

## **ADMINISTRATIVE PANEL DECISION**

**Boursorama S.A. v. EDOUARD BELHACHE**

**Case No. DCO2023-0083**

### **1. The Parties**

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

The Respondent is EDOUARD BELHACHE, France.

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

The disputed domain name <boursobank.co> is registered with Porkbun LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 28, 2023. On September 29, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 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 October 3, 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 4, 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 13, 2023. In accordance with the Rules, paragraph 5, the due date for Response was November 2, 2023. The Respondent did not submit a response within the due date specified. Accordingly, the Center notified the Respondent’s default on November 13, 2023. On the same day, the Respondent sent a late Response to the Center.

The Center appointed Alexandre Nappey as the sole panelist in this matter on November 20, 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 company registered under the laws of France, operating in the financial industry (online banking, online brokerage and financial information on the Internet).

The Complainant has provided evidence that it is the registered owner of several trademarks relating to its company name and brand BOURSO, including, but not limited, to the following:

- French word mark BOURSO filed on February 22, 2000, for products and services in classes 9; 35; 36; 38; 41; and 42, and registered under No. 3009973, duly renewed.

Also, the Complainant has demonstrated to own various domain names in relation to the BOURSO trademark, e.g., since 2000 the domain name <boursocom> as well as since 2005 the domain name <boursobank.com>, of which the latter resolves to the Complainant's official website at "www.boursobank.com", used to promote the Complainant's services in the online financial industry in French.

The Respondent, according to the disclosed Whois information for the disputed domain name, is an individual located in France, around Paris who registered the disputed domain name on September 22, 2023, which by the time of rendering this decision does not resolve to any content on the Internet.

The Complainant, however, has demonstrated that, at some point before the filing of the Complaint (e.g., on September 28, 2023), the disputed domain name resolved to a website in English, provided by the concerned Registrar, where the domain name was offered for sale USD 42,000.

The Complainant requests that the disputed domain name be transferred to the Complainant.

#### **5. Parties' Contentions**

##### **A. Complainant**

First, the Complainant asserts that the disputed domain name is identical to its trademark BOURSO, the addition of the generic term "bank" not being sufficient to escape the finding that the disputed domain name is confusingly similar to the trademark.

Second, the Complainant believes that the Respondent has no rights or legitimate interests in the disputed domain name. The Complainant states that the Respondent is not affiliated with its company, nor authorized by itself in any way. The Complainant states that it has never conducted any business with the Respondent. Thus, the Complainant contends that no license or authorization has been granted to the Respondent to make any use of the Complainant's trademarks, or any application to register the disputed domain name. The Complainant adds that the disputed domain name is inactive. In the Complainant's view, this proves that the Respondent has no legitimate interest because there is no credible evidence of use or demonstrable preparation for use of the disputed domain name in connection with a *bona fide* offering of goods or services.

Third, the Complainant contends that the disputed domain name was registered and is being used in bad faith. The Complainant contends that the Respondent could not have been unaware of its trademark at the time of registration of the disputed domain name since it and its trade marks have been well known in France and abroad since 1995. The Complainant points out that the disputed domain name points to an inactive webpage and thus contends that the Respondent has not demonstrated any legitimate activity in connection

with the disputed domain name, and 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 a violation of consumer protection legislation or an infringement of the Complainant's rights under trademark law. Finally, the Complainant adds that the Respondent registered the disputed domain name with intent to sell it in bad faith within the meaning of Policy.

## **B. Respondent**

The Respondent submitted a late Response to the Center. In view of the fact that said late submission was received only one day after the Response due date and that the Decision outcome is not impacted by consideration of the late Response, the Panel will therefore consider the late Response without granting the Complainant an opportunity to reply via supplemental filing.

In his late Response of November 13, 2023, the Respondent mentioned that there is neither confusing similarity nor commercial usage of the disputed domain name. The disputed domain name has been acquired freely and justly, without any intention to harm or mislead. The Respondent mentioned that it is distinct due to the use of the country-code Top-Level Domain ("ccTLD") ".co" designating Columbia, creating a separate identity from the Complainant's brand. There is no resemblance or content at all on the webpage that was online that would suggest commercial usage or an attempt to associate with the Complainant's brand. The Respondent emailed that the disputed domain name was registered for genuine intentions, unrelated to the Complainant's activities, and has been used in good faith.

## **6. Discussion and Findings**

Notwithstanding the default of the Respondent, the Complainant has the burden of proof to make its case in accordance with paragraph 4(a) of the Policy, and to demonstrate that:

- (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.

However, under paragraph 14(b) of the Rules, where a party does not comply with any provision of the Rules, the Panel "shall draw such inferences therefrom as it considers appropriate".

Having considered the Parties' submissions, the Policy, the Rules, the Supplemental Rules and applicable law, the Panel's findings on each of the above-mentioned elements are the following.

### **A. Identical or Confusingly Similar**

The Panel notes that the Complainant has trademark rights, that the disputed domain name incorporates the Complainant's trademark BOURSO, and that the confusing similarity is not impacted by the addition of the term "bank" (see the WIPO Overview of Panel Views on Certain UDRP Questions, Third Edition, hereinafter "[WIPO Overview Version 3.0](#)", sections 1.7 and 1.8).

Despite the Respondent's contentions to the opposite, the Panel also notes that the addition of the ccTLD ".co" to the Complainant's trademark does not impact the assessment of confusing similarity since it is a technical requirement for registration that is typically disregarded (see [WIPO Overview version 3.0](#), section 1.11.1).

The Panel considers that the disputed domain name is confusingly similar to the Complainant's mark.

The requirement of paragraph 4(a)(i) of the Policy is therefore met.

## B. Rights or Legitimate Interests

The Panel notes that the Complainant argues *prima facie*, that the Respondent, who is not identified in the Whois under the disputed domain name, is not known by all or part of that name and that it holds no rights in the Complainant's trademark BOURSO, that it has never had any business with the Complainant, and that it has not granted the Complainant any licence or authorisation to register or use the trademark BOURSO, in particular in domain names.

In addition, the Respondent is offering the disputed domain name for sale for USD 42,000 which is not considered to be a *bona fide* offer of goods or services, or a legitimate, noncommercial or fair dealing use.

While the Respondent submitted conclusory assertions of an intended good faith use, no evidence or explanation has been provided as to what use the disputed domain name was intended to be put nor for what reasons the disputed domain name was chosen and what relationship the terms composing the disputed domain name would have with such intended use. While the Respondent points to various jurisprudence to support the notion of "fair use", the facts of such cases are very distinct from this instance where the Respondent has provided no evidence of an intended fair use of the disputed domain name. See, for example, *Cheyne Capital Holdings Limited v. Sheri Kempe, cheynegroup*, WIPO Case No. [D2022-2070](#); *Adventure SAS v. Mike Robinson, BlackHawk Paramotors USA Inc.*, WIPO Case No. [D2019-2489](#); and, *Airbus SAS v. Ben Riecken*, WIPO Case No. [D2023-3842](#).

Rather, given the Complainant's ownership of the domain name <boursobank.com>, from which the disputed domain name only differs by the omission of the "m" in the ccTLD ".co", the disputed domain name is likely to infer a direct association with the Complainant, contrary to the fact, and thus such composition cannot constitute fair use, particularly given the for-sale nature of the disputed domain name. [WIPO Overview 3.0](#), sections 2.5.1 and 2.5.3

The Panel therefore finds that, in light of the [WIPO Overview version 3.0](#), section 2.1, the Respondent has no rights or legitimate interests in the disputed domain name and the requirement of paragraph 4(a)(ii) of the Policy is satisfied.

## C. Registered and Used in Bad Faith

The Panel notes that the Complainant's evidence establishes that the Respondent registered the disputed domain name in bad faith, since the reputation of the Complainant's trademark BOURSO has been established in a number of administrative decisions (e.g., *Boursorama S. A. v. Contact Privacy Inc. Customer 1249617786 / Marcou*, WIPO Case No. [D2021-0671](#)) so that the Respondent could not have been unaware of the Complainant's reputation and goodwill of the trademark BOURSO when it registered the disputed domain name.

The Panel considers that while the disputed domain name was inactive at the time of filing the Complaint, it had previously been directed to a webpage where it was offered for sale for an amount very likely exceeding considerably the out of pocket cost of the Respondent, and thus the passive use of the disputed domain name does not prevent a finding of use in bad faith in the application of the doctrine of passive holding. Moreover, given the apparent typo-squatting of the Complainant's genuine domain name <boursobank.com>, it is clear that the Respondent sought to target and commercially benefit from the resale of the Complainant's trademark in the ".co" ccTLD, which is *per se* evidence of bad faith registration and use under paragraph 4(b)(i) of the Policy. Regardless of the Respondent's unsupported assertions, there is no plausible good faith use to which such typosquatting disputed domain name could be put that would not infringe or cause an unfair association with the Complainant and its trademark.

In these circumstances, the Panel finds that the third condition of paragraph 4(a)(iii) of the Policy is satisfied and that the Respondent may legitimately be considered to have registered and used the disputed domain name in bad faith.

## **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, <boursobank.co>, be transferred to the Complainant.

*/Alexandre Nappey/*

**Alexandre Nappey**

Sole Panelist

Date: December 26, 2023