

ADMINISTRATIVE PANEL DECISION

Boursorama S.A. v. Esperanza Murillo, EsperanzaCloud
Case No. D2023-1674

1. The Parties

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

The Respondent is Esperanza Murillo, EsperanzaCloud, United States of America.

2. The Domain Name and Registrar

The disputed domain name <boursoramasoutien.com> (the “Domain Name”) 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 April 17, 2023. On April 18, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On April 19, 2023, the Registrar transmitted by email to the Center its verification response disclosing additional registrant and contact information for the Domain Name to the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on April 21, 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 April 24, 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 April 26, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 16, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 17, 2023.

The Center appointed Gregor Vos as the sole panelist in this matter on June 17, 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

The Complainant is a French financial institution with online brokerage, online financial information and online banking as its core business. The Complainant was the first online banking platform in France and is currently used by over 4 million customers.

The Complainant is the owner of the European Union Trade Mark reg. No. 001758614 BOURSORAMA, registered on October 19, 2001 (the "Trademark").

Further, it is undisputed that the Complainant is the owner of the following domain names:

- <boursorama.com>, registered on March 1, 1998;
- <boursoramabanque.com>, registered on May 26, 2005.

The Domain Name was registered on March 25, 2023, and at the time of filing of the Complaint redirects to the official homepage of the Complainant's website connected to the domain name <boursorama.com>.

5. Parties' Contentions

A. Complainant

With the Complaint, the Complainant seeks that the Domain Name is transferred to the Complainant. The Complaint is based on the following factual and legal grounds: The Domain Name is identical or confusingly similar to the Trademark of the Complainant, the Respondent has no rights or legitimate interests in the Domain Name and the Domain Name has been registered and is being used in bad faith.

First, the Complainant states that the Domain Name is confusingly similar to the Trademark and the domain names of the Complainant. The Trademark is included in the Domain Name in its entirety with the addition of the French term "soutien", which translates to "support".

Second, the Complainant asserts that the Respondent lacks any rights or legitimate interests in the Domain Name. The Respondent is not commonly known by the Domain Name and is not authorized by the Complainant to use the Domain Name. There is no business relationship between the Respondent and the Complainant. The Domain Name resolves to the official homepage of the Complainant's website connected to the domain name <boursorama.com> and is not making a *bona fide* offering of goods or services.

Finally, according to the Complainant, the Respondent has registered and uses the Domain Name in bad faith. The Complainant contends that the Trademark is well-known and distinctive, meaning the Respondent must have had knowledge about the Trademark before registering the Domain Name. This is reinforced by the fact that the Domain Name resolves to the official homepage of one of the Complainant's website. According to the Complainant, the Domain Name has been registered in an effort to take advantage of the good reputation that the Complainant has built up, and the aim of the Respondent has been to create confusion between the Complainant and the Respondent. Also, the active MX records indicate registration and use of the Domain Name in bad faith because it is inconceivable that an e-mail from an e-mail address with the Domain Name could be used in good faith.

B. Respondent

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

6. Discussion and Findings

In view of the lack of a response filed by the Respondent as required under paragraph 5 of the Rules, this

proceeding has proceeded by way of default. Hence, under paragraphs 5(f), 14(a) and 15(a) of the Rules, the Panel is directed to decide this administrative proceeding on the basis of the Complainant's undisputed factual presentations.

For the Complainant to succeed, it must prove, within the meaning of paragraph 4(a) of the Policy and on the balance of probabilities that:

- i. the Domain Name is identical or confusingly similar to a trademark or a service mark in which the Complainant has rights; and
- ii. the 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.

Only if all three elements have been fulfilled, the Panel is able to grant the remedies requested by the Complainant. The Panel will deal with each of the requirements in turn.

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires the Complainant to show that the Domain Name is (i) identical or confusingly similar to a trademark or service mark, (ii) in which the Complainant has rights.

With respect to having rights pursuant to paragraph 4(a)(i) of the Policy, it is noted that the Complainant is registered as the owner of the Trademark and has used the Trademark prior to registration of the Domain Name. Thus, the Panel finds that the Complainant's rights in the Trademark have been established.

With regard to the assessment of identity or confusing similarity of the Domain Name with the Trademark, it is generally accepted that this test involves a reasoned but relatively straightforward comparison between the Complainant's Trademark and the Domain Name (see section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"). In cases where a domain name incorporates the entirety of a trademark, the domain name will normally be considered confusingly similar to that mark (see section 1.7 of the [WIPO Overview 3.0](#)).

The Trademark is incorporated in the Domain Name in its entirety. The addition of the term "soutien" in the Domain Name does not prevent a finding of confusing similarity between the Domain Name and the Trademark (see section 1.8 of the [WIPO Overview 3.0](#)). The generic Top-Level Domain ".com" is disregarded under the first element confusing similarity test (see section 1.11.1 of the [WIPO Overview 3.0](#)). Consequently, the Panel finds that the requirement under paragraph 4(a)(i) of the Policy has been satisfied.

B. Rights or Legitimate Interests

The second requirement the Complainant must prove is that the Respondent has no rights or legitimate interests in the Domain Name. The onus of proving this requirement, like each element, falls on the Complainant. Given the difficulty in proving a negative, however, it is usually sufficient for a complainant to make out a *prima facie* case that a respondent lacks rights or legitimate interests. If a complainant does establish a *prima facie* case, the burden of production shifts to the respondent (see, e.g. [WIPO Overview 3.0](#), section 2.1; *Sanofi v. Cimpress Schweiz GmbH*, WIPO Case No. [D2017-0522](#)).

Paragraph 4(c) of the Policy lists three non-limitative examples of instances in which a respondent may establish rights or legitimate interests in the disputed domain name.

The Complainant has substantiated that none of these circumstances apply in this case. Furthermore, the Respondent has failed to produce any evidence to demonstrate rights or legitimate interests in the Domain Name. The Panel notes that the fact that the Domain Name resolves to the Complainant's own website does not create any rights or legitimate interests under the Policy, since this is likely to mislead Internet users

into believing that the Domain Name is connected to the Complainant (see *Bureau Veritas v. Xavier Garreau*, WIPO Case No. [D2017-1570](#)). The Panel does not see any further indication that any of the circumstances of paragraph 4(c) of the Policy is present.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in respect of the Domain Name. Paragraph 4(a)(ii) is thereby fulfilled.

C. Registered and Used in Bad Faith

Under paragraph 4(a)(iii) of the Policy, a complainant must show that the disputed domain name has been registered and is being used in bad faith. Paragraph 4(b) of the Policy lists four non-limitative circumstances which may be considered as evidence of registration and use in bad faith of a domain name.

In the present case, the Panel agrees with the Complainant that the Respondent must have had knowledge of the Trademark and the domain names of the Complainant when registering the Domain Name, in light of the well-known character of the Trademark, which has been confirmed by earlier UDRP panels (see *e.g. Boursorama SA v. Estrade Nicolas*, WIPO Case No. [D2017-1463](#); *Boursorama S.A. v. WhoisGuard, Inc. / Margaret Robinson*, WIPO Case No. [D2020-0083](#)). This knowledge is confirmed by the fact that the Domain Name resolves to the official website of the Complainant connected to the domain name <boursorama.com>. As such, the Panel finds it inconceivable that the Respondent registered the Domain Name without knowledge of the Trademark of the Complainant.

Since the Respondent does not have any rights or legitimate interests in the Domain Name, and in the absence of any conceivable good faith in use of the Domain Name, the Panel finds from the present circumstances that the Respondent has intentionally attempted to attract Internet users to its website by creating a likelihood of confusion with the Trademark. Section 3.1.4, [WIPO Overview 3.0](#). Therefore, the Panel finds that the Domain Name has been registered and is being used in bad faith and that the third element of paragraph 4(a) of the Policy is fulfilled.

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 Domain Name, <boursoramasoutien.com>, be transferred to the Complainant.

/Gregor Vos/

Gregor Vos

Sole Panelist

Date: July 1, 2023