

ADMINISTRATIVE PANEL DECISION

Boursorama v. BrooklynOnline, Brooklyn Dickerson
Case No. D2023-4167

1. The Parties

The Complainant is Boursorama, France, represented by Nameshield, France.

The Respondent is BrooklynOnline, Brooklyn Dickerson, United States of America.

2. The Domain Name and Registrar

The disputed domain name <boursorama-sepa.com> is registered with Nicenic International Group Co., Limited (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 6, 2023. On October 6, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 7, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name which differed from the named Respondent (Unknown) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 9, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on October 10, 2023.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on October 17, 2023. In accordance with the Rules, paragraph 5, the due date for Response was November 6, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 10, 2023.

The Center appointed Mihaela Maravela as the sole panelist in this matter on November 14, 2023. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

4. Factual Background

According to information in the Complaint, the Complainant is a company founded in 1995 and acting in three core businesses, namely online brokerage, financial information on the Internet and online banking. In France, the Complainant has over 5 million customers in its online banking activities.

The Complainant is the owner of various registered trademarks that consist of or include BOURSORAMA, including the European Trademark no. 001758614 BOURSORAMA registered on October 19, 2001, covering goods and services in classes 9, 16, 35, 36, 38, 41, and 42. The Complainant has registered the domain name <boursorama.com> since March 1, 1998, that it uses as a financial and economic information website.

The disputed domain name was registered on October 4, 2023, and according to information in the case file, it was used to redirect to the Complainant's official website at "www.boursorama.com". At the date of the decision, the disputed domain name resolves to a Google warning page stating "[d]eceptive site ahead", containing, among others, a hyperlink stating: "[...] if you understand the risks to your security, visit this unsafe site". Also, the record indicates that an active mail exchange ("MX") email server for the disputed domain name has been configured.

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant contends that the disputed domain name is confusingly similar to its well-known and distinctive trademark BOURSORAMA and its domain names, as the term BOURSORAMA is reproduced in the disputed domain name in its entirety. The addition of the word "sepa" in the disputed domain name is not sufficient to avoid the likelihood of confusion with the Complainant's trademark. On the contrary, this term refers to "Single Euro Payments Area", which is a service commonly provided by banks. This addition reinforces the risk of confusion in the Complainant's view.

As regards the second element, the Complainant argues that the Respondent is not affiliated with nor authorized by the Complainant in any way. 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 trademark BOURSORAMA, or apply for registration of the disputed domain name. Furthermore, the disputed domain name redirects to the Complainant's official website "www.boursorama.com". The Complainant contends that the Respondent is not making a *bona fide* offering of goods or services by means of the disputed domain name, or a legitimate noncommercial or fair use of it.

With respect to the third element, the Complainant argues that it has 5 million customers, and it is the French online banking reference. Given the distinctiveness of the Complainant's trademark and its reputation, the Complainant contends that it is inconceivable that the Respondent could have registered the disputed domain name without actual knowledge of the Complainant's rights in the trademark. Moreover, the disputed domain name redirects to the Complainant's official website. Consequently, the disputed domain name has been registered by the Respondent to take advantage of the good reputation the Complainant had built up in

its BOURSORAMA trademarks, with the sole aim to create a likelihood of confusion with the Complainant's trademarks and domain names. Finally, MX servers are configured, which suggests that the disputed domain name may be actively used for email purposes.

B. Respondent

The Respondent did not reply to the Complainant's contentions.

6. Discussion and Findings

No response has been received from the Respondent in this case. Accordingly, the Panel considers it can proceed to determine the Complaint based on the statements and documents submitted by the Complainant as per paragraph 15(a) of the Rules. The applicable standard of proof in UDRP cases is the "balance of probabilities" or "preponderance of the evidence", and the Panel can draw certain inferences in light of the particular facts and circumstances of the case. See section 4.2 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

To succeed, the Complainant must demonstrate that all of the elements listed in paragraph 4(a) of the Policy have been satisfied: (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights, (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.

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. [WIPO Overview 3.0](#), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is identical or confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7. While the addition of other terms here, "sepa" (and of a hyphen) may bear on assessment of the second and third elements, the Panel finds the addition of such terms does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Based on the available record, the Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

While the overall burden of proof in UDRP proceedings is on the complainant, UDRP panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. As such, 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 disputed domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant's *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

There is no evidence in the record that the Respondent is currently using the disputed domain name in connection with a *bona fide* offering of goods or services, nor does the Respondent appear to engage in any legitimate noncommercial or fair use of the disputed domain name within the meaning of paragraphs 4(c)(i) and (iii) of the Policy. Rather, according to evidence in the case file, the Respondent has used the disputed domain name to redirect Internet users to the Complainant's own website through the disputed domain name. The Panel is of the view that such redirection cannot confer any rights or legitimate interests in the disputed domain name to the Respondent.

Also, there is no evidence that the Respondent is commonly known by the disputed domain name within the meaning of paragraph 4(c)(ii) of the Policy.

Furthermore, the nature of the disputed domain name carries a risk of implied affiliation and cannot constitute a fair use as it effectively impersonates or suggests sponsorship or endorsement by the Complainant. See section 2.5.1 of the [WIPO Overview 3.0](#).

Based on the available record, the Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular but without limitation, that if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

According to the unrebutted assertions of the Complainant, its BOURSORAMA trademark was widely used in commerce well before the registration of the disputed domain name. The disputed domain name is identical or confusingly similar with the Complainant's trademark and according to unrebutted information in the case file, it was used to redirect to the Complainant's official website. Under these circumstances, given also the addition of "sepa" in the disputed domain name (which, as per the Complainant, stands for "Single Euro Payments Area", which is a term in the Complainant's area of business), it is most likely that the Respondent was aware of the Complainant's trademark at the registration date of the disputed domain name. The Respondent provided no explanations for why it registered the disputed domain name.

Therefore, given the circumstances in the case, and that the disputed domain name incorporating the Complainant's trademark redirected to the Complainant's official website, the Panel considers that the Respondent must have had knowledge of the Complainant's rights in the BOURSORAMA trademarks when it registered the disputed domain name and it has intentionally created a likelihood confusion with the Complainant's trademarks and website in order to attract Internet users for its own commercial gain, as envisaged by paragraph 4(b)(iv) of the Policy and/or to disrupt the business of the Complainant.

Furthermore, the Respondent's bad faith registration and use of the disputed domain name can also be inferred from the warnings on the relevant website, that the disputed domain name resolves to a website that is deceptive, stating that "if you understand the risks to your security, visit this unsafe site" and disclosing that the Internet users might be tricked into doing something dangerous like installing software or revealing personal information (for example passwords, phone numbers, or credit cards). An additional element is the DNS setup of the disputed domain name (with active MX records). Moreover, the Respondent has not formally participated in these proceedings and has failed to rebut the Complainant's contentions and to provide any evidence of actual or contemplated good-faith use and indeed none would seem plausible.

Based on the available record, the Panel finds the third element of the Policy has been established.

7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain name <boursorama-sepa.com> be transferred to the Complainant.

/Mihaela Maravela/

Mihaela Maravela

Sole Panelist

Date: November 28, 2023