Decision for dispute CAC-UDRP-106431

Case number	CAC-UDRP-106431
Time of filing	2024-04-09 09:39:34
Domain names	boursoepargne.com

Case administrator

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

Complainant

Organization	BOURSORAMA

Complainant representative

Organization	NAMESHIELD S.A.S.

Respondent

Name	Luca Miro

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 the French trademark registration number 3009973 for BOURSO, registered on 28 July 2000 in classes 9, 35, 36, 38, 41 and 42.

FACTUAL BACKGROUND

The Complainant operates under the name BOURSOBANK. It has three core businesses: online brokerage, financial information on the Internet and online banking. In France, it has over 6 million customers. Its portal www.boursorama.com is a national financial and economic information site and online banking platform.

The Complainant owns the French trademark BOURSO, which predates the registration of the disputed domain name. The Complainant also owns a number of domain names that incorporate the mark BOURSO, including <boursorama.com>, registered since 1 March 1998, <bourso.com>, registered since 11 January 2000, and <boursobank.com>, registered since 23 November 2005.

The Respondent has his address in France. He registered the disputed domain name on 4 April 2024 using a privacy shield. It is inactive. MX servers are configured.

PARTIES CONTENTIONS

The Complainant

The Complainant states that the disputed domain name is confusingly similar to its trademark BOURSO. It asserts that the addition of the French generic term “epargne” meaning “savings” is not sufficient to escape the finding that the disputed domain name is confusingly similar to the trademark BOURSO.

The Complainant asserts that the Respondent has no rights or legitimate interest in the disputed domain name and states that:

i. the Respondent is not known as the disputed domain name and 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;
ii. the Respondent is not known by the Complainant, is not affiliated with, nor authorised by the Complainant in any way, and does not carry out any activity for nor has any business with the Complainant;
iii. the Respondent is not licenced nor authorised to use the Complainant’s trademark BOURSO, or apply for registration of the disputed domain name; and
iv. the disputed domain name resolves to an inactive page and the Respondent has not used and has no plan to use the disputed domain name.

The Complainant contends that the disputed domain name was registered and is being used in bad faith. It states that:

i. its trademark BOURSO has been in use since 1995 and has a significant reputation in France and abroad in connection with online financial services (see WIPO Case No. D2021-0671,Boursorama S.A. v. Contact Privacy Inc. Customer 1249617786/Marcou);
ii. 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 (see WIPO Case No. D2004-0673, Ferrari S.p.A v. American Entertainment Group Inc); and
iii. the disputed domain name resolves to an inactive page and
iv. MX servers are configured which suggests that it may be actively used for email purposes (see CAC Case No. 102827, JCDECAUX SA v. Handi Hariyono 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 an infringement of the Complainant’s rights under trademark law (see WIPO Case No. D2000-0003, Telstra Corporation Limited v. Nuclear Marshmallows; and WIPO Case No. D2000-0400, CBS Broadcasting, Inc. v. Dennis Toeppen).

The 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 the UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

Paragraph 4(a) of the Policy requires the Complainant to prove each of the following three elements:

i. the disputed 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 the disputed domain name; and
iii. the disputed domain name has been registered and used in bad faith.

A. IDENTICAL OR CONFUSINGLY SIMILAR

The disputed domain name comprises the Complainant's mark BOURSO, the French word "epargne" and the top level domain ".com". The word "epargne" meaning "savings" is a word likely to be associated with the Complainant and its banking business and does not prevent the disputed domain name being confusingly similar to the Complainant's distinctive mark, BOURSO.

A top level domain, such as ".com", is a standard registration requirement. It does not add any distinctiveness to a domain name and can be disregarded when assessing whether the disputed domain name is confusingly similar to the Complainant's trademark.

The Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark and that the requirements of paragraph 4(a)(i) of the Policy have been met.

B. NO RIGHTS OR LEGITIMATE INTEREST IN THE DISPUTED DOMAIN NAME

The Complainant has provided evidence of its rights in the trademark BOURSO, which predate the registration of the disputed domain name and has made out a prima facie case that the Respondent lacks rights or legitimate interest in the disputed domain name. The burden of proof now shifts to the Respondent to show that he has relevant rights (see WIPO Case No. D2003-0455, Croatia Airlines d.d. v. Modern Empire Internet Ltd).

The Respondent has failed to file a Response, nor submitted any evidence to show he has rights or a legitimate interest in the disputed domain name or that he is commonly known by that name. He is not connected with the Complainant, does not conduct any business for the Complainant, and is not authorised use the Complainant's trademark. There is no evidence that the Respondent is using, or has any demonstrable plans to use, the disputed domain name in connection with a bona fide offering of goods or services, nor any evidence of legitimate non-commercial use.

Taking the above factors into consideration, the Panel finds that the Respondent has no rights or legitimate interest in the disputed domain name and that the requirements of paragraph 4(a)(ii) of the Policy have been met.

C. REGISTERED AND BEING USED IN BAD FAITH

The disputed domain name is confusingly similar to the Complainant's well-known trademark, BOURSO. The Respondent resides in France and it is implausible that he was unaware of the Complainant's mark when he registered the disputed domain name. The Respondent is not affiliated with the Complainant and there appears no reason to register the disputed domain name incorporating both the Complaint's mark and a word associated with the Complainant's banking business, other than to create a likelihood of confusion with that mark. The Panel concludes that the disputed domain was registered by the Respondent in bad faith.

The disputed domain name resolves to an inactive webpage. The passive holding of a domain name can in certain circumstances amount to acting in bad faith (see WIPO Case No. D2000-0003, Telstra Corporation Limited v. Nuclear Marshmallows).

In the present case:

- the Complainant's trademark is well-known;
- the Respondent has used a privacy service to conceal his identity;
- the Respondent has provided no evidence of any actual or contemplated good faith use of the disputed domain name;
- MX servers are configured, which suggests that the disputed domain name may be used for email purposes; and
- it is impossible to conceive of any plausible actual or contemplated use of the disputed domain name by the Respondent that would not infringe the Complainant's rights.

Considering the above factors, the Panel concludes that the Respondent has registered and is using the disputed domain name in bad faith and that the requirements of paragraph 4(a)(iii) of the Policy have been met.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **boursoepargne.com**: Transferred

PANELLISTS

Name	**Veronica Bailey**

DATE OF PANEL DECISION 2024-05-11

Publish the Decision