

## **ADMINISTRATIVE PANEL DECISION**

Boursorama S.A. v. Carlos Hernández

Case No. D2022-1204

### **1. The Parties**

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

The Respondent is Carlos Hernández, Spain.

### **2. The Domain Name and Registrar**

The disputed domain name <support-boursorama.com> is registered with IONOS SE (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 6, 2022. On April 6, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 7, 2022, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on April 11, 2022, 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 April 11, 2022.

On April 11, 2022, the Center informed the parties in English and Spanish, that the language of the registration agreement for the disputed domain name is Spanish. On April 11, 2022, the Complainant confirmed its request that English be the language of the proceeding as set forth in the Complaint. The Respondent did not submit any comment on the Complainant’s submission request.

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 May 10, 2022. In accordance with the Rules, paragraph 5,

the due date for Response was May 30, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on June 9, 2022.

The Center appointed Miguel B. O'Farrell as the sole panelist in this matter on June 23, 2022. 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**

The Complainant, Boursorama S.A., was founded in 1995 and is one of the leaders in its three core businesses, online brokerage, financial information on the Internet and online banking.

In France, the Complainant claims to be the online reference with over 3.3 million customers and that the portal "www.boursorama.com" is the first national financial and economic information site and the first French online banking platform.

The Complainant is the owner of several trademarks BOURSORAMA, including European Union Trade mark Registration No. 001758614, registered on October 19, 2001 in classes 9, 16, 35, 36, 38, 43 and 42.

Also, the Complainant owns a number of domain names which include the trademark BOURSORAMA, such as the domain name <boursorama.com>, registered on February 28, 1998.

The disputed domain name <support-boursorama.com> was registered on April 4, 2022, and resolves to an inactive website, with MX servers configured.

#### **5. Language of the Proceeding**

Pursuant to paragraph 11 of the Rules, unless otherwise agreed by the parties, the default language of the proceeding is the language of the registration agreement, subject to the authority of the panel to determine otherwise.

As indicated above, the Center has informed the parties that the language of the registration agreement for the disputed domain name is Spanish. Nevertheless, the Complainant has filed the Complaint in English and has confirmed its request for the language of the proceeding to be English.

The Respondent did not oppose the Complainant's language request when asked by the Center to comment thereon.

Noting the aim of conducting the proceedings with due expedition, paragraph 10 of the Rules vests a panel with authority to conduct the proceedings in a manner it considers appropriate while also ensuring both that the parties are treated with equality and, that each party is given a fair opportunity to present its case.

The Panel finds that ordering the Complainant to translate the Complaint, in view of the costs involved, would imply a significant burden to the Complainant, in addition to an unwarranted delay in the proceeding.

English is the international business language and more likely than not is understandable to the Respondent who, not only failed to answer the Complaint, but also did not oppose the Complainant's language request when it was given the opportunity to do so.

In view of the foregoing, the Panel decides that the language of the proceeding is English.

## 6. Parties' Contentions

### A. Complainant

The Complainant claims that the disputed domain name is confusingly similar to its trademark BOURSORAMA in which the Complainant has rights and that the Respondent has no rights or legitimate interests in the disputed domain name, which was registered and is being used in bad faith.

More specifically, the Respondent is not affiliated with the Complainant in any way. 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.

The Respondent has not made any use of the disputed domain name since its registration, and has no demonstrable plan to use the disputed domain name, other than to create a likelihood of confusion with the Complainant's trademark.

The disputed domain name includes the well-known and distinctive trademark BOURSORAMA. Consequently, it is reasonable to infer that the Respondent has registered the disputed domain name with full knowledge of the Complainant's trademark.

Furthermore, MX servers are configured, which indicates that the disputed domain name may be used for email services (Annex 7). Previous panels have considered that the setting up of MX servers may be found to be further evidence of use of the disputed domain name in bad faith (*Decathlon v. Registration Private, Domains By Proxy*, WIPO Case No. [D2021-2228](#)).

Finally, the Complainant has requested the Panel to issue a decision ordering the transfer of the disputed domain name to the Complainant.

### B. Respondent

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

## 7. Discussion and Findings

According to paragraph 4(a) of the Policy, for this Complaint to succeed in relation to the disputed domain name, the Complainant must prove each of the following, namely that:

- (i) the disputed domain name is identical or confusingly similar with 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

As set forth in section 1.7 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") the standing test for confusing similarity involves a reasoned but relatively straightforward comparison between the trademark and the disputed domain name to determine whether the disputed domain name is confusingly similar with the trademark. The test involves a side-by-side comparison of the disputed domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name.

The Panel considers that the disputed domain name is confusingly similar with the Complainant's BOURSORAMA trademark.

The disputed domain name <support-boursorama.com> incorporates the Complainant's trademark BOURSORAMA in its entirety with the inclusion of the word "support" and a hyphen which does not prevent a finding of confusing similarity.

The ".com" generic Top-Level Domain ("gTLD") is viewed as a standard registration requirement and is generally disregarded under the first element confusing similarity test, as set forth in section 1.11.1 of [WIPO Overview 3.0](#).

Accordingly, the Panel finds that the disputed domain name is confusingly similar to the trademark BOURSORAMA in which the Complainant has rights and that the requirements of paragraph 4(a)(i) of the Policy are fulfilled.

## **B. Rights or Legitimate Interests**

Pursuant to paragraph 4(c) of the Policy, a respondent may establish rights to or legitimate interests in a domain name by demonstrating any of the following non-exclusive defenses:

- (i) before any notice to it of the dispute, the respondent's 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; or
- (ii) the respondent has been commonly known by the domain name, even if it has acquired no trademark or service mark rights; or
- (iii) the respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain, to misleadingly divert consumers.

Although the Policy addresses ways in which a respondent may demonstrate rights or legitimate interests in a disputed domain name, it is well established, as it is put in section 2.1 of [WIPO Overview 3.0](#), that a complainant is required to make out a *prima facie* case that the respondent lacks rights or legitimate interests in the domain name. Once such *prima facie* case is made, the burden of production 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.

There is no evidence in the present case that the Respondent has been commonly known by the disputed domain name, enabling it to establish rights or legitimate interests therein. j

Furthermore, there is no evidence in the file to prove any of the circumstances mentioned in paragraph 4(c) of the Policy, nor any other circumstances to suggest that the Respondent has rights or legitimate interests in the disputed domain name.

Likewise, and as further discussed under section 7.C of this Decision, it does not seem that the Respondent is making any legitimate noncommercial or fair use of the disputed domain name, but rather that it intends to use the disputed domain name for the purpose of deriving unfair monetary advantage by confusing Internet users and leading them to believe that the site to which the disputed domain name relates is an official site of the Complainant.

As established in section 2.5 of [WIPO Overview 3.0](#): "Fundamentally, a respondent's use of a domain name will not be considered 'fair' if it falsely suggests affiliation with the trademark owner; the correlation between a domain name and the complainant's mark is often central to this inquiry." Here, the nature of the disputed domain name carries a risk of implied affiliation.

The Panel finds that the Complainant has made out a *prima facie* case, a case calling for an answer from the Respondent. The Respondent has not responded and the Panel is unable to conceive of any basis upon which the Respondent could sensibly be said to have any rights or legitimate interests in respect of the disputed domain name (*Telstra Corporation Ltd. v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#)).

The Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name and that the requirements of paragraph 4(a)(ii) of the Policy have been fulfilled.

### **C. Registered and Used in Bad Faith**

The Panel is satisfied that the Respondent must have been aware of the Complainant and the Complainant's trademark BOURSORAMA mentioned in paragraph 4 above (Factual Background) when it registered the disputed domain name on April 4, 2022.

In accordance with section 3.1.4 of [WIPO Overview 3.0](#), the Panel considers that the inclusion of the Complainant's BOURSORAMA trademark in the disputed domain name creates a presumption of bad faith.

The Complainant has submitted evidence to support that the trademark BOURSORAMA mentioned in paragraph 4 above is widely known and was registered and used many years before the Respondent registered the disputed domain name. The Respondent when registering the disputed domain name has targeted the Complainant's trademark BOURSORAMA with the intention to confuse Internet users and capitalize on the fame of the Complainant's name and trademark. Furthermore, the Complainant's evidence that the Respondent has set up MX records for the disputed domain name indicate that the disputed domain name may be used for misrepresentations and/or phishing attempts.

The clear absence of rights or legitimate interests coupled with no credible explanation for the Respondent's choice of the disputed domain name is also a significant factor to consider that the disputed domain name was registered in bad faith (as stated in section 3.2.1 of [WIPO Overview 3.0](#)).

Pursuant to section 3.3 of [WIPO Overview 3.0](#), the fact that the disputed domain name does not resolve to an active website does not prevent a finding of bad faith under the doctrine of passive holding. See also *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. D2000-0003).

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

## **8. 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 <support-boursorama.com> be transferred to the Complainant.

*/Miguel B. O'Farrell/*

**Miguel B. O'Farrell**

Sole Panelist

Date: July 7, 2022