

Decision for dispute CAC-UDRP-104397

Case number	CAC-UDRP-104397
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Time of filing	2022-03-04 09:35:17
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Domain names	brma-login.com
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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 S.A.S.
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Respondent

Name	Farid AKHARAZ
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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 name.

IDENTIFICATION OF RIGHTS

The Complainant claims ownership of International Trademark Registration No. 1758614, registered on October 19, 2001 for the word BOURSORAMA in relation to a range of financial services such as online brokering, online banking, and the providing of financial information.

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:

Founded in 1995, the Complainant is a pioneer and leader in its three core businesses: online brokerage, financial information on the internet, and online banking. The Complainant has also owned the domain name <boursorama.com> since March 1, 1998 and it owns other domain names such as <brsimg.com>, <brsourama.com> and <brsp.app>.

The disputed domain name was registered on January 27, 2022 and redirects to a template page without meaningful content. However, the domain name was used by the Respondent to impersonate the Complainant for the purposes of attempted consumer fraud by emails.

PARTIES CONTENTIONS

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

A. The disputed domain name is confusingly similar to a trademark or service mark in which the Complainant has rights

Paragraph 4(a)(i) of the Policy is a standing requirement which is satisfied if the disputed domain name is identical or confusingly similar to a trademark in which the Complainant has rights. Furthermore, it is not as extensive as the “likelihood of confusion” test for trademark infringement applied by many courts. Rather, under the Policy confusing similarity is commonly tested by comparing the Complainant’s trademark and the disputed domain name in appearance, sound, meaning, and overall impression. See *Administradora de Marcas RD, S. de R.L. de C.V. v. DNS Manager / Profile Group*, Case No. 101341 (CAC November 28, 2016).

It has been consistently held that “[r]egistration of a mark with governmental trademark agencies is sufficient to establish rights in that mark for the purposes of Policy ¶ 4(a)(i).” *Teleflex Incorporated v. Leisa Idalski*, FA 1794131 (FORUM July 31, 2018). In this case, the Complainant has submitted screenshots from the WIPO website demonstrating that it owns a registration of the BOURSORAMA trademark and it has further submitted a screenshot from its own <boursorama.com> website proving that it offers services in the area of online finance and information. The Complainant also owns a number of other domain names that consist of abbreviations of its trademark.

Although a disputed domain name consists of an abbreviation of a well-known trademark, confusing similarity may nevertheless be found under paragraph 4(a)(i) of the Policy. *Instagram, LLC v. Domains By Proxy, LLC / Masud Rana, D-limit Ltd*, D2022-0250 (WIPO March 21, 2022) (“‘Insta’ is also a well-known and commonly used abbreviation for INSTAGRAM.”) Also, *Phi Kappa Sigma Fraternity, Inc. v. Phi Kappa Sigma Foundation Fund, Inc. / Daniel Heiss, Phi Kappa Sigma Foundation*, D2021-4164 (WIPO March 10, 2022) (“The Domain Name incorporates the common law PKS mark, which is a transliteration of the common law ΦΚΣ mark as well as the initials commonly used as an acronym for the registered PHI KAPPA SIGMA trademark. Thus, the Complainant’s marks are recognizable in the Domain Name.”). Here, the disputed domain name contains the letters “brma”, an abbreviation of the Complainant’s trademark. It further adds a hyphen, the generic word “login”, and the “.com” TLD. Thus, the BOURSORAMA trademark is recognizable in the abbreviation thereof which appears in the second level of the disputed domain name. Let there be any doubt, the Respondent has engaged in a fraudulent email scheme, as discussed more fully below, and so it appears that the Respondent has created the disputed domain name specifically for its value of being confused with the Complainant’s trademark.

Of course, the extension “.com” adds no meaning to the second level of the disputed domain name. *Lesaffre et Compagnie v.*

Tims Dozman, 102430 (CAC May 2, 2019) (“the top-level suffix in the domain name (i.e. the ‘.com’) must be disregarded under the identity / confusing similarity test as it is a necessary technical requirement of registration.”).

Accordingly, this Panel finds that the Complainant has rights to the BOURSORAMA trademark and that the disputed domain name is confusingly similar to such trademark. Thus, the Complainant has satisfied paragraph 4(a)(i) of the Policy.

B. The Respondent has no rights or legitimate interests in respect of the disputed domain name

Pursuant to paragraph 4(a)(ii) of the Policy, a complainant has the burden of making a prima facie showing that the respondent has no rights or legitimate interests in a domain name. *Cephalon, Inc. v. RiskIQ, Inc.*, 100834 (CAC September 12, 2014). Once this standard is met, the burden shifts to the respondent to demonstrate that it does have rights or legitimate interests in the domain name.

Paragraph 4(c) of the Policy offers respondents several examples of how to demonstrate their rights or legitimate interests to a domain name.

With reference to 4(c)(ii), the Complaint states that the Respondent is not commonly known by the disputed domain name and it is not affiliated with, and is not authorized by the Complainant to use its trademark in any way. The Respondent does not contest this. Further, reference may be made to the WHOIS record when considering this issue. *MAJE v. enchong lin*, 102382 (CAC April 14, 2019) (“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.”) The WHOIS record for the disputed domain name lists the Registrant as Farid AKHARAZ. This name bears no resemblance to the Complainant’s trademark or to the disputed domain name and the Respondent has not submitted any claim or evidence that it is known otherwise. As such, the Panel finds no evidence that the Respondent is commonly known by the disputed domain name.

Next, under Paragraphs 4(c)(i) and 4(c)(iii) of the Policy the Panel considers whether the Respondent is using the disputed domain name to make a bona fide offering of goods or services or whether it is making a legitimate non-commercial or fair use of the disputed domain name. Resolving a confusingly similar domain name to a static parking page is typically not considered to be a bona fide use. See, *Novartis AG v. CCN World*, 101654 (CAC September 27, 2017) (no bona fide use found where “the website seems to consists of a mere template....”) Here, the Complainant has submitted a screenshot of the Respondent’s website. The site displays a generic photo of a person’s hands holding a mobile phone, the name KICKSTART at the top, and placeholder language typical used by template websites, i.e., beginning with “Lorem ipsum dolor sit amet...” The Respondent, having not filed a Response or made any submission in these proceedings, does not offer any explanation for its use of the disputed domain name. Considering the evidence presented, it is apparent to this Panel that the Respondent is not using the disputed domain name for a bona fide offering of goods or services or in connection with a legitimate non-commercial or fair use under Paragraphs 4(c)(i) and 4(c)(iii) of the Policy.

Further, the Complainant asserts that “the disputed domain name was used by the Respondent to impersonate the Complainant for the purpose of attempted consumer fraud.” Such activity, if supported by evidence, indicates a lack of rights or legitimate interests. *Arla Foods Amba v. ESM EMPIRE staintcollins*, 101578 (CAC August 9, 2017) (“Respondent has used the disputed domain name to impersonate the Complainant and fraudulently attempt to obtain payments and sensitive personal information. The use of the disputed domain name in connection with such illegal activities cannot confer rights or legitimate interests on the Respondent.”) Here, the Complainant asserts that “the domain name was used by the Respondent to impersonate the Complainant for the purpose of attempted consumer fraud by emails” and it submits a copy of one such email that originates from the address <service.clients@brma-login.com>. The email requests that the recipient complete an attached account registration form which, itself, prominently displays a copy of the BOURSORAMA graphic logo and seeks certain personal and financial information. The Respondent has not disputed the Complainant’s assertions which are plausible, on their face. As such, the Panel finds that this evidence of a fraudulent phishing scheme further supports the claim that the Respondent is not making a bona fide use of the disputed domain name or a legitimate non-commercial or fair use thereof.

For all of the above-stated reasons, this Panel finds, by a preponderance of the evidence, that the Complainant has met its burden of proof and that the Respondent has not refuted this to show that it has any rights or legitimate interests in the disputed

domain name. Thus, it is held that the Respondent has no rights or legitimate interests in respect to the disputed domain name under Paragraph 4(a)(ii) of the Policy.

C. The disputed domain name was registered and is being used in bad faith

Under paragraph 4(a)(iii) of the Policy, the complainant must demonstrate both that the domain name was registered and is being used in bad faith. Further guidance on that requirement is found in paragraph 4(b) of the Policy, which sets out four examples of actions by a respondent that may satisfy this burden of proof.

A threshold question here is whether, at the time that it registered the disputed domain name, Respondent was aware of the Complainant's BOURSORAMA trademark. The registration of the Complainant's trademark preceded the creation of the disputed domain name by many years. Further, the Complainant asserts that "the Respondent has registered the domain name with full knowledge of the Complainant's trademark" and it submits a screenshot of a page at its <boursorama.com> website as well as prior UDRP decisions which have found that the Complainant's trademark is well known. See, e.g., Boursorama SA v. Estrade Nicolas, D2017-1463 (WIPO October 3, 2017) ("Given the circumstances of the case including the evidence on record of the longstanding of use of the Complainant's trademark, and the distinctive nature of the mark BOURSORAMA, it is inconceivable to the Panel in the current circumstances that the Respondent registered the disputed domain name without prior knowledge of the Complainant and the Complainant's mark."). Buttressing this assertion are the Respondent's actions of sending an email and an account registration form which copies the graphic logo and full BOURSORAMA trademark. This definitively indicates the Respondent's actual knowledge of the Complainant's trademark.

Next, attention is given to the Complainant's claim that the Respondent uses the disputed domain name in bad faith. Here, the disputed domain name was created on January 27, 2022 which is long after the issuance of the Complainant's cited trademark registration and after the Complainant began use of its BOURSORAMA trademark in commerce. The disputed domain name is not being used for a substantive website. It has been held in many prior UDRP decisions that non-use of a domain name for website content, will not prevent a finding of bad faith under the doctrine of passive holding. Rather "panellists will look at the totality of the circumstances in each case, including: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put." 3Shape A/S v. Michael Nadeau, 102312 (CAC March 12, 2019), citing the seminal decision in Telstra Corporation Limited v. Nuclear Marshmallows, D2000-0003 (WIPO February 18, 2000). As noted above, the screenshot submitted by the Complainant shows that the disputed domain name resolves to an unfinished template website. Moreover, the BOURSORAMA trademark is distinctive and the Respondent has failed to submit a response or submit any evidence of good faith use. In this case, the Respondent's resolution of the disputed domain name to a static, parked page, along with the totality of the circumstances, supports the Complainant's assertion that the domain name is used in bad faith.

Further, Paragraph 4(b)(iv) of the Policy states that bad faith may be found where a respondent intentionally attempts to attract, for commercial gain, internet users to its website by creating a likelihood of confusion with a complainant's trademark as to the source, sponsorship, affiliation, or endorsement of its products or services. The Complainant asserts that the Respondent is using the disputed domain name in furtherance of a fraudulent scheme. Such activity provides quite firm evidence of bad faith use, for commercial gain, based upon confusion with an asserted trademark. Twilio Inc. v. Namecheap baddo, FA 1986813 (FORUM April 1, 2022) (bad faith found where the "Respondent attempts to pass itself off and impersonate Complainant to [sic] offering fake job listings and perpetuate a scheme to defraud third parties into tendering payments to Respondent's account."). As noted above, the Complainant submits a copy of an email in which the Respondent uses the disputed domain name to request that the recipient complete an account registration form which bears the BOURSORAMA trademark and graphic logo and requests personal and financial information. The Respondent has not participated in this case and so it does not dispute the Complainant's assertion of fraud or provide an alternate explanation for its actions. As such, the Panel finds, by a preponderance of the evidence, that the disputed domain name has been used in bad faith under Paragraph 4(b)(iv) and thus under Paragraph 4(a)(iii) of the Policy.

Accepted

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

1. **BRMA-LOGIN.COM**: Transferred

PANELLISTS

Name	Steven M. Levy, Esq.
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DATE OF PANEL DECISION	2022-04-04
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Publish the Decision