

Decision for dispute CAC-UDRP-105499

Case number	CAC-UDRP-105499
Time of filing	2023-06-07 08:43:30
Domain names	actuboursos.com, profilboursos.com, secureboursos.com

Case administrator

Organization	Iveta Špiclová (Czech Arbitration Court) (Case admin)
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Complainant

Organization	BOURSORAMA
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Complainant representative

Organization	NAMESHIELD S.A.S.
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Respondent

Name	Popins Mat
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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 names.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of the following trademark registration:

- “BOURSO” registered French word mark No. 3009973 designated for goods and services in Classes 9, 35, 36, 38, 41 and 42 of the Nice Classification, with a filing date on January 22, 2000.

The Complainant proved its ownership of the trademark registration by the submitted extract from the INPI Data Portal.

FACTUAL BACKGROUND

The Complainant is a European company with business in e-commerce and the continuous expansion of the range of financial products online. It is the pioneer and leader in its three core businesses, online brokerage, financial information on the Internet and online banking. In France, the Complainant is the online banking reference with over 4,9 million customers. Its portal <boursorama.com> was the first national financial and economic information site and the first French online banking platform.

The Complainant is the owner of the “BOURSO” French trademark registered, inter alia, in connection with financial affairs or financial information provided online.

The Complainant owns several registered domain names consisting of its trademark wording, such as, the domain name <boursorama.com>, registered since March 1, 1998, or <boursos.com>, registered since January 11, 2000. The Complainant proved registration of the aforementioned domain names by excerpt from the Whois database.

According to the Registrar, the Respondent is 'Mat Popins'. The Respondent's provided address as being at Challans, France. The Respondent registered the following disputed domain names <actuboursos.com>, <profilboursos.com>, <secureboursos.com> on May 30, 2023 as shown in the excerpt from the Whois database (hereinafter "disputed domain names"). The disputed domain names resolve to forbidden or parking pages with commercial links as shown in the annexes.

PARTIES CONTENTIONS

COMPLAINANT:

A. The Complainant contends that the disputed domain names are confusingly similar to the Complainant's trademarks.

The Complainant states that the disputed domain names are confusingly similar to its "BOURSO" trademark and its domain names associated. Indeed, the disputed domain names include it in its entirety.

The Complainant asserts that the addition of the generic terms "ACTU" (meaning "NEWS"), "PROFIL" (meaning "PROFILE"), "SECURE" and of the letters "S", is not sufficient to escape the finding that the disputed domain names are confusingly similar to the trademark BOURSOS®. It is well-established that "a domain name that wholly incorporates a Complainant's registered trademark may be sufficient to establish confusing similarity for purposes of the UDRP" (WIPO Case No. D2003-0888, Dr. Ing. h.c. F. Porsche AG v. Vasiliy Terkin).

Moreover, the Complainant contends that the addition of the suffix ".COM" does not change the overall impression of the designations as being connected to the "BOURSO" trademark. It does not prevent the likelihood of confusion between the disputed domain names and the Complainant, its trademarks and its domain names associated [WIPO Case No. D2006-0451, F. Hoffmann-La Roche AG v. Macalve e-dominios S.A. ("It is also well established that the specific top level of a domain name such as ".com", ".org" or ".net" does not affect the domain name for the purpose of determining whether it is identical or confusingly similar.")].

Finally, the Complainant's rights over the term "BOURSO" have been confirmed by previous panels.

For instance:

- WIPO Case No. D2022-3936, BOURSORAMA S.A. v. Laetitia Dramais, boursos pret immo <boursos-pret-immo.com>;
- CAC Case No. 104986, BOURSORAMA SA v. Didier Jore <supportboursos.com>.

B. The Complainant states that the Respondent has no rights or legitimate interests in respect of the disputed domain names.

According to the WIPO Case No. D2003-0455, Croatia Airlines d.d. v. Modern Empire Internet Ltd., the Complainant is required to make out a prima facie case that the Respondent lacks rights or legitimate interests. Once such prima facie case is made, the Respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(a) (ii) of the UDRP.

The Complainant asserts that the Respondent is not known as the disputed domain names. Past 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. For instance, Forum Case No. FA 1781783, Skechers U.S.A., Inc. and Skechers U.S.A., Inc. II v. Chad Moston / Elite Media Group <bobsfromsketchers.com> ("Here, the WHOIS information of record identifies Respondent as "Chad Moston / Elite Media Group." The panel therefore finds under Policy 4(c)(ii) that Respondent is not commonly known by the disputed domain name under Policy 4(c)(ii).").

The Respondent is not known by the Complainant. The Complainant contends that the Respondent is not affiliated with nor authorized by the Complainant in any way. The Complainant alleges that Respondent has no rights or legitimate interests in respect of the disputed domain names. The Complainant does not carry out any activity for, nor has any business with the Respondent.

Neither license nor authorization has been granted to the Respondent to make any use of the Complainant's "BOURSO" trademark, or to apply for registration of the disputed domain names.

Moreover, the disputed domain name <actuboursos.com> resolves to a forbidden page. The Complainant contends that Respondent did not make any use of disputed domain names, and it confirms that Respondent has no demonstrable plan to use the disputed domain names. It proves a lack of legitimate interests in respect of the disputed domain names except in order to create a likelihood of confusion with the Complainant and its trademark.

The disputed domain names <profilboursos.com> and <secureboursos.com> resolve to registrar parking pages with commercial links. Past panels have found it is not a bona fide offering of goods or services or legitimate non-commercial or fair use.

C. The Complainant contends that the domain names have been registered and are being used in bad faith.

With its 4,9 million customers, BOURSORAMA is the French online banking reference. The disputed domain names include the well-known and distinctive "BOURSO" trademark as confirmed with the decision WIPO Case No. D2022-4646 Boursorama S.A. v. Ibraci

Links, Ibraci Links SAS ("On the balance of the probabilities, the Panel determines that Respondent was aware of Complainant and its BOURSO trademark, and targeted that mark when registering the Domain Name [...] As discussed above, Complainant's BOURSO mark is well established").

On those facts, given the distinctiveness of the Complainant's trademark and reputation, it is reasonable to infer that the Respondent has registered the domain name with full knowledge of the Complainant's trademark. For instance, WIPO Case No. D2004-0673, Ferrari S.p.A v. American Entertainment Group Inc.

The disputed domain name <actuboursos.com> resolves to a forbidden page. The Complainant contends that the Respondent has not demonstrated any activity in respect of the disputed domain name, 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, such as by being a passing off, an infringement of consumer protection legislation, or an infringement of the Complainant's rights under trademark law.

Based on this information, previous panels have held that the mere registration of a domain name that is identical or confusingly similar to a well-known or widely-known trademark by an unaffiliated entity may be sufficient to create a presumption of bad faith (WIPO Summary, version 3.0, sections 3.1.4). In addition, the domain names are not used or does not indicate any information about a development project. Such a practice, defined in many previous decisions as "passive holding", is considered as a bad faith use.

The disputed domain names <profilboursos.com> and <securebourso.com> resolve to registrar parking pages with commercial links. The Complainant asserts the Respondent has attempt to attract Internet users for commercial gain to his own website thanks to the Complainant's trademarks for its own commercial gain, which is evidence of bad faith.

For example, WIPO Case No. D2018-0497, StudioCanal v. Registration Private, Domains By Proxy, LLC / Sudjam Admin, Sudjam LLC ("In that circumstance, whether the commercial gain from misled Internet users is gained by the Respondent or by the Registrar (or by another third party), it remains that the Respondent controls and cannot (absent some special circumstance) disclaim responsibility for, the content appearing on the website to which the disputed domain name resolve [...] so the Panel presumes that the Respondent has allowed the disputed domain name to be used with the intent to attract Internet users for commercial gain, by creating a likelihood of confusion with the Complainant's trademark as to the source, affiliation, or endorsement of the Respondent's website to which the disputed domain name resolves. Accordingly, the Panel finds that the disputed domain name was registered and is being used in bad faith.").

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

RESPONDENT:

No administratively Complaint Response has been filed.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain names are 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 names (within the meaning of paragraph 4(a)(ii) of the UDRP).

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 UDRP).

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

In the present case, the Respondent has not submitted any Response and consequently has not contested any of the contentions made by the Complainant. The Panel proceeds therefore to decide only on the basis of the Complainant's factual statements and the documentary evidence provided in support of them (Paragraph 5(f) of The Rules).

I. CONFUSING SIMILARITY

The Panel finds that the disputed domain names are confusingly similar to the Complainant's "BOURSO" trademark.

The WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (hereinafter referred to as "The WIPO Overview 3.0") in Paragraph 1.2.1 states: "Where the complainant holds a nationally or regionally registered trademark or service mark, this *prima facie* satisfies the threshold requirement of having trademark rights for purposes of standing to file a UDRP case".

The WIPO Overview 3.0 in Paragraph 1.7 states: "[...] 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 WIPO Overview 3.0 in Paragraph 1.8 state: "Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element. The nature of such additional term(s) may however bear on assessment of the second and third elements."

In the WIPO Case No. D2003-0888, Dr. Ing. h.c. F. Porsche AG v. Vasily Terkin, the Panel stated that: "In numerous cases, it has been held that a domain name that wholly incorporates a Complainant's registered mark may be sufficient to establish confusing similarity for purposes of the UDRP."

In the WIPO Case No. D2006-0451, F. Hoffmann-La Roche AG v. Macalve e-dominios S.A., the panel stated that: "It is also well established that the specific top level of a domain name such as ".com", ".org" or ".net" does not affect the domain name for the purpose of determining whether it is identical or confusingly similar".

The Complainant has established that owns "BOURSO" registered trademark in France, protected for goods and services in connection with online financial products proved by the excerpt from the pertinent trademark database. The disputed domains consist of:

- <actuboursos.com> - term "actu", trademark "bourso", letter "s";
- <profilboursos.com> - term "profil", trademark "bourso", letter "s";
- <securebourso.com> - term "secure", trademark "bourso".

Therefore, the Complainant's trademark is incorporated in its entirety and clearly recognizable in the disputed domain names.

The Complainant's trademark "BOURSO" is accompanied by the generic terms "ACTU" [i.e. "NEWS" in English]; "PROFIL" [i.e. "PROFILE" in English], "SECURE" and by the addition of the letter "s" at the end of two of the disputed domains. However, the addition of those terms and the letter "s" does not change the overall impression of the disputed domain names.

The addition of the gTLD <.com> does not alter the overall impression of the disputed domain names either.

Therefore, the disputed domain names, as they reproduce the "BOURSO" trademark in its entirety, with the addition of the generic terms and the letter "s" are considered to be confusingly similar to the relevant trademark.

As a result, the Panel finds that the Complainant has satisfied Paragraph 4(a)(i) of the UDRP.

II. THE RESPONDENT'S LACK OF RIGHTS OR LEGITIMATE INTERESTS IN THE DOMAIN NAMES

The Panel finds that the Respondent lacks rights or legitimate interests in the disputed domain names.

According to Paragraph 4(a)(ii) of the UDRP, the Complainant shall make a case that the Respondent lacks rights and legitimate interests in the disputed domain name. If the Complainant fulfils this requirement, the burden of proof shifts to the Respondent and so the Respondent shall demonstrate rights or legitimate interests in the disputed domain name. If the Respondent fails to prove its rights or legitimate interests, it is assumed that the Complainant satisfied the element of Paragraph 4(a)(ii) of the UDRP (CAC Case No. 102430, Lesaffre et Compagnie v. Tims Dozman). Moreover, past panels were of the view that it is difficult or sometimes impossible to prove negative facts, i.e., absence of rights or legitimate interest on the part of the Respondent. In this respect, past panels referred to the WIPO Case No. D2000-1769, Neusiedler Aktiengesellschaft v. Vinayak Kulkarni. Within the meaning of Paragraph 4(a)(ii) of the UDRP, once the complainant has made something credible (*prima facie* evidence), the burden of proof shifts to the Respondent to show that he has rights or legitimate interests in the domain name at issue by providing concrete evidence.

In the CAC Case No. 102279, FileHippo s.r.o. v. whois agent, the Panel stated that "[i]n the absence of a response, the Panel accepts the Complainant's allegations as true that the Respondent has no authorization to use the Complainant's trademarks in the disputed domain name. Hence, as the Complainant has made out its *prima facie* case, and as the Respondent has not demonstrated any rights or legitimate interests as illustrated under Paragraph 4(c) of the Policy, nor has the Panel found any other basis for finding any rights or legitimate interests of the Respondent in the disputed domain name, the Panel concludes that the Complainant has satisfied the requirements of Paragraph 4(a)(ii) of the Policy."

In the Forum Case No. FA 1781783, Skechers U.S.A. Inc. v. Chad Moston / Elite Media Group, the panel stated that: "where a response

is lacking, WHOIS information can support a finding that the respondent is not commonly known by the disputed domain name”.

In the present case, the identification data about the registrant are not shown in the Whois database. Therefore, the Respondent is not identified in the Whois database as the disputed domain names holder. However, according to the Registrar Verification, the registrant and the disputed domain names holder is the Respondent. To summarize, because of a lack of information about the identification of the registrant of the Whois database, the Respondent could not be known by the disputed domain names.

In addition, the Respondent is not related in any way to the Complainant and the Complainant has never granted any license nor authorization to the Respondent to use the Complainant’s trademark or to apply for registration of the disputed domain names.

Moreover, the disputed domain name <actuboursos.com> resolves to a forbidden page evidenced by the print-screen. The Complainant contends that the Respondent did not make any use of disputed domain names, and it confirms that the Respondent has no demonstrable plan to use the disputed domain names. The Panel agrees with the Complainant that the Respondent has no demonstrable plan to use the disputed domain names.

Furthermore, the disputed domain names <profilboursos.com> and <secureboursos.com> resolve to registrar parking pages with commercial links proven by the print-screens. Past panels have found it is not a bona fide offering of goods or services or legitimate non-commercial or fair use (see Forum Case No. FA 970871, Vance Int’l, Inc. v. Abend; WIPO Case No. D2007-1695, Mayflower Transit LLC v. Domains by Proxy Inc./Yariv Moshe).

The Respondent did not reply to the Complaint and so failed to demonstrate its rights or legitimate interests in the disputed domain names.

Therefore, the Panel finds that the Complainant has satisfied Paragraph 4(a)(ii) of the UDRP.

III. THE REGISTRATION AND USE OF THE DISPUTED DOMAIN NAMES IN BAD FAITH

The Panel finds that the Respondent registered and used the disputed domain names in bad faith.

The WIPO Overview 3.0 in Paragraph 3.1.4 states: “Panels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith.”

The WIPO Overview 3.0 in Paragraph 3.3 states: “From 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.”

In the WIPO Case No. D2006-1440, National Football League v. Thomas Trainer, the panel stated: “when a registrant, such as the Respondent here, obtains a domain name that is confusingly similar to a famous mark, with no apparent rights or legitimate interests in the name, and then fails to respond to infringement claims and a UDRP Complaint, an inference of bad faith is warranted.”

In the WIPO Case No. D2015-1167, Valero Energy Corporation and Valero Marketing and Supply Company v. Sharad Bhat, the panel stated that: “In accordance with previous UDRP decisions, inactive or passive holding of a domain name, under the circumstances does not prevent a finding of bad faith use.”

In the Forum Case No. FA 1773444, Ashley Furniture Industries, Inc. v. Joannet Macket / JM Consultants, the panel mentioned that: “The Panel finds that Respondent’s lack of content at the disputed domain shows the lack of a bona fide offering of goods or services or a legitimate noncommercial or fair use per Policy 4(c)(i) and (iii).”

In the present case, the Complainant owns the “BOURSO” trademark, registered since 2000 (evidenced by excerpt from the pertinent trademark database) which is identical to the domain names associated, such as, the domain name <boursorama.com> (since 1998) or <boursos.com> (since 2000) (proven by excerpt from the Whois database).

Past panels have decided that the Complainant’s mark “BOURSO” is well-known and has distinctive nature (the WIPO Case No. D2022-4646 Boursorama S.A. v. Ibraci Links, Ibraci Links SAS). Moreover, in France, the Complainant is the online banking reference with over 4,9 million customers and its portal <boursorama.com> was the first national financial and economic information site and the first French online banking platform.

Therefore, this Panel states that the Respondent must have been aware of the Complainant’s trademark and its reputation before the registration of the disputed domain name on May 30, 2023.

As mentioned earlier, the disputed domain name <actuboursos.com> resolves to a forbidden page (evidenced by the print-screen). The disputed domain names <profilboursos.com> and <secureboursos.com> resolve to registrar parking pages with commercial links (proven by the print-screen). The former disputed domain registration represents the passive holding of the disputed domain name, the latter can be considered as an attempt from the Respondent to obtain a commercial gain by creating confusion with the Complainant’s reputation. By that, the Respondent has not demonstrated any activity that could be considered legitimate and in good faith.

Following the above-mentioned, the Panel finds that the Complainant has satisfied Paragraph 4(a)(iii) of the UDRP.

Accepted

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

- 1. **actuboursos.com**: Transferred
- 2. **profilboursos.com**: Transferred
- 3. **securebourso.com**: Transferred

PANELLISTS

Name	Radim Charvát
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DATE OF PANEL DECISION 2023-07-10

Publish the Decision