

Decision for dispute CAC-UDRP-106672

Case number	CAC-UDRP-106672
Time of filing	2024-07-09 09:19:33
Domain names	boursobankinvest.com, boursobankinvest.com

Case administrator

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

Organization	BOURSORAMA
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Complainant representative

Organization	NAMESHIELD S.A.S.
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Respondents

Name	M.L Michel Laveri
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Name	D.J Didier Jur
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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 names.

IDENTIFICATION OF RIGHTS

The Complainant is a registered owner the following trademarks containing a word element "BOURSO" or "BOURSOBANK":

- BOURSORAMA (word), EU Trademark, priority (filing) date 13 July 2000, registration date 19 October 2001, trademark application no. 1758614, registered for goods and services in the international classes 4 9, 16, 35, 36, 38, 41, and 42;

- BURSOBANK (device), WIPO (international) Trademark, registration date 28 August 2023, trademark no. 1757984, registered for goods and services in the international classes 9, 16, 35, 36, 38, and 41;

(collectively referred to as "Complainant's trademarks").

Also, the Complainant owns the domain names <boursorama.com>, registered since 1 March 1998, and <boursobank.com>, registered since 11 January 2000.

FACTUAL BACKGROUND

The Complainant was founded in 1995 and grew in Europe with the emergence of e-commerce and the continuous expansion of the range of financial products online. Pioneer and a leader in its three core businesses: online brokerage, online financial information, and online banking, Complainant based its growth on innovation, commitment, and transparency. In France, Complainant is the online banking reference with over 2,000,000 customers. Its website has more than 30 million monthly visits.

The disputed domain names were both registered on 3 July 2024 and are held by the Respondent.

The disputed domain name website for <boursainvestissement.com> (i.e. the website available under the internet address containing the disputed domain name) is currently inactive and merely includes links (likely automatically generated) to a third-party content.

The disputed domain name website for <boursobankinvest.com> is currently unavailable with restricted access.

PARTIES CONTENTIONS

COMPLAINANT:

CONFUSING SIMILARITY

The Complainant states that:

- The disputed domain names are confusingly similar to the Complainant's trademarks as they both include the word element BOURSOBANK.
- The addition of the French generic terms "INVEST and INVESTISSEMENT" (meaning "INVESTMENT") is not sufficient to escape the finding that the disputed domain names are confusingly similar to the Complainant's trademarks.
- The Complainant refers to previous domain name decisions in this regard.

Thus, according to the Complainant the confusing similarity between Complainant's trademarks and the disputed domain names is clearly established.

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant states that:

- The Respondent has not been commonly known by the disputed domain names;
- The Complainant has not authorized, permitted or licensed the Respondent to use the Complainant's trademarks in any manner. The Respondent has no connection or affiliation with the Complainant whatsoever. On this record, Respondent has not been commonly known by the disputed domain name;
- The disputed domain names resolve to an inactive page. The Complainant contends that the Respondent did not use the disputed domain names and that the Respondent has no demonstrable plan to use the disputed domain names;
- On the contrary, the disputed domain name <boursobankinvest.com> was used for attracting internet users to services provided by the Respondent and this is why it has been free-riding on the reputation of the Complainant's trademark and its business;
- The Complainant refers to previous domain name decisions in this regard.

BAD FAITH REGISTRATION AND USE

The Complainant states that:

- Seniority of the Complainant's Trademarks predates the disputed domain name registration;
- The disputed domain names were used for attracting internet users to websites provided by the Respondent and therefore it is free-riding on the reputation of the Complainant's trademark and its business;
- The Complainant refers to previous domain name decisions in this regard.

RESPONDENT:

The Respondent has not provided any response to the complaint.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain names are 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 names (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 names have 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.

The Panel has found that the conditions for consolidation of the disputes are fulfilled. In particular, based on the circumstances of the case, the Panel concluded that all disputed domain names were in fact registered by the same registrant (Respondent). Consequently, the Panel consolidated the disputes concerning the disputed domain names into a single proceeding.

PRINCIPAL REASONS FOR THE DECISION

RIGHTS

Since the domain names and the Complainant's trademark are not identical, the key element investigated and considered by the Panel is whether the disputed domain names consisting of terms "BOURSO" and "BOURSOBANK" respectively are confusingly similar to the Complainant's trademarks.

The disputed domain names and the Complainant's trademark are very similar since they differ only in addition of generic terms "INVEST and INVESTISSEMENT" (meaning "INVESTMENT").

This cannot prevent the association in the eyes of internet consumers between the disputed domain names and the Complainant's trademarks and thus the likelihood of confusion still exists. A non-distinctive term, frequently used in a common language, cannot sufficiently distinguish the disputed domain names from the Complainant's trademarks.

For the sake of completeness, the Panel asserts that the top-level suffix in the domain names (i.e. the ".com") must be disregarded under the identity and confusing similarity tests, as it is a necessary technical requirement of registration.

Therefore, the Panel has decided that there is confusing similarity in both cases, it also concludes that the Complainant has satisfied paragraph 4(a)(i) of the Policy.

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant's assertions that the Respondent is not commonly known by either disputed domain name and is not affiliated with or authorised by the Complainant are sufficient to constitute prima facie showing of absence of rights or legitimate interest in the disputed domain names on the part of the Respondent.

Therefore, in the absence of the Respondent's response, the Panel concludes that there is no indication that the disputed domain names were intended to be used in connection with a bona fide offering of goods or services as required by UDRP.

Consequently, the evidentiary burden shifts to the Respondent to show by concrete evidence that it does have rights or legitimate interests in that name. However, the Respondent failed to provide any information and evidence that it has relevant rights or legitimate interests in respect of the disputed domain names (within the meaning of paragraph 4(a) (ii) of Policy).

BAD FAITH

The Panel finds it grounded that the Respondent registered and used the disputed domain names in bad faith, namely

(i) for the purpose of selling the disputed domain names; or

(ii) by using the domain names the Respondent intentionally attempted to attract, presumably for commercial gain, Internet users to the disputed domain name websites by creating a likelihood of confusion with the Complainant's trademark to the source, sponsorship, affiliation, or endorsement of the Respondent's website (or other location) or of a product or service on the Respondent's website (or other location).

Although the Respondent has not genuinely used the disputed domain names, the Panel concludes (as it has been ruled in many similar cases, as for example *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. D2000-0003, <telstra.org>, *Jupiters Limited v. Aaron Hall*, WIPO Case No. D2000-0574, <jupiterscasino.com>, *Ladbroke Group Plc v. Sonoma International LDC*, WIPO Case No. D2002-0131, <ladbrokespoker.com>) that the apparent lack of so-called active use (e.g., to resolve to a functional website) of the domain name(s) without any active attempt to sell or to contact the trademark holder (passive holding), does not as such prevent a finding of bad faith.

Examples of what may be cumulative circumstances found to be indicative of bad faith include cases in which (i) the Complainant has a well-known trademark and (ii) there is no genuine use (e.g. a mere "parking") of the disputed domain name by the Respondent (irrespective of whether the latter should also result in the generation of incidental revenue from advertising referrals).

Based upon the concepts above, which the Panel finds satisfied in this case, even though there is no real use of the dispute domain names, the Panel contends, on the balance of probabilities, that both disputed domain names have been registered and are being used (held) by the Respondent in bad faith.

Thus, the Panel has taken a view that the disputed domain names have been registered and are being used in bad faith (within the meaning of 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. **boursobankinvest.com**: Transferred
2. **boursoinvestissement.com**: Transferred

PANELLISTS

Name	Jiří Čermák
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DATE OF PANEL DECISION 2024-08-11

Publish the Decision
