online banking as 'Boursorama Banque'.

The Complainant provides information on its products online inter alia at <boursorama.com>, registered since March 1, 1998, but has also registered the domain names <bourso.com>, registered since January 11, 2000, and <boursobank.com> registered since November 23, 2005.

The disputed domain name <boursobunk.com> was registered on January 4, 2024 and is currently not used in connection with an active website, but MX servers are configured.

PARTIES CONTENTIONS

COMPLAINANT:

The Complainant contends that the disputed domain name is confusingly similar to the Trademark since it fully incorporates the Trademark and the addition of a generic term, such as "bunk" is not sufficient to escape the finding that the domain name is confusingly similar to the Trademark. The term "bunk" could be even seen as a misspelling of the word "bank".

Furthermore, the Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name. In this regard, the Complainant states that the Respondent is not commonly known by the disputed domain name, that it 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, and that neither license nor authorization has been granted to the Respondent to make any use of the Trademark or apply for registration of the disputed domain name by the Complainant.

Finally, the Complainant contends that the disputed domain name was registered and is being used in bad faith. It contends that the Respondent must have been aware of the Complainant and its Trademark at the time of registration of the disputed domain name, that the Respondent's non-use of the disputed domain name can be evidence of bad faith registration and use according to the Telstra doctrine of passive holding and that since MX servers are configured this action suggests that the domain name may be actively used for e-mail purposes.

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

Under paragraph 4(a) of the Policy, the Complainant must prove that each of the following three elements is present:

(i) the disputed domain name is identical or confusingly similar to the Complainant's trademark; and

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

(iii) the disputed domain name has been registered and is being used in bad faith.

1. Based on the evidence submitted, the Panel finds that the disputed domain name is confusingly similar to the Trademark. The disputed domain name wholly incorporates the Trademark and the addition of the generic term, "bunk" does not provide sufficient distinction from the Trademark.

2. The Complainant has substantiated that the Respondent has no rights or legitimate interests in the disputed domain name. The Panel finds that the Complainant has fulfilled its obligations under paragraph 4(a)(ii) of the Policy. The Respondent did not deny these assertions in any way and therefore failed to prove any rights or legitimate interests in the disputed domain name.

3.1 The Panel is satisfied that the Respondent registered the disputed domain name with full knowledge of the Complainant and its rights in the Trademark as the Trademark is well-known and highly distinctive.

3.2 Furthermore, the Panel accepts the Complainant's contentions that the disputed domain name has been used in bad faith under the principles of passive holding. It is the consensus view that the lack of active use of a domain name does not as such prevent a finding of bad faith under the Policy. In such cases, the panel must examine all the circumstances of the case to determine whether a respondent is acting in bad faith. Examples of circumstances that can indicate bad faith include a complainant having a well-known trademark, no response to the complaint, respondent's concealment of identity and the impossibility of conceiving a good faith use of the domain name (cf Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003; Jupiters Limited v. Aaron Hall, WIPO Case No. D2000-0574; Ladbroke Group Plc v. Sonoma International LDC, WIPO Case No. D2002-0131).

The Panel is convinced that the Trademark is highly distinctive. Furthermore, the Respondent failed to file a Response and therefore did not provide evidence of any actual or contemplated good faith use of the disputed domain names. In the view of the Panel, the facts of this case do not allow for any plausible actual or contemplated active use of the disputed domain names by the Respondent in good faith. The Panel is therefore convinced that, even though the disputed domain name has not yet been actively used, the Respondent's non-use of the disputed domain name equals to use in bad faith.

Taking all the circumstances into account and for all the above reasons, the Panel concludes that the Respondent has registered and 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. **boursobunk.com**: Transferred

PANELLISTS

Name	**Stefanie Efstathiou LL.M. mult.**

DATE OF PANEL DECISION 2024-03-21

Publish the Decision