

Decision for dispute CAC-UDRP-103774

Case number	CAC-UDRP-103774
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Time of filing	2021-04-29 09:43:26
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Domain names	espace-boursorama.life, espace-boursorama.live
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Case administrator

Organization	Denisa Bilík (CAC) (Case admin)
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Complainant

Organization	BOURSORAMA SA
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Complainant representative

Organization	Nameshield (Laurent Becker)
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Respondent

Name	Benjamin Kors
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OTHER LEGAL PROCEEDINGS

The Panel is unaware of any other pending or decided legal proceedings in respect of the disputed domain names.

IDENTIFICATION OF RIGHTS

The Complainant relies upon the following registered trade mark:

- EU trade mark registration no. 1758614, dated 19 October 2001, for the word mark BURSORAMA, in classes 09, 16, 35, 36, 38, 41 and 42 of the Nice Classification.

FACTUAL BACKGROUND

The Complainant's contentions can be summarised as follows:

I. The disputed domain names are confusingly similar to a trade mark in which the Complainant has rights

According to the Complaint, the Complainant was founded in 1995 and is a pioneer and leader in its three core businesses, namely online brokerage, financial information on the Internet and online banking. The Complainant further states that it is the online banking reference in France with over 2.37 million customers, and that its portal on <www.boursorama.com> is the first national financial and economic information website and first French online banking platform.

In addition to the trade mark mentioned above, the Complainant states that it is the owner of several other trade marks and numerous domain names, such as the domain name <boursorama.com> which was registered on 1 March 1998.

The disputed domain names <espace-boursorama.life> and <espace-boursorama.live> were registered on 24 April 2021, and none of them resolve to active websites.

The Complainant avers that the disputed domain names are confusingly similar to the Complainant's trade mark BOURSORAMA, which is wholly incorporated into the disputed domain names. The addition of the French language term "espace" (which means "space" in English language) is insufficient to escape the finding of confusingly similar to the Complainant's trade mark BOURSORAMA.

Moreover, the Complainant contends that the New generic Top-Level Domain (gTLD) suffixes ".life" and ".live" do not change the overall impression of the designation as being connected to the Complainant's trade mark BOURSORAMA. Hence, the gTLDs do not prevent the likelihood of confusion between the disputed domain names and the Complainant's trade mark BOURSORAMA.

In order to substantiate its claim, the Complainant relies on previous UDRP decisions, namely WIPO Case No. D2006-0451, F. Hoffmann-La Roche AG v Macalve e-dominios S.A. (arguing that the gTLD does not affect the test under the first element of the Policy); CAC Case No. 102253, BOURSORAMA v Brandsos.com, in respect of <boursorama.com> and al.; CAC Case No. 102211, BOURSORAMA SA v Olga Pererva, in respect of <boursorma.com>; and CAC Case No. 102170, Boursorama SA v johnny legend, in respect of <boursorma.com>.

II. The Respondent has no rights or legitimate interests in respect of the disputed domain names

The Complainant relies on WIPO Case No. D2003-0455, Croatia Airlines d.d. v Modern Empire Internet Ltd. to elucidate the evidentiary test under the UDRP, which requires the Complainant to make out a prima facie case. If successfully made, the burden of production is shifted to the Respondent to elicit any evidence to the contrary.

The Complainant asserts that the Respondent has no rights in the disputed domain names, and that the Respondent is not affiliated with, nor authorised by, the Complainant in any way. The Complainant does not carry out any activity for, nor has any business with, the Respondent. The Respondent has not been authorised or licensed by the Complainant to make any use of the Complainant's trade mark BOURSORAMA nor to apply for registration of the disputed domain names by the Complainant. The Complainant further asserts that the Respondent is not known by the disputed domain names, and that the websites, to which the disputed domain names resolve, are inactive. The Complainant contends on this point that past UDRP decisions have held that the lack of use of a domain name is considered an important indicator of the absence of legitimate interests by the Respondent.

In view of the above factors, the Complainant argues that the Respondent has no rights or legitimate interests in respect of the disputed domain names.

III. The Respondent registered and is using the disputed domain names in bad faith

The Complainant contends that, given the Complainant's trade mark's distinctiveness and reputation, it is reasonable to infer that the Respondent has registered the disputed domain names with full knowledge of the Complainant's trade mark BOURSORAMA.

On this point, the Complainant relies on previous UDRP decisions, namely CAC Case No. 101131, BOURSORAMA v PD Host Inc - Ken Thomas; and WIPO Case No. D2017-1463, Boursorama SA v. Estrade Nicolas.

Lastly, the Complainant states that the disputed domain names resolve to inactive websites. In this regard, the Complainant avers that the Respondent has not demonstrated any activity in respect of the disputed domain names, that it is not possible to conceive any plausible actual or contemplated use of the disputed domain names 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 trade mark law. The Complainant relies on further previous UDRP decisions to base its claim that the incorporation of a famous mark into a domain name, coupled with an inactive website, may be evidence of bad faith registration and use (WIPO Case No. D2000-0003, Telstra Corporation Limited v Nuclear Marshmallows; and WIPO Case No. D2000-0400, CBS Broadcasting, Inc. v Dennis Toeppen).

On these bases, the Complainant concludes that the Respondent has registered and is using the disputed domain names in bad faith.

PARTIES CONTENTIONS

No administratively compliant Response has been filed.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown that the disputed domain names are identical or confusingly similar to a trade 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 are 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

Pursuant to Rule 15 of the UDRP Rules, the Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the UDRP Policy, the UDRP Rules, and any rules and principles of law that the Panel deems applicable.

Paragraph 4(a) of the UDRP Policy provides the following threshold for the Complainant to meet in order to divest the Respondent of the disputed domain names:

- i. The disputed domain names are 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 respect of the disputed domain names; and
- iii. The disputed domain names have been registered and is being used in bad faith.

It is therefore incumbent on the Complainant the onus of meeting the above threshold. The evidentiary standard under the UDRP proceedings is the balance of probabilities and, on that basis, the Panel will now proceed to determine each of the three Policy elements in turn.

I. Identical or Confusingly Similar

The UDRP test under the first element provides for a juxtaposing approach, according to which the textual components of the

disputed domain names and the Complainant's trade mark are to be compared side by side.

In order to succeed under the first element of the Policy, the Complainant must provide evidence that it has rights in a trade mark or service mark, following which the Panel shall assess whether or not the disputed domain names are identical or confusingly similar to the Complainant's trade mark.

Upon review of the case file, the Panel is satisfied that the Complainant has trade mark rights in the term "BORSORAMA", dating back to 2001.

The disputed domain names <espace-boursorama.life> and <espace-boursorama.live> were registered on 24 April 2021, and, at the time of writing, none of them resolve to active websites.

The disputed domain names wholly incorporate the Complainant's trade mark BORSORAMA. The terms "espace" and "boursorama" are connected by a dash "-". "Espace" is the French word for "space" in the English language. It is the Panel's view that the word "space" is commonly used by online banking platforms and understood by consumers to be an interface between the service provider and the customer. In this respect, the Panel notes that the Complainant's website <www.boursorama.com> offers "espace client" and "espace membre" as segments of their website interface.

In the Panel's view, the addition of the term "espace" in the disputed domain names in fact increases the confusion between the disputed domain names and the Complainant's trade mark given the Complainant's business model, which appears to be focused on customers' online interface.

The Panel further notes that TLD suffixes are typically disregarded in the assessment of the first element of the Policy, the reason being that the TLD is part of the anatomy of a domain name (see WIPO Jurisprudential Overview 3.0, paragraph 1.11).

The Panel notes, however, that the TLDs in the disputed domain names may actually enhance the confusion with the Complainant's trade mark BORSORAMA. Both the words "live" and "life" could arguably be connected with the Complainant and its business. For example, the suffix ".live" could resonate with the Complainant's core businesses, most notably, its online banking platform. Internet users may assume that "live" relates to interactions existing at the present time, e.g. live updates. The suffix ".life", on its turn, may cause Internet users to assume that the disputed domain name is somehow associated with the Complainant's offering of one of its products (e.g. life insurance).

Accordingly, the Panel finds that the disputed domain names are confusingly similar to the Complainant's trade mark BORSORAMA, the result of which being that the Complainant has succeeded under the requirement of paragraph 4(a)(i) of the Policy.

II. Rights or Legitimate Interests

The second element of the Policy provides that the Respondent shall demonstrate that it has rights or legitimate interests in the disputed domain names. It therefore falls on the Complainant the burden to refute any such allegations.

Paragraph 4(c) of the Policy sets out a non-exhaustive list of examples by which the Respondent can demonstrate its rights or legitimate interests in the disputed domain names, as follows:

- (i) before any notice of the dispute, the respondent's 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; or
- (ii) the respondent (as an individual, business, or other organization) has been commonly known by the domain name, even if the respondent has acquired no trademark or service mark rights; or
- (iii) the respondent is making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The evidentiary standard under the UDRP proceedings is such that, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production shifts to the respondent to provide evidence to the contrary.

The Respondent did not submit a Response in these UDRP proceedings. Therefore, the Panel will make a determination on the basis of the available evidence.

Having reviewed the case file, the Panel notes that the Respondent does not carry out any activity for, or has any business or relationship of any nature with, the Complainant. There is no contractual arrangement between the parties to that effect, nor has the Complainant otherwise authorised the Respondent to make any use of the Complainant's trade mark, or to apply for registration of the disputed domain names on the Complainant's behalf. The Complainant has also not authorised the Respondent to make any use of the Complainant's trade mark BURSORAMA, and there is no evidence on the record to suggest that the Respondent (as an individual, business, or other organisation) has been commonly known by the disputed domain names.

The Panel notes that there is also no evidence on the record to suggest that the Respondent is affiliated with, or endorsed by, the Complainant (and, in any event, any affiliation or endorsement has been denied by the Complainant).

In addition, in the Panel's view, the choice of a domain name which incorporates a complainant's trade mark wholly or nearly wholly, and is unaccompanied or unsupported by any credible explanation as to the reason for this coincidence, could further evidence a lack of rights or legitimate interests.

Lastly, the Panel notes that under the second element of the Policy, the Complainant also contends that the lack of use of the disputed domain names should be factored into the assessment of the absence of legitimate interests.

The Panel, however, advocates for a more cautionary approach regarding this assessment. The lack of use may equate to an absence of rights or legitimate interests in a domain name. Nevertheless, in the case at hand, the disputed domain names were registered only five (5) days before these UDRP proceedings commenced. It would therefore be rather precipitous for this Panel to find that the absence of use of the disputed domain names per se equated to lack of rights or legitimate rights. The Panel therefore makes no ruling on this particular point. Instead, the Panel notes that the evidence on the available record does not demonstrate, before any notice of the dispute, the Respondent's use of, or demonstrable preparations to use, the disputed domain names or a name corresponding to the disputed domain names in connection with a bona fide offering of goods or services. In addition, the available record does not demonstrate that the Respondent is making a legitimate non-commercial or fair use of the disputed domain names, without intent for commercial gain to misleadingly divert consumers.

For the foregoing reasons, and noting that the Respondent has not provided a Response to refute any of the allegations and evidence produced by the Complainant in these proceedings, the Panel finds that the Complainant has made a prima facie showing of the Respondent's lack of rights or legitimate interests in the disputed domain names under paragraph 4(a)(ii) of the Policy.

III. Registered and Used in Bad Faith

In order to meet the third requirement under the Policy, the Complainant must provide evidence that the disputed domain names were registered and is being used in bad faith.

The Policy enumerates non-exhaustive circumstances which would evidence bad faith registration and use of a domain name, as follows:

1. circumstances indicating that the respondent has registered or has acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the 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 your documented out-of-pocket

costs directly related to the domain name; or

2. the respondent has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or

3. the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or

4. by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to your web site 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 your web site or location or of a product or service on your web site or location.

The Panel has considered the evidence put forward by the Complainant and has undertaken some factual research into matters available on the public record. In the Panel's view, the case circumstances warrant a concurrent assessment of bad faith registration and use, as follows:

- The disputed domain names wholly incorporate the Complainant's trade mark BURSORAMA. The presence of the term "espace" in the disputed domain names increases the confusion between them and the Complainant's trade mark given the Complainant's business model, which appears to be focused on customers' online interface;
- The TLDs in the disputed domain names may actually enhance the confusion with the Complainant's trade mark BURSORAMA. The suffix ".live" could resonate with the Complainant's core businesses, most notably, its online banking platform, whereas the suffix ".life" may cause Internet users to assume that the disputed domain name is somehow associated with the Complainant's offering of one of its products (e.g. life insurance);
- There is no credible explanation for the Respondent's choice of the disputed domain names, which were registered in 2021, and contain the term "Bursorama" within the domain name strings. Firstly, the Complainant has been in operation for over 20 years, including in France, where the Respondent appears to be based. Secondly and most compellingly, the Complainant owns, and operates its activities through, the domain name <bursorama.com>, composed of the word "Bursorama". The Complainant's domain name was registered in 1998, over 20 years before the registration of the disputed domain names. Therefore, the Panel does not look favourably upon the Respondent, and finds it highly unlikely that the Respondent was not aware of the Complainant's prior rights in the trade mark BURSORAMA at the time of registering the disputed domain names, given the Complainant's reputation in France, which the Panel accepts;
- This Panel additionally views the provision of false contact information as an indication of bad faith. In this instance, the Respondent appears to have adopted a non-existent address;
- The Respondent has not provided a Response within the time prescribed under the UDRP Rules, or at all, and has thus failed to offer any explanation of justification to the matters raised by the Complainant in the context of these proceedings. The Panel is empowered to draw adverse inferences by such failure (UDRP Rule 14 (b));
- There is nothing on the record suggesting that the Respondent is affiliated or otherwise connected with the Complainant and the Complainant denies any association;
- The Respondent's failure to provide any evidence of actual or contemplated good faith use, and the disputed domain names are not resolving to active websites; and
- Taken the above together, and on the balance of probabilities, the overall unlikelihood of any good faith use of the disputed domain names.

The Panel has looked at the overall composite picture of events and finds it, collectively, to be sufficient to justify a finding that the Respondent has registered and is using the disputed domain names in bad faith under the Policy.

Accordingly, the Complainant has made a prima facie showing that the Respondent has registered and is using the disputed domain names in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

- 1. **ESPACE-BOURSORAMA.LIFE**: Transferred
- 2. **ESPACE-BOURSORAMA.LIVE**: Transferred

PANELLISTS

Name	Dr Gustavo Moser
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DATE OF PANEL DECISION 2021-05-28

Publish the Decision