Decision for dispute CAC-UDRP-106788

Case number	CAC-UDRP-106788
Time of filing	2024-08-09 08:59:32
Domain names	boursogroup.pro

Case administrator

Name	Olga Slanařová (Case admin)

Complainant

Organization	BOURSORAMA

Complainant representative

Organization	NAMESHIELD S.A.S.

Respondent

Name	Thobias Lokven

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 has demonstrated ownership of rights in the trademark BOURSO for the purposes of standing to file a UDRP complaint.

The Complainant has provided evidence of ownership of the French trademark registration No. 3009973 for BOURSO (word mark), filed on February 22, 2000, in classes 09, 35, 36, 38, 41 and 42.

FACTUAL BACKGROUND

The Complainant in the present dispute is BOURSORAMA, an online brokerage, banking and financial information provider, founded in France in 1998.

The Complainant is the owner of several domain names, including <boursorama.com>, registered on March 1, 1998, and <bourso.com>, registered on January 11, 2000, both used by the Complainant's in connection with its financial and economic information site as well as its banking platform at "www.boursorama.com".

The disputed domain name <boursogroup.pro>, was registered on August 6, 2024, and currently resolves to an inactive website. According to the screenshots submitted by the Complainant – which have not been challenged by the Respondent -, the disputed

domain name resolved, at the time of the filing of the Complaint, to a website promoting financial services, reproducing the Complainant's trademark and the color scheme of the Complainant's official website.

PARTIES CONTENTIONS

COMPLAINANT

The Complainant contends that the disputed domain name <boursogroup.pro> is confusingly similar to the trademark BOURSO in which the Complainant has rights as it reproduces the trademark in its entirety with the mere addition of the descriptive word "group" and the generic Top Level Domain ("gTLD") ".pro".

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name because the Respondent i) is in no way affiliated with the Complainant ii) does not carry out any activity or has any business with the Complainant and iii) is neither licensed nor authorized by the Complainant to make any use of the trademark BOURSO in any way including the registration of the disputed domain name. The Complainant also states that the website in relation with the disputed domain name offers investments services identical to the services provided by the Complainant, using the Complainant's logo and color scheme, and concludes that using a confusing similar domain name that resolves to a competing webpage does not amount to a bona fide offering of goods or services.

The Complainant claims that the Respondent registered the disputed domain name in bad faith because: i) the BOURSO mark has been in use since 1995 gaining a significant reputation in France and abroad in connection with online financial services; ii) the disputed domain name resolves to a website offering financial services and reproducing the Complainant's logo and color scheme; and iii) given the distinctiveness of the Complainant's trademarks and reputation, the Respondent registered the disputed domain name with full knowledge of the Complainant.

As to bad faith use, the Complainant states that the Respondent is using the disputed domain name to divert Internet users searching for the Complainant's website, to the Respondent's competing website, and to create a likelihood of confusion with the Complainant's mark for the Respondent's commercial gain by offering competing services. The Complainant also submits that MX servers are configured for the disputed domain name and concludes that such circumstance suggests that it may be also actively used for email communication purpose.

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

1. The Complainant has provided evidence of ownership of a valid trademark registration for BOURSO.

The Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark BOURSO as it reproduces the trademark in its entirety with the mere addition of the dictionary term "group", which is not sufficient to prevent a finding of confusing similarity.

As to the gTLD ".pro", as established in a number of prior UDRP cases, it is viewed as a standard registration requirement and as such can be disregarded for the purpose of assessing identity or confusing similarity under paragraph 4(a)(i) of the Policy.

2. With reference to the Respondent's rights or legitimate interests in the disputed domain name, the Panel finds that the Complainant has made a prima facie case and that the Respondent, by not submitting a Response, has failed to provide any element from which a Respondent's right or legitimate interest in the disputed domain name could be inferred.

The Panel notes that, based on the Complainant's submissions, the Complainant has not authorized the Respondent to register and use its trademark BOURSO. Moreover, there is no evidence that the Respondent might be commonly known by the disputed domain name or a name corresponding to the disputed domain name.

As highlighted above, the disputed domain name, currently resolving to an inactive website, was redirected at the time of the filing of the Complaint to an active website offering financial services and reproducing the Complainant's logo and the color scheme of the Complainant's official website. The Panel finds that such use does not amount to a bona fide offering of goods or services or a legitimate non-commercial or fair use of the disputed domain name without intention to misleadingly divert the consumers or to tarnish the Complainant's trademark.

Therefore, the Panel finds that the Complainant has demonstrated that the Respondent has no rights or legitimate interests in respect of the domain name according to paragraph 4(a)(i) of the Policy.

3. As to bad faith at the time of the registration, the Panel finds that, in light of the prior registration and use of the trademark BOURSO in connection with the financial services offered by the Complainant via its website www.boursorama.com, the Respondent was or could have been aware of the Complainant's trademark when it registered the disputed domain name in August 2024. The fact that, according to the evidence submitted by the Complainant – which has not been contested by the Respondent – the Respondent pointed the disputed domain name to a website featuring the Complainant's mark and promoting services identical to the ones offered by the Complainant demonstrates that the Respondent was indeed well aware of, and intended to target, the Complainant and its trademark.

The Panel also notes that, in view of the use of the disputed domain name to divert users to the website described above, promoting financial services and publishing content that could easily be associated with the Complainant, the Respondent intentionally attempted to attract Internet users to its website, for commercial gain, by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation or endorsement of its website and the services provided therein, according to paragraph 4(b)(iv) of the Policy.

The disputed domain name does not currently resolve to an active website. As established in a number of prior UDRP cases, the concept of "bad faith use" in paragraph 4(b) of the Policy includes not only positive action but also passive holding. In the present case, considering i) the distinctive and widely known character of the Complainant's trademark BOURSO in the financial sector, ii) the Respondent's failure to reply to the Complaint, and iii) the prior use of the disputed domain name as shown by the documents submitted by the Complainant, the Panel finds that the current passive holding of the disputed domain name does not prevent a filing of bad faith use.

Therefore, the Panel finds that the Complainant has also demonstrated that the Respondent registered and is using the disputed domain name in bad faith according to 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.pro**: Transferred

PANELLISTS

Name	**Luca Barbero**

DATE OF PANEL DECISION 2024-09-19

Publish the Decision