

Decision for dispute CAC-UDRP-104607

Case number	CAC-UDRP-104607
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Time of filing	2022-05-24 09:25:48
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Domain names	boursorama-fr.click
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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

Organization	1337 Services LLC
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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 has provided evidence of ownership of the following trademark:

Trademark of the European Union BOURSORAMA No. 1758614 registered on 19 October 2001, duly renewed, and covering goods and services in international classes 09, 16, 35, 36, 38, 41 and 42.

FACTUAL BACKGROUND

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

The Complainant submitted references to prior panel decisions:

CAC Case No. 101131, BOURSORAMA v. PD Host Inc - Ken Thomas ("In the case at hand, the Respondent acted in bad faith especially because the Respondent, who has no connection with the well-known "BOURSORAMA" trademark, registered a domain name, which incorporates the well-known "BOURSORAMA" trademark and it is totally unrealistic to believe that the Respondent did not know the Complainant's trademark when registered the domain name <wwwboursorama.com>.").

WIPO Case No. D2017-1463, Boursorama SA v. Estrade Nicolas ("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.").

WIPO Case No. D2000-0003, Telstra Corporation Limited v. Nuclear Marshmallows;
WIPO Case No. D2000-0400, CBS Broadcasting, Inc. v. Dennis Toeppen.

PARTIES CONTENTIONS

COMPLAINANT:

THE DISPUTED DOMAIN NAME IS IDENTICAL OR CONFUSINGLY SIMILAR TO A TRADEMARK OR SERVICE MARK IN WHICH THE COMPLAINANT HAS RIGHTS

The disputed domain name is confusingly similar to the Complainant's trademark "BOURSORAMA". The addition of the term "fr" is not sufficient to escape the finding that the disputed domain name is confusingly similar to the trademark "BOURSORAMA" nor does it prevent the likelihood of confusion between the disputed domain name and the Complainant's trademark.

THE RESPONDENT HAS NO RIGHTS OR LEGITIMATE INTERESTS IN RESPECT OF THE DISPUTED DOMAIN NAME

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

The Respondent is not commonly known by the disputed domain name. Neither license nor authorization has been granted to the Respondent to make any use of the Complainant's trademark BOURSORAMA®, or apply for registration of the disputed domain name.

Lastly, the Complainant states it did not find any fair or non-commercial uses of the disputed domain name at stake.

THE DISPUTED DOMAIN NAME WAS REGISTERED AND IS USED IN BAD FAITH

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

The Complainant submits that the Respondent registered and used the disputed domain name in full knowledge of the Complainant's trademark considering the Complainant's trademark reputation.

The Complainant states that the disputed domain name is not used actively and it is not possible to conceive of any plausible actual or contemplated active use of the domain name by the Respondent that would not be illegitimate.

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

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

Notwithstanding the fact that no Response has been filed, the Panel shall consider the issues present in the case based on the statements and documents submitted by the Complainant.

Paragraph 4(a) of the Policy directs that the Complainant must prove each of the following elements:

- (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 was registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant must establish that it has a trademark or service mark and that the disputed domain name is identical or confusingly similar to that trademark or service mark to succeed.

The Complainant, Boursorama, is a French banking and financial services company. The Complainant has provided evidence of ownership of a trademark of the European Union in the term "BOURSORAMA" for more than 20 years.

The disputed domain name is <boursorama-fr.click>.

As regards the question of identity or confusing similarity for the purpose of the Policy, it requires a comparison of the disputed domain name with the trademarks in which the Complainant holds rights. According to section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0"), "this test typically involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name".

Also, according to section 1.7 of the WIPO Overview 3.0, "in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing".

The disputed domain name wholly incorporates the Complainant's trademark "BOURSORAMA" in attack position, followed by the country code "fr", as well as a hyphen. This addition does not prevent a finding of confusing similarity with the Complainant's trademarks. The fact that a domain name wholly incorporates the Complainant's trademark is sufficient for this Panel to establish identity or confusing similarity for the purpose of the Policy, despite the addition of other words to such marks.

It is well accepted by UDRP panels that a generic Top-Level Domain ("gTLD"), such as ".click", is typically ignored when assessing whether a domain name is identical or confusingly similar to a trademark.

This Panel concludes that the disputed domain name is confusingly similar to the Complainant's trademark and therefore finds that the requirement of paragraph 4(a)(i) of the Policy is satisfied.

B. Rights or Legitimate Interests

Under paragraph 4(c) of the Policy, any of the following circumstances, if found by the Panel, may demonstrate the Respondent's rights or legitimate interests in the disputed domain name:

- (i) before any notice to it of the dispute, the Respondent's use of, or demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a bona fide offering of goods or services; or
- (ii) the Respondent has been commonly known by the disputed domain name, even if it has acquired no trademark or service mark rights; or
- (iii) the Respondent is making a legitimate non-commercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The consensus view of UDRP panels on the burden of proof under paragraph 4(a)(ii) of the Policy is summarized in section 2.1 of the WIPO Overview 3.0, which states: "[...] where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element."

In the absence of rebuttal from the Respondent, the Panel finds that the Respondent is not commonly known by the disputed domain name.

The Complainant has not at any time authorised or licensed the Respondent to use "BOURSORAMA" as a domain name, business or trading name, trade mark or in any other way.

In addition, nothing in the record shows any bona fide offering of goods or services from the disputed domain name on the part of the Respondent before the submission of the Complaint.

The Panel concludes that the Respondent has no right or legitimate interests in the disputed domain name and therefore finds that the requirement of paragraph 4(a)(ii) of the Policy is satisfied.

C. Registration and Use in Bad faith

For the purpose of Paragraph 4(a) (iii) of the Policy, the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of the disputed domain name in bad faith:

- (i) circumstances indicating that the holder has registered or has acquired the disputed domain name primarily for the purpose of selling, renting, or otherwise transferring the disputed 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 the holders documented out-of-pocket costs directly related to the disputed domain name; or
- (ii) the holder has registered the disputed 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 the holder has engaged in a pattern of such conduct; or
- (iii) the holder has registered the disputed domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, the holder has intentionally attempted to attract, for commercial gain, Internet users to the holder's website or other online location, by creating a likelihood of confusion with the Complainant's mark as to the source,

sponsorship, affiliation, or endorsement of your website or location or of a product or service on the holder's website or location.

The Panel finds the third element of Paragraph 4(b) of the Policy applicable in the present case. The evidence on the record shows that the Respondent was certainly aware of the existence of the Complainant and of the rights of the Complainant, and that the Respondent, by registering and using the disputed domain name has intentionally attracted internet users by creating a likelihood of confusion with the Complainant's trademark.

The addition of the country code “fr” designating France, where the Complainant is headquartered demonstrates the knowledge of the Complainant by the Respondent.

Past UDRP panels have already dealt with the question of whether the “passive holding” of a domain name could constitute bad faith. Section 3.3 of the already quoted WIPO Overview 3.0 states that “[f]rom the inception of the UDRP, panelists have found that the non-use of a domain name (including a blank or ‘coming soon’ page) would not prevent a finding of bad faith under the doctrine of passive holding. While UDRP panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (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”.

In the present case, the passive holding of the disputed domain name by the Respondent amounts to the Respondent acting in bad faith, given the fact that the Respondent has provided no evidence whatsoever of any actual or contemplated good faith use of the disputed domain name. The Respondent's lack of reply to the Complaint also corroborates the finding of the Registrant's acting in bad faith.

The Panel concludes that the Respondent has registered and is using the disputed domain name in bad faith, and therefore finds that the requirement of paragraph 4(a)(iii) of the Policy is satisfied.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **BOURSORAMA-FR.CLICK**: Transferred

PANELLISTS

Name	Arthur Fouré
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DATE OF PANEL DECISION	2022-06-27
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Publish the Decision
