Decision for dispute CAC-UDRP-106409

Case number	CAC-UDRP-106409
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Domain names	fr-boursobnk.com

Case administrator

Name	Olga Slanařová (Case admin)

Complainant

Organization	BOURSORAMA

Complainant representative

Organization	NAMESHIELD S.A.S.

Respondent

Name	Pia Gloger

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 prior French trademark BOURSO n°3009973 registered on February 22nd, 2000 for products and services of classes 9, 35, 36, 38, 41 and 42.

FACTUAL BACKGROUND

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

BOURSORAMA (the Complainant), operating under the name BOURSOBANK grows in Europe with the emergence of e-commerce and the continuous expansion of the range of financial products online. Pioneer and 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 6 million customers. The portal www.boursorama.com is the first national financial and economic information site and first French online banking platform.

The Complainant is the owner of prior French trademark BOURSO n°3009973 registered on February 22nd, 2000.

The Complainant also owns a number of domain names, including the same distinctive wording BOURSO such as the domain names <boursorama.com>, registered since March 1st, 1998, <bourso.com>, registered since January 11th, 2000, and <boursobank.com> registered since November 23rd, 2005.

The disputed domain name was registered on April 1st, 2024, and resolves to an index page.

1. **The domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights**

The Complainant states that the disputed domain name is confusingly similar to its trademark BOURSO and its domain names associated, as it is identically contained.

The addition of the term geographical term “FR” (short for France) and the term “BNK” is not sufficient to escape the finding that the domain name is confusingly similar to the trademark and branded goods BOURSO. It does not change the overall impression of the designation as being connected to the Complainant’s trademark BOURSO. It does not prevent the likelihood of confusion between the disputed domain name and the Complainant, its trademark and the domain names associated.

On the contrary, the addition of the terms “FR” and “BNK” (a misspelled version of the term “BANK”) worsens the likelihood of confusion between the disputed domain name and the Complainant’s trademark BOURSO, as it directly refers to the Complainant’s nationality and its new corporate name and website https://www.boursobank.com/.

Furthermore, Complainant contends that the addition of the gTLD “.COM” does not change the overall impression of the designation as being connected to Complainant’s trademark. It does not prevent the likelihood of confusion between the disputed domain name and Complainant, its trademark and its domain names associated (WIPO Case No. D2006-0451, F. Hoffmann-La Roche AG v. Macalve e-dominios S.A. (“It is also well established that the specific top level of a domain name such as “.com”, “.org” or “.net” does not affect the domain name for the purpose of determining whether it is identical or confusingly similar.”).

1. **The Respondent has no rights or legitimate interests in respect of the domain name**

The Complainant asserts that the Respondent is not known as the disputed domain name. Past panels have held that a Respondent was not commonly known by a disputed domain name if the Whois information was not similar to the disputed domain name. Please see for instance Forum Case No. FA 1781783, Skechers U.S.A., Inc. and Skechers U.S.A., Inc. II v. Chad Moston / Elite Media Group <bobsfromsketchers.com> (“Here, the WHOIS information of record identifies Respondent as “Chad Moston / Elite Media Group.” The Panel therefore finds under Policy ¶ 4(c)(ii) that Respondent is not commonly known by the disputed domain name under Policy ¶ 4(c)(ii).”).

The Respondent is not known by the Complainant. The Complainant contends that the Respondent is not affiliated with nor authorized by the Complainant in any way. The Complainant contends that 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 BOURSO, or apply for registration of the disputed domain name.

Finally, the disputed domain name points to an index page. The Complainant contends that the Respondent did not use the disputed domain name, and it confirms that Respondent has no demonstrable plan to use the disputed domain name. Please see for instance 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).").

1. **The domain name was registered and is being used in bad faith**

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. Several experts have confirmed the reputation of the trademark BOURSO. The Complainant refers to WIPO Case No. D2021-0671, Boursorama S.A. v. Contact Privacy Inc. Customer 1249617786 / Marcou. ("First, with respect to the bad faith registration, it is undisputed that the Respondent had the Complainant's mark in mind when it configured its domain name: it reproduced the BOURSO mark identically, associating the term 'service' with it in an attacking position. Not only are the Complainant's BOURSORAMA and BOURSO trademarks perfectly arbitrary, but they are also well known in France. As for the term "service", it is descriptive of the services likely to be rendered by the Applicant online to its customers, like any banking institution. Thus, the combination of the terms SERVICE and BOURSO was devised by the Respondent with the aim of creating confusion with the Applicant's trademarks.").

Moreover, the addition of the terms "FR" and "BNK" to the trademark BOURSO cannot be coincidental, as it directly refers to the Complainant's nationality and its new corporate name and website https://www.boursobank.com/.

Besides, most results of a search on the terms "FR BOURSOBNK" refer to the Complainant.

On those facts, 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. Please see for instance WIPO Case No. D2004-0673, Ferrari S.p.A v. American Entertainment Group Inc.

Furthermore, the disputed domain name points to an index 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.

As prior WIPO UDRP panels have held, the incorporation of a famous mark into a domain name, coupled with an inactive website, that it might be evidence of bad faith registration and use.

PARTIES CONTENTIONS

The Complainant's contentions are reproduced above.

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. RIGHTS

The disputed domain name is confusingly similar to the Complainant's registered trademarks since it reproduces the Complainant's mark 'BOURSO', merely adding the letters "FR" at the beginning (country code for France) and the letters BNK that will be understood as "bank". Therefore, the Complainant's mark BOURSO is clearly recognizable.

As a consequence, the first element is met.

2. NO RIGHTS OR LEGITIMATE INTERESTS

The Respondent has not submitted any response. Therefore, they have submitted no information on possible rights or legitimate interests they might hold. On its part, the Complainant has submitted information and arguments which, prima facie, allow it to be reasonably assumed that the Respondents have no rights or legitimate interest in the disputed domain name.

As the WIPO Arbitration and Mediation Center pointed out in UDRP case No. D2002-0856:

"As mentioned, [in the decision], the Respondent has not filed a Response and is therefore in default. In those circumstances when the Respondent has no obvious connection with the disputed domain name, the prima facie showing by the Complainant that the Respondent has no right or legitimate interest is sufficient to shift the burden of proof to the Respondent to demonstrate that such a right or legitimate interest exists."

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.

3. BAD FAITH

The Respondent has, as a result of his default, not invoked any circumstances which could invalidate the Complainant´s allegations and evidence with regard to the Respondent´s registration and use of the disputed domain name in bad faith.

The Complainant has filed evidence of the well-known character of its BOURSO, BOURSORAMA and BOURSOBANK trademarks for banking and financial services. In view of that, the only plausible explanation for the registration of the domain name in dispute is

that the Respondent is trying to impersonate the Complainant.

Paragraph 4(b) (iiii) of the Policy provides that the following circumstances are deemed to be evidence that the Respondent has registered and is using the disputed domain name in bad faith:

(iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its 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 its website or location or of a product or service on its website or location.

As mentioned in Andrey Ternovskiy dba Chatroulette v. Alexander Ochki, WIPO Case No. D2017-0334:

"It is clear in the Panel's view that in the mind of an Internet user, the disputed domain names could be directly associated with the Complainant's trademark, which is likely to be confusing to the public as suggesting either an operation of the Complainant or one associated with or endorsed by it (see AT&T Corp. v. Amjad Kausar, WIPO Case No. D2003-0327)."

It has, therefore, been satisfactorily demonstrated to 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. **fr-boursobnk.com**: Transferred

PANELLISTS

Name	**José Ignacio San Martín**

DATE OF PANEL DECISION 2024-04-30

Publish the Decision