

Decision for dispute CAC-UDRP-104610

Case number	CAC-UDRP-104610
Time of filing	2022-05-26 09:24:08
Domain names	espaceclient-bourso.com

Case administrator

Organization	Iveta Špiclová (Czech Arbitration Court) (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	espace bourso
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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 is the owner of trademarks consisting of the term "BOURSORAMA" and "BOURSO" in particular the EUTM BOURSORAMA® n° 1758614 registered since October 19, 2001 in classes 09, 16, 35, 36, 38, 41, 42 and the French trademark BOURSO® n° 3009973 registered since February 22, 2000 in classes 09, 35, 36, 38, 41, 42. Further, the Complainant owns domain names consisting of the term "BOURSO", such as <boursorama>, created on March 1, 1998 and <bourso.com> created on January 11, 2000.

FACTUAL BACKGROUND

The Respondent, located in Luxembourg, registered the disputed domain name <espaceclient-bourso.com> on May 19, 2022.

The language of the registration agreement is English.

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

The Complainant is a French company founded in 1995 and a pioneer and leader in its three main activities: online banking (with over 3.7 million clients), online brokerage (one of the leaders in France) and financial information on the internet (the leading economic and financial information site in France with around 47 million visitors and 500 million page views). The Complainant conducts business in more than 80 countries worldwide and is listed on the Euronext Paris stock exchange.

The disputed domain name is confusingly similar to the Complainant's trademark BOURSO®.

The Respondent is not affiliated with nor authorized by the Complainant in any way.

The Respondent registered and used the disputed domain name with full knowledge of the Complainant's mark, because the Complainant is well-known, and the website associated with the disputed domain name copies that of the Complainant.

The disputed domain name resolves to a page that mimics the Complainant's official access page which could mislead consumers into believing that they are accessing the Complainant's website. This shows that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to his website by creating a likelihood of confusion with the Complainant's marks as to the source, sponsorship, affiliation, or endorsement of his website. Further, the Respondent's website could be used to improperly harvest personal information from the Complainant's customers.

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

THREE ELEMENTS 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 the 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 conclusion 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 several classes. Further, the Complainant is the owner of domain names that incorporate its trademark including <BOURSO.COM>. All the above were created and registered prior to May 19, 2022, the creation date of the disputed domain name. It is well established that 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. As such, the Panel finds that the Complainant possesses rights in its BOURSO trademark.

The addition of the non-distinctive terms "espace" and "client" (along with a hyphen), to the disputed domain name does not diminish the confusing similarity. Rather, in the French language the term "espace client" means "client area", a term especially relevant to the Complainant and its business in online banking, brokerage and financial information. A side-by-side comparison of the disputed domain name and the BOURSO trademark leads to the conclusion that they are confusingly similar because the BOURSO trademark is included in its entirety and the term "espaceclient-" suggests a non-existent connection to, or relationship with, the Complainant.

UDRP panels agree that the TLD 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).

Therefore, 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) RESPONDENT'S LACK OF RIGHTS OR LEGITIMATE INTERESTS IN THE DISPUTED DOMAIN NAME

The second element of the Policy requires that the Complainant establish that the Respondent has no rights or legitimate interests in the disputed domain name. The generally adopted approach by UDRP 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, for example, CAC Case No. 102333, Amedei S.r.l. v sun xin. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy (see e.g. WIPO case no. D2003-0455, Croatia Airlines d.d. v. Modern Empire Internet Ltd.).

However, the burden of proof remains with the Complainant to make out its prima facie case on a balance of probabilities; see, for example, CAC Case No. 102263, Intesa Sanpaolo S.p.A. v Ida Ekkert. 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.

In the present case, the Complainant asserts that the Respondent is not commonly known by the disputed domain name, is not in any way related to the Complainant, nor has the Respondent been granted an authorization or license to use the disputed domain name by the Complainant. Although the Respondent name in the whois is "espace client", this is clearly not a legitimate name and there is no evidence at all of a connection the denomination "bourso". This has not been contested by the Respondent. Instead, the Respondent has not responded in any form and thus has failed to provide any information and evidence whatsoever that could have shown that it has relevant rights or legitimate interests in respect of the disputed domain name (within the meaning of paragraph 4(a) (ii) of the Policy).

The disputed domain name resolves to a login page which mimics the Complainant's legitimate client access page. The website associated with the disputed domain name features a similar layout and color scheme to that of the Complainant's site, with the heading on the online form being "ESPACE PERSONNEL", meaning "customer area", the fields for input "Votre email" meaning "your email" and "Votre mot de passe" meaning "your password", and then below these fields a button labeled "Se connecter" meaning "login". As such, this appears to be an attempt to phish for customer personal information as the website asks the visitor to submit an email address and password. Such improper and potentially fraudulent use certainly fails to demonstrate a legitimate right or interest in the disputed domain name.

Therefore, the Panel concludes that neither the Respondent nor the evidence establishes that the Respondent has any right or legitimate interest to the disputed domain name. The Complainant has therefore also satisfied the requirement under paragraph 4(a)(ii) of the Policy.

(C) BAD FAITH REGISTRATION AND USE OF THE DISPUTED DOMAIN NAME

The third element requires Complainant to show that the disputed domain name has been registered and used in bad faith under paragraph 4(a)(iii) of the Policy. *Hallmark Licensing, LLC v. EWebMall, Inc.*, Case No. D2015-2202 (WIPO, February 12, 2016) ("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.").

For this purpose, the Complainant has successfully put forward prima facie evidence that the Respondent has not made use, or demonstrable preparations to use, of either the disputed domain name in connection with a bona fide offering of goods or services, or of making a legitimate non-commercial or fair use of the disputed domain name. Complainant submits the Respondent is not commonly known under the disputed domain name and that Respondent has never been authorized or licensed by Complainant to use the Complainant's trademark(s) or register the disputed domain name. This prima facie evidence has not been challenged by the Respondent.

At the time the disputed domain name was registered, it is unlikely that the Respondent did not have knowledge of the Complainant's rights on the trademarks, since the trademark "BOURSO" was registered many years prior and had been substantially used particularly in the French market and around the world. In light of these factors, it is therefore reasonable to infer that the Respondent either knew, or should have known, that the disputed domain name would be identical, or confusingly similar to, the Complainant's trademarks and that they registered the disputed domain name with knowledge of the Complainant's trademarks.

Bad faith use by the Respondent is demonstrated in this case because the disputed domain name resolves to a login page mimicking the Complainant's official customer access by using a similar color scheme and layout. This shows that the Respondent used the disputed domain name to intentionally attract users to his website with the potential to benefit commercially by fraudulently harvesting visitor's personal information, clearly in contravention of paragraph 4(b)(iv) of the Policy as well as more generally constituting abusive conduct. In similar circumstances in *Boursorama SA v. rida salhi* CAC Case No. 102934, the panel held that the respondent in that case was acting in bad faith because he was trying to collect the ID and passwords of the complainant's customers.

As a final point the Panel notes that the Respondent obviously provided false or incomplete contact information in the Whois register for the disputed domain name, giving their name as "espace client" which means "client area" in English. This false contact information casts a negative light on Respondent's behavior which further bolsters the Panel's bad faith finding.

Therefore, considering the above analysis, the Panel concludes that the Complainant made out its case that the disputed domain name was registered and is being used in bad faith, and thus has satisfied the requirement 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. **ESPACECLIENT-BOURSO.COM**: Transferred

PANELLISTS

Name	Claire Kowarsky, LL.M
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DATE OF PANEL DECISION	2022-06-25
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Publish the Decision
