

ADMINISTRATIVE PANEL DECISION

Boursorama S.A. v. Claude Bernard Fountum Kengne, APLUS
Case No. DCO2023-0052

1. The Parties

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

The Respondent is Claude Bernard Fountum Kengne, APLUS, Cameroon.

2. The Domain Name and Registrar

The disputed domain name <boursoramabanque.co> is registered with FastDomain, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 30, 2023. On May 30, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 30, 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 (Redacted For Privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 31, 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 May 31, 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 June 7, 2023. In accordance with the Rules, paragraph 5, the due date for Response was June 27, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 11, 2023.

The Center appointed Rodrigo Azevedo as the sole panelist in this matter on July 18, 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 the French online bank Boursorama.

The Complainant is the owner of the European Union Trade Mark BOURSORAMA n°001758614, registered since October 19, 2001, and the French trademark BOURSORAMA BANQUE n°3676762, registered since September 16, 2009.

The Complainant also owns a number of domain names incorporating the same distinctive wording “Boursorama”, such as the domain names <boursorama.com>, registered since March 1, 1998, and <boursoramabanque.com>, registered since May 26, 2005.

The Respondent registered the disputed domain name on May 25, 2023.

The Panel accessed the disputed domain name on July 30, 2023, when it was not linked to any active website, but just to an error page¹.

5. Parties’ Contentions

A. Complainant

The Complainant makes the following contentions:

- The disputed domain name is confusingly similar to the Complainant’s trademark BOURSORAMA. Indeed, the disputed domain name includes it in its entirety. The Complainant asserts that the addition of the term “banque” is not sufficient to escape the finding that the disputed domain name is confusingly similar to the trademark BOURSORAMA. 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. On the contrary, this addition worsens the likelihood of confusion, as it directly refers to the Complainant’s trademark BOURSORAMA BANQUE and its domain name <boursoramabanque.com>. Furthermore, the Complainant contends that the addition of the country code Top-Level Domain (“ccTLD”) “.co” does not change the overall impression of the designation as being connected to the Complainant’s trademark. It does not prevent the likelihood of confusion between the disputed domain name and the Complainant, its trademark and its domain names associated.
- The Respondent has no rights or legitimate interests in respect of the disputed domain name. 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 disputed domain name. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(a) (ii) of the UDRP. The Respondent is not known as the disputed domain name. Past panels have held that a Respondent was not commonly known by a disputed domain name if the Whols information was not similar to the disputed domain name. The Respondent is not known by the Complainant. The Respondent is not affiliated with nor authorized by the Complainant in any way. The Respondent has no rights or legitimate interests in respect of the disputed domain name. 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

¹ Further to the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 4.8, “[n]oting in particular the general powers of a panel articulated inter alia in paragraphs 10 and 12 of the UDRP Rules, it has been accepted that a panel may undertake limited factual research into matters of public record if it would consider such information useful to assessing the case merits and reaching a decision...This may include visiting the website linked to the disputed domain name in order to obtain more information about the respondent or its use of the domain name...”.

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 resolves to an error page. The Respondent did not use the disputed domain name, and it confirms that the Respondent has no demonstrable plan to use the disputed domain name.

- The disputed domain name was registered and is being used in bad faith. With its 4,9 million customers, BOURSORAMA is the French online banking reference. The disputed domain name includes the well-known and distinctive trademark BOURSORAMA. Given the distinctiveness of the Complainant's trademarks and reputation, it is reasonable to infer that the Respondent has registered the disputed domain name with full knowledge of the Complainant's trademarks. Finally, 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. 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 Overview 3.0](#), section 3.1.4). In addition, the disputed domain name is 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. Finally, MX servers are configured, which suggests that the disputed domain name may be actively used for email purposes and it is inconceivable that the Respondent will be able to make any good faith use of the disputed domain name as part of an e-mail address.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy provides that in order to be entitled to a transfer of the disputed domain name, a complainant shall prove the following three elements:

- (i) the disputed domain name is identical or confusingly similar to 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 has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

Annex 4 to the Complaint shows trademark registrations for BOURSORAMA, as early as in 2001.

The disputed domain name reproduces the Complainant's trademark BOURSORAMA BANQUE in its entirety. The disputed domain name also presents the country-code TLD extension ".co".

It is already well established that the addition of a country-code TLD extension such as ".co" is typically irrelevant when determining whether a domain name is confusingly similar to a complainant's trademark.

As a result, the Panel finds that the disputed domain name is identical to the Complainant's trademark BOURSORAMA BANQUE, and that the Complainant has satisfied the first element of the Policy.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides some examples without limitation of how a respondent can demonstrate rights or legitimate interests in a domain name:

- (i) before receiving any notice of the dispute, the respondent used or made demonstrable preparations to use 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; 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 or to tarnish the trademark at issue.

Based on the Respondent's default and on the *prima facie* evidence in the Complaint, the Panel finds that the above circumstances are not present in this particular case and that the Respondent has no rights or legitimate interests in the disputed domain name.

The Panel notes that the present record provides no evidence to demonstrate the Respondent's intent to use or to make preparations to use the disputed domain name in connection with a *bona fide* offering of goods or services. Indeed, the disputed domain name is currently not linked to any active website and the Respondent has not indicated any reason to justify why it has chosen the specific term "boursoramabanque" to compose the disputed domain name. The Panel has no doubt that "boursoramabanque" is a term directly connected with the Complainant and that the disputed domain name carries a high risk of implied affiliation with the Complainant. [WIPO Overview 3.0](#), section 2.5.1.

The Complainant has not licensed or authorized the use of its trademark to the Respondent, and it does not appear from the present record that the Respondent is commonly known by the disputed domain name.

Consequently, the Panel is satisfied that the Respondent has no rights or legitimate interests in the disputed domain name, and the Complainant has proven the second element of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy states that the following circumstances in particular, but without limitation, shall be evidence of registration and use of a domain name in bad faith:

- (i) circumstances indicating that the respondent has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that the complainant, for valuable consideration in excess of documented out-of-pocket costs directly related to the domain name; or
- (ii) the respondent registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct; or
- (iii) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (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 its website or location or of a product or service on its website or location.

When the disputed domain name was registered by the Respondent (in 2023), the trademarks BOURSORAMA and BOURSORAMA BANQUE were already directly connected to the Complainant's online banking services.

Therefore, the Panel concludes that it would not be feasible to consider that the Respondent could not have been aware of the Complainant's trademarks at the time of the registration of the disputed domain name, as well as that the adoption of the expression "boursoramabanque" could be a mere coincidence.

According to the [WIPO Overview 3.0](#), section 3.1.4, UDRP panels have consistently found that the mere registration of a domain name that is identical or confusingly similar to a famous or widely known trademark by an unaffiliated entity can by itself create a presumption of bad faith.

Actually, the Panel considers that in the present case the incorporation of the Complainant's trademark BOURSORAMA BANQUE in its entirety enhance the risk of confusion, making a direct reference to the Complainant's banking activities.

From the Panel's search, the disputed domain name does not currently resolve to any active website, but just to an error page.

However, UDRP panels have frequently found that the apparent lack of so-called active use of the domain name (passive holding) does not prevent a finding of bad faith. See [WIPO Overview 3.0](#), section 3.3; *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#); and *Polaroid Corporation v. Jay Strommen*, WIPO Case No. [D2005-1005](#).

The non-collaborative posture of the Respondent, *i.e.*, (a) not presently using the disputed domain name, (b) not indicating any intention to use it, and (c) not at least providing justifications for the use of a third party trademark, certainly cannot be used in benefit of the Respondent in this Panel's opinion, which circumstances, together with (d) the lack of any plausible interpretation for the adoption of the term "boursoramabanque" by the Respondent and (e) with the information that email servers were recently set up using the disputed domain name, are enough in this Panel's view to characterize bad faith registration and use in the present case.

Accordingly, the Panel finds that the disputed domain name was registered and used in bad faith, and the Complainant has also satisfied the third element of the Policy.

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 <boursoramabanque.co> be transferred to the Complainant.

/Rodrigo Azevedo/

Rodrigo Azevedo

Sole Panelist

Date: August 3, 2023