

Decision for dispute CAC-UDRP-105555

Case number	CAC-UDRP-105555
Time of filing	2023-06-22 09:22:12
Domain names	bourso-apps-vosavis.com

Case administrator

Name	Olga Dvořáková (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	Ancellela Daniella
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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

Complainant is the owner of a French trademark BOURSO® n° 3009973 registered on February 22, 2000.

FACTUAL BACKGROUND

BOURSORAMA S.A. was founded in 1995 concurrent with the emergence of e-commerce and has expanded to fill a range of financial products online. It is a pioneer and leader in its three core businesses: online brokerage, financial information on the Internet, and online banking. It is the online banking preference with over 4.9 million customers. The portal www.boursorama.com was the first national financial and economic information site and first French online banking platform. Complainant alleges that the disputed domain names are confusingly similar to its trademark BOURSO® in that it they include its trademark in its entirety.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

COMPLAINANT:

The Complainant states that the Respondent registered the Disputed Domain Name <bourso-apps-vosavis.com> (the "Disputed Domain Name") on June 19, 2023 and that it resolves to a login page that duplicates Complainant's official customer access page. The Complainant has no business relationship with the Respondent, it has not licensed the right or authorized the Respondent to register and use its trademark. It is evident from the Respondents' use of the Disputed Domain Name that the purpose for its registration is to target the Complainant's customers and consumers generally seeking entry into the Complainant's banking platform.

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name because it has not been authorized by the Complainant to use the BOURSO trademark, and the disputed domain name does not correspond to the name of the Respondent which is not „Bourso“ but Ancelleta Daniella. The Complainant adds that the Respondent carries out a blatantly deceptive website that targets Complainant's customers and the consuming public.

Given the notoriety of the Complainants presence in the marketplace and the Respondent's physical address in France it would defy belief that the Respondent could have acquired the Disputed Domain Name in ignorance of either the Complainant or its mark.

RESPONDENT:

The Respondent has not appeared formally or informally to controvert the evidence submitted by the Complainant.

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

Paragraph 15(a) of the Rules for the UDRP ('the Policy') instructs this Panel to "decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable."

Pursuant to Paragraph 4(a) of the Policy the Complainant is required to prove each of the following three elements to obtain an order that a domain name should be cancelled or transferred:

- (i) the domain name registered by respondent is identical or confusingly similar to a trademark or service mark in which complainant has rights; and
- (ii) respondent has no rights or legitimate interests in respect of the domain name; and
- (iii) the domain name has been registered and is being used in bad faith.

In view of the Respondent's failure to submit a response, the Panel shall decide this administrative proceeding on the basis of the Complainant's undisputed representations and adduced proof pursuant to paragraphs 5(f), 14(a) and 15(a) of the Rules and draw such inferences it considers appropriate pursuant to paragraph 14(b) of the Rules. The Panel is entitled to accept all reasonable allegations and inferences set forth in the Complaint and annexes as true unless the evidence is clearly contradictory. See Vertical Solutions Mgmt., Inc. v. webnet-marketing, inc., FA 95095 (FORUM July 31, 2000) (holding that the respondent's failure to respond allows all reasonable inferences of fact in the allegations of the complaint to be deemed true); see also Talk City, Inc. v. Robertson, WIPO Case No. D2000-

0009 (WIPO February 29, 2000) ("In the absence of a response, it is appropriate to accept as true all [reasonable] allegations of the Complaint.").

Identical or Confusingly Similar to a Mark in which Complainant has a Right:

To succeed under the first element of the Policy, a complainant must pass a two-part test by first establishing that it has rights, and if it does it must then show that the disputed domain name is either identical or confusingly similar to the mark. If complainant passes this two-part test it is said to have standing to maintain the proceeding.

Here, the Complainant has established that it has rights in the word mark BOURSO by providing the Panel with evidence that it has a registered mark for that term. The consensus view which the Panel adopts is that a national or an international trademark registration is sufficient to establish rights in that mark. As such, the Panel finds that the Complainant has established that it has a right in the word mark BOURSO.

The second part of the test calls for comparing the Complainant's mark with the Disputed Domain Name. It entails "a straightforward visual or aural comparison of the trademark with the alphanumeric string in the domain name. 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." WIPO Overview 3.0 at section 1.7.

The Panel observes that the single difference in this case is the addition of the words "apps" and "vosavis" (a French expression corresponding in English to "Your reviews") with each word separated from "Boursos" with hyphens. "Apps" can be seen as associated with Complainant and "vosavis" can be seen as inviting customers and consumers to enter the impersonated portal. Such changes including the addition of grammatical markers are immaterial. Where the relevant trademark is recognizable within the disputed domain name it is sufficient to establish confusing similarity. The gTLD ".com" is a purely functional element that has impact on the overall impression of the dominant portion of the disputed domain name and is therefore irrelevant in determining the confusing similarity between the Disputed Domain Name and BOURSO.

Accordingly, the Complainant has satisfied Paragraph 4(a)(i) of the Policy.

Determining Whether Respondent Lacks rights or legitimate interests in the Disputed Domain Name:

To establish the second of the three elements, the Complainant must first demonstrate that Respondent lacks rights and legitimate interests in the disputed domain name. Recognizing that the proof for establishing this element is under the Respondent's control, the Complainant's may satisfy this burden by offering a prima facie case based on such concrete, circumstantial, or presumptive evidence as there is thus shifting the burden to the Respondent to produce evidence to overcome the presumption that it lacks rights or legitimate interests in the Disputed Domain Name.

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name. It states that it did not authorize the Respondent to register the Disputed Domain Name and nor is it licensed to use the Disputed Domain Name. The Complainant also asserts that the Respondent is not using the domain name for any bona fide purpose and is not commonly known by the name "BOURSO" as it has been identified in the Whois directory as Ancelet Daniella.

Further, the Complainant has adduced evidence that Respondent is not using the Disputed Domain Name for any non-commercial or fair use. See *Croatia Airlines d. d. v. Modern Empire Internet Ltd.*, WIPO Case No. D2003-0455 (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). See also *Advanced International Marketing Corporation v. AA-1 Corp.*, FA 780200 (Forum November 2, 2011) (finding that a complainant must offer some evidence to make its prima facie case and satisfy Policy paragraph 4(a)(ii).

Accordingly, the Complainant's contentions satisfy the presumptive burden that Respondent lacks rights or legitimate interests in the Disputed Domain Name. A respondent has the opportunity to controvert the prima facie case by adducing evidence demonstrating that it has rights or legitimate interests. The Policy sets forth the following nonexclusive list of factors:

- (i) "[B]efore any notice to you of the dispute, your 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."
- (ii) "[Y]ou (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights."
- (iii) "[Y]ou are 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."

Evidence of any one of these defences will satisfy a respondent's rebuttal burden, but the absence of any evidence supports a complainant's contention that the respondent lacks rights or legitimate interests in the disputed domain name. The failure of a party to submit evidence on facts in its possession and under its control may permit the Panel to draw an adverse inference regarding those facts. See *Mary-Lynn Mondich and American Vintage Wine Biscuits, Inc. v. Shane Brown, doing business as Big Daddy's Antiques*, WIPO Case No. D2000-0004. Here, the Disputed Domain Name is virtually identical to the Complainant's mark. The sole difference is the addition of a common word ("Apps") and a common expression ("Vos Avis") set off by hyphens. This strategy of adding words that Internet users would interpret as Complainant's portal to view their accounts does not support a right or legitimate interest in a disputed domain name and the Panel so finds in this matter. See *Chernow Communications, Inc. v. Jonathan D. Kimball*, WIPO Claim No. D2000-0119 ("If the dissent's reasoning were accepted it would be very easy in the future for a prospective cybersquatter, by inserting or deleting a hyphen.") *Oxygen Media, LLC v. Primary Source*, WIPO Claim No. D2000-0362 (holding: "The substitution of the digit

zero for the letter “o” appears calculated to trade on Complainant’s name by exploiting likely mistake by users when entering the url address.”)

It is noteworthy that the Disputed Domain Name resolves to a page identical to Complainant’s portal page. Using an impersonating domain name to attract Internet users and particularly those with accounts held by Complainant establishes Complainant’s contention that Respondent lacks rights or legitimate interests in the Disputed Domain Name. Where the “only apparent purpose would be to trade on mistakes by users seeking Complainant’s web site” the registration is abusive. See *Emerson Electric Co. v. golden humble /golden globals*, FA 1787128 (Forum June 11, 2018) (“lack of evidence in the record to indicate a respondent is authorized to use [the] complainant’s mark may support a finding that [the] respondent does not have rights or legitimate interests in the disputed domain name per Policy ¶ 4(c)(ii)”).

As the Respondent has not controverted the evidence that it lacks right or legitimate interests in the Disputed Domain Name, and for the reasons herein stated, the Panel finds that the Complainant has satisfied Paragraph 4(a)(ii) of the Policy.

Registration and Use in Bad faith:

Having demonstrated that Respondent lacks rights or legitimate interests in the Disputed Domain Name, it is the Complainant’s further burden under Paragraph 4(a)(iii) of the Policy to prove that the Respondent both registered and is using the Disputed Domain Name in bad faith. It is not sufficient for a complainant to rest its case on the finding under Paragraph 4(a)(ii) of the Policy, although the fact that the Respondent lacks rights or legitimate interests in the Disputed Domain Name maybe a factor in assessing its motivation for registering a domain name in which the dominant part is identical to Complainant’s mark.

In this case, the Respondent adds a word and a phrase set out between hyphens in pretense of being the Complainant. Taken as a whole the Disputed Domain Name is designed to attract Internet visitors seeking to access their accounts held by Complainant. Preying on Internet user in the matter in which Complainant has demonstrated is a quintessential abuse of Complainant’s rights and in violation of the Policy.

The preamble to Paragraph 4(b) states: “For the purposes of Paragraph 4(a)(iii) [the finding of any of the circumstances] shall be evidence of the registration [...] of a domain name in bad faith.” In the absence of a respondent to explain and justify its registration and use of a domain name corresponding to a famous or well-known mark, a Panel is compelled to examine the limited record for any exonerative evidence of good faith. The Respondent has not appeared and based on the evidence of record, the Panel finds none.

The Complainant’s proof in this case focuses the Panel’s attention on the fourth factor. As there is no proof that would support the other factors, the Panel will not address them. Subparagraph 4(b)(iv) reads:

(iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its 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 the respondent’s website or location or of a product or service on the respondent’s website or location.

The Complainant argues and the evidence supports that the Respondent resolves the Disputed Domain Name to a page that is identical to Complainant’s official login page. No other inference can be drawn except that Respondent is targeting users to harvest their personal information. See *The Royal Bank of Scotland Group plc v. [Redacted]*, FA0908001282153 (Forum October 28, 2009) (Holding, that Respondent registered <rbs-partners.com> for “a fraudulent scheme that seeks to obtain personal financial information from Internet users in the United States”); and also *Intercontinental Exchange Holdings, Inc. (ICE) v. Withheld for Privacy*, D2021-1332 (WIPO June 11, 2021) (Where Complainant is in the financial sector and respondent redirects the domain name to complainant’s website “[S]uch redirection is often used by malevolent parties to suggest that the disputed domain name is connected to the Complainant in aid of phishing schemes or other fraudulent activity.”)

Complainant has adduced more than sufficient evidence to supports its contention that the Respondent has appropriated a well-known mark to serve an infringing and fraudulent purpose. See *Royal Bank of Canada - Banque Royale Du Canada v. Registration Private, Domains By Proxy, LLC / Randy Cass*, WIPO Case No. D2019-2803, the Panel noted: “It is clear that where the facts of the case establish that the respondent’s intent in registering or acquiring a domain name was to unfairly capitalize on the complainant’s [...] trademark, panels have been prepared to find the respondent acted in bad faith.”

Impersonation for the purpose evident in this case is to create an impression that it is who it is impersonating, thus “creating a likelihood of confusion with the complainant’s mark as to the source, sponsorship, affiliation, or endorsement of the respondent’s website or location or of a product or service on the respondent’s website or location.” Absent a remedy consumers will undoubtedly be taken in and likely defrauded by accepting the invitation to enter the false portal.

For all the above reasons, the Panel finds that the Complainant has demonstrated that the Respondent registered and is using the Disputed Domain Name in bad faith, thus it has satisfied 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. **bourso-apps-vosavis.com:** Transferred

PANELLISTS

Name **Gerald Levine Ph.D, Esq.**

DATE OF PANEL DECISION 2023-07-24

Publish the Decision