

ADMINISTRATIVE PANEL DECISION

BOURSORAMA S.A. v. Emmanuel Friteur

Case No. DCO2023-0064

1. The Parties

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

The Respondent is Emmanuel Friteur, France.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 18, 2023. On July 19, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 19, 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 July 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 amended Complaint on July 25, 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 August 1, 2023. In accordance with the Rules, paragraph 5, the due date for Response was August 21, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 28, 2023.

The Center appointed Vincent Denoyelle as the sole panelist in this matter on September 22, 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

Given that no Response was filed, the following facts are based on the submissions in the Complaint and the Annexes to the Complaint.

The Complainant is a financial services company headquartered in France with online activities including banking and brokerage.

The Complainant is the owner of several trade marks for BOURSO including in France where the Respondent appears to be based. The Complainant's trade marks include the following:

- French trade mark BOURSO, registration no. 3009973, registered from July 28, 2000.

The Complainant is also the owner of the domain name <bourso.com> registered in 2000.

The disputed domain name was registered on July 15, 2023. It does not point to any active website.

There is no information known on the Respondent apart from the details as they appear on the respective Whois records.

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 the BOURSO trade mark in which the Complainant has rights as the disputed domain name incorporates the entire BOURSO trade mark with the mere addition of the term "profils" and that such addition does not prevent the finding that the disputed domain name is confusingly similar to the Complainant's trade mark.

The Complainant asserts that the Respondent is not identified in the Whois database by the disputed domain name and that the Respondent is thus not deemed to be commonly known by the disputed domain name. The Complainant also states that the Respondent is not known to the Complainant. The Complainant contends that the Respondent is not affiliated with nor authorised by the Complainant in any way. Furthermore, the Complainant highlights that the disputed domain name does not resolve to any active website to conclude that the Respondent did not make any use of the disputed domain name and has made no demonstrable plan to use the disputed domain name.

The Complainant contends that the Respondent has registered and used the disputed domain name with full knowledge of the Complainant's trade mark and the Complainant refers to prior UDRP panels findings that the Complainant's BOURSO trade mark is well established. The Complainant then points to the fact that the disputed domain name is passively held and asserts that it is not possible to conceive of any plausible actual or contemplated active use of the disputed domain name by the Respondent that would not be illegitimate, such as constituting passing off, an infringement of consumer protection legislation, or an infringement of the Complainant's rights under trade mark law.

B. Respondent

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

6. Discussion and Findings

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 trade mark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trade mark 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 confusingly similar to the BOURSO trade mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

While the addition of other terms, here "profils", may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the trade 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, 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. Here there is no indication that the Respondent is known by the disputed domain name. In addition, in these circumstances, the passive holding of the disputed domain name cannot qualify as either use of the disputed domain name (or demonstrable preparations for such use) with a *bona fide* offering or a legitimate noncommercial or fair use. In this regard, the Panel notes that the composition of the disputed domain name carries a risk of implied affiliation. [WIPO Overview 3.0](#), section 2.5.1.

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.

In the present case, the Panel finds that the Respondent, at the time of registration of the disputed domain name, must have been aware of the Complainant's trade mark BOURSO reproduced in the disputed domain name given (i) the reputation of the BOURSO trade mark, as acknowledged by previous UDRP panels, (ii) the fact that the Respondent appears to be based in France where the Complainant is headquartered and where its goodwill is probably higher than anywhere else, (iii) the choice of the term preceding the BOURSO trade mark in the disputed domain name which could be understood as referring to the client profile page of the Complainant's online banking portal, and (iv) the fact that the disputed domain name was registered relatively recently and many years after the registration of the trade mark BOURSO.

As for use of the disputed domain name in bad faith, the disputed domain name does not point to an active website. In the face of the Complaint, the Respondent has not attempted to justify its registration or use of the disputed domain name.

Panels have found that the non-use of a domain name (including a blank or "coming soon" page) would not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the record, the Panel finds the non-use of the disputed domain name does not prevent a finding of bad faith in the circumstances of this proceeding including (i) the significant online visibility of the Complainant's BOURSO trade mark, (ii) the failure of the Respondent to submit a response or to provide any evidence of actual or contemplated good-faith use and (iii) the implausibility of any good faith use to which the disputed domain name may be put. [WIPO Overview 3.0](#), section 3.3.

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, <profilbourso.co>, be transferred to the Complainant.

/Vincent Denoyelle/

Vincent Denoyelle

Sole Panelist

Date: October 6, 2023