Decision for dispute CAC-UDRP-106606

Case number	CAC-UDRP-106606
Time of filing	2024-06-13 13:38:44
Domain names	boursogroup.info

Case administrator

Name	Olga Slanařová (Case admin)

Complainant

Organization	BOURSORAMA

Complainant representative

Organization	NAMESHIELD S.A.S.

Respondent

Name	Peter Lawrence

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 French trademark “BOURSO®”, no. 3009973 registered since February 22, 2000, in classes 9, 35, 36, 38, 41 & 42.

In addition, the Complainant owns domain names comprising of or including the term “ BOURSO®” such as <bourso.com> registered since January 11, 2000.

FACTUAL BACKGROUND

The Complainant, with origins since at least 1998, is the online banking reference with over 6 million customers in France, operating under the BOURSORAMA brand.

The Complainant’s portal <boursorama.com> is the first French national financial and economic information site and the first French online banking platform.

The Complainant is the owner of the French trademark " BOURSO®” since 2000.

The disputed domain name <boursogroup.info> was registered on June 12, 2024, by the Respondent Peter Lawrence based in the

United States and resolves to an inactive page.

According to the Complainant's non-contested allegations, the Respondent has no rights or legitimate interest in respect of the disputed domain name, and he is not related in any way to the Complainant's business.

The Registrar of the disputed domain name confirmed that the Respondent is the current Registrant, and that English is the language of the registration agreement.

The facts asserted by the Complaint are not contested by the Respondent.

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.

COMPLAINANT:

First element: Confusingly similar to the protected mark

The Complainant states that the disputed domain name <boursogroup.info> is confusingly similar to its trademark "BOURSO®" and the Complainant's domain names associated therewith.

The Complainant asserts that the addition of the term "GROUP"" does not change the overall impression of the designation as being connected to the Complainant's trademark BOURSO®. Further, the addition of this term does not prevent the likelihood of confusion between the disputed domain name and the Complainant, its trademark and associated domain names.

Second element: Rights or legitimate interest

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name and that is the Respondent is not related in any way to the Complainant's business.

The Complainant indicates that the Respondent is not known as the disputed domain name. In accordance with the Complainant's allegations, 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. Thus, the Complainant argues that the Respondent is not known as the disputed domain name.

The Complainant asserts that the Respondent is not affiliated with nor authorized in any way to use the Complainant's trademark BOURSO®. 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 to apply for registration of the disputed domain name incorporating it.

The Complainant indicates that the disputed domain name resolves to an inactive page which indicates that the disputed domain name is not in use nor is there any demonstrable plan to use the disputed domain name.

Third element: The disputed domain name has been registered and is being used in bad faith

The Complainant states that the disputed domain name is confusingly similar to its distinctive trademark BOURSO®, in use since 1995 and with a significant reputation in France and abroad in connection with online financial services. The Complainant asserts that the status of its BOURSO® trademark has been affirmed by a prior decision. See WIPO Case No. D2021-0671-, Boursorama S.A. v. Contact Privacy Inc. Customer 1249617786 / Marcou) ("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 brands." [Note, this quote is translated from the French language decision by Google translate])

According to the Complainant, the most of the search result of the terms "BOURSO GROUP" refer to the Complainant.

In light of the distinctiveness of the Complainant's trademarks and reputation, the Complainant contends that it is reasonable to infer that the Respondent registered and used the disputed domain name with full knowledge of the Complainant's trademarks.

Further, the Complainant claims that the lack of active use of the disputed domain name is evidence of bad faith, because it is not possible to conceive of any plausible active purpose thereof that would not be infringing on the Complainant's rights .

Finally, the Complainant notes that the configuration of MX servers associated with the disputed domain name suggests that it may be actively used for email purposes.

For these reasons, the Complainant concludes that the Respondent has registered and is using the disputed domain name in bad faith.

RESPONDENT

The Respondent did not reply to the Complaint.

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

THREE ELEMENTS THE COMPLAINANT MUST ESTABLISH UNDER THE POLICY

According to Paragraph 4(a) of the Policy, the Complainant is required to prove each of the following three elements to obtain an order that a disputed domain name should be transferred or cancelled:

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

The Panel has examined the evidence available to it and has come to the following conclusions concerning the satisfaction of the three elements of paragraph 4(a) of the Policy in these proceedings:

(A) THE COMPLAINANT'S RIGHTS AND CONFUSING SIMILARITY OF THE DISPUTED DOMAIN NAME TO THE COMPLAINANT'S RIGHTS

Sufficient evidence has been submitted by the Complainant of its trademark rights in the term BOURSO in numerous classes in France. Such trademark rights were created and registered long prior to June 12, 2024, the creation date of the disputed domain name. A nationally or regionally registered trademark confers on its owner sufficient rights to satisfy the requirement of having trademark rights for the purposes of standing to file a UDRP case. Accordingly, the Panel finds that the Complainant possesses rights in its BOURSO trademark such that it has standing under the Policy.

UDRP panels have held that where the asserted trademark is recognizable within a disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) does not prevent a finding of confusing similarity under paragraph 4(a)(i) of the Policy. See, e.g., LEGO Juris A/S v. DBA David Inc/ DomainsByProxy.com, Case No. D2011-1290 (WIPO, September 20, 2011) ("the mere addition of the words ‚Ninjago' and ‚Kai' is not sufficient to exclude the likelihood of confusion between the disputed domain name and the Complainant's trademark.").

In the present case, the disputed domain name consists of the BOURSO trademark reproduced in its entirety with the addition of the generic but related term "GROUP". In assessing confusing similarity, the Panel finds the disputed domain name is confusingly similar to the Complainant's trademark, because it incorporates the entirety of the BOURSO trademark, and differs from such mark

merely by adding the aforementioned generic but related term “GROUP”. This addition does not prevent a finding of confusing similarity in light of the prominence of the distinctive BOURSO mark within the disputed domain name.

The TLD – in this case “.info” - may usually be ignored for the purpose of determination of identity or confusing similarity between a domain name and the Complainant’s trademark as it is technical requirement of registration (see paragraph 1.11.1 WIPO Overview 3.0).

Accordingly, the Panel concludes that the Complainant has satisfied the requirement under paragraph 4(a)(i) of the Policy and the disputed domain name is confusingly similar to the Complainant’s mark.

(B) THE RESPONDENT’S LACK OF RIGHTS OR LEGITIMATE INTERESTS IN THE DISPUTED DOMAIN NAME

The second element of the Policy requires that the Complainant establishes that the Respondent has no rights or legitimate interests in the disputed domain name. The approach generally adopted by panels, when considering the second element, is that if a complainant makes out a prima facie case, the burden of proof shifts to the respondent to rebut it (see WIPO Overview 3.0., Paragraph 2.1). (“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.”). However, the burden of proof still remains with the complainant to make out its prima facie case on a balance of probabilities. Moreover, the wording of paragraph 4(a)(ii) of the Policy requires a complainant to establish that the respondent has no rights or legitimate interests in the domain name in issue. Simply establishing that the complainant also has rights in the domain name in issue is insufficient.

Paragraph 4(a)(ii) of the Policy contemplates examining the available facts to determine whether a respondent has rights or legitimate interest in the domain name. Paragraph 4(c) sets out circumstances under which a respondent may demonstrate that it does have such rights or interests.

The first circumstance, under Paragraph 4(c)(i), is where “before any notice to you of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services”. Here, there is no active website associated with the disputed website not any evidence of demonstrable preparations to use it. Accordingly, the Panel finds no evidence of a bona fide offering or goods or services or demonstrable preparations to use per Policy 4(c)(i) and Respondent does not have rights or legitimate interests with respect to the disputed domain name thereunder.

The second circumstance, under Paragraph 4(c)(ii), concerns cases where the respondent is commonly known by the domain name. Here, according to the registrar verification, the Respondent’s name is “Peter Lawrence” – which has no similarity or connection to the disputed domain name. There is no evidence that the Respondent is commonly known by the disputed domain name. As such, this second circumstance of legitimate rights or interests under the Policy is not applicable to the Respondent.

Regarding the third circumstance, under Paragraph 4(c)(iii) of the Policy, there is no evidence that the Respondent is making a legitimate non-commercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the Complainant’s BOURSO trademark. According to the evidence submitted, there is no active website associated with the disputed domain name. As such, none of the accepted categories of fair use - such as news reporting, commentary, political speech, education etc. – are found to apply and thus the Panel does not find any legitimate non-commercial or fair use on the part of the Respondent.

As a final pertinent point on the second element, the Complaint states that the Respondent is not licensed, nor has any relationship with or authority to represent the Complainant in any way.

Accordingly, the Complainant has sufficiently made out its prima-facie case on the second element of the Policy. Thus, the burden of proof is shifted to the Respondent to rebut the Complainant’s case. Here, because the Respondent has not participated in these proceedings, there is no such rebuttal to consider, and the Complainant prevails.

(C) THE DISPUTED DOMAIN NAME HAS BEEN REGISTERED AND IS BEING USED IN BAD.

The third element requires the Complainant to show that the disputed domain name has been registered and used in bad faith under paragraph 4(a)(iii) of the Policy. See, e.g. Hallmark Licensing, LLC v. EWebMall, Inc., WIPO Case No. D2015-2202 (“The standard of proof under the Policy is often expressed as the “balance of the probabilities” or “preponderance of the evidence” standard. Under this standard, an asserting party needs to establish that it is more likely than not that the claimed fact is true.”).

Further, Paragraph 4(b) of the Policy sets out a non-exhaustive list of four circumstances, any one of which may be evidence of the registration and use of a domain name in bad faith. The four specified circumstances are:

(i) circumstances indicating that the Respondent has registered or acquired the disputed domain name primarily for the purpose of selling, renting, or otherwise transferring the disputed 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 the Respondent’s documented out-of-pocket costs directly related to the domain name; or

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

(iii) The Respondent has registered the disputed domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to the Respondent's website or other on-line location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or location or of a product.

There is no evidence that the Respondent is commonly known by the disputed domain name and the Complainant confirms that the Respondent has never been affiliated with nor authorized by the Complainant to use the Complainant's trademark(s) and/or register the disputed domain name. Nor is there any business or other association between the Complainant and the Respondent.

Panels have consistently found that the registration of a domain name that is confusingly similar to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith (see Paragraph 3.1.4 WIPO Overview 3.0). Here, there is persuasive evidence that the Complainant's trademark BOURSO® is distinctive and it has a strong reputation in the banking and finance industry. The Complainant was founded in 1998 with the website <boursorama.com> as a pioneer in online stock market and financial information. The Complainant's substantial reputation in its sector is indicated by its six million customers and 41.5 million visits each month to its websites. Additionally, previous UDRP panels have confirmed the notoriety of the Complainant, see, e.g. CAC Case No. 104986 BOURSORAMA SA v Didier Jore concerning the domain name <supportbourso.com>. ("the most likely explanation of the combination of the words "Support" and "Bourso" is as a reference to customer support services of the Complaint[sic]"). The logic of the aforementioned decision may be followed in this instant case, namely, that the combination of the terms "BOURSO", "group" - and "info" as the TLD - most likely is a reference to the Complainant's corporate group and information about the same. Further, the Panel finds that because of the well-established status of the Complainant, it is more probable than not that the Respondent either knew, or should have known, that the disputed domain name would be confusingly similar to the Complainant's trademarks and thus they registered the disputed domain name with the Complainant in mind.

The non-active use of the disputed domain name in this case satisfies the doctrine of passive holding as described in WIPO Case No. D2000-0003 Telstra Corporation Limited v. Nuclear Marshmallows considering all of the circumstances of the case because, relevantly, (i) the Complainant's trademark is distinctive and has a strong reputation in its sector, (ii) the Respondent failed to respond to these proceedings and thus has provided no evidence of actual or contemplated good-faith use, (iii) it is impossible to conceive of any plausible actual or contemplated good faith use of the disputed domain name by the Respondent in this case.

Additionally, the record indicates that that MX records are configured for the disputed domain name. Past panels have found that the activation of mail exchanger records (MX records) suggests the Respondent is using or is preparing to use the disputed domain name to send and receive email communications with the purpose to mislead the recipients as to their source. Such active MX records can be an additional circumstance of Respondent's bad faith. In this instant case, it is difficult to conceive of a good faith purpose for which emails originating from the disputed domain name could be used. Such emails would be likely to be mistaken by a casual observer for official communications originating from the Complainant.

As a final point, the Panel may take into consideration the Respondent's silence throughout these proceedings.

In light of the above analysis, the Panel concludes that the Complainant has made out its case that the disputed domain name was registered and are being used in bad faith, and thus has satisfied the requirements under 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. **boursogroup.info**: Transferred

PANELLISTS

Name	**Claire Kowarsky**

DATE OF PANEL DECISION 2024-07-16

Publish the Decision