

ADMINISTRATIVE PANEL DECISION

Boursorama v. OPUSM, OPUSM
Case No. D2023-4341

1. The Parties

Complainant is Boursorama, France, represented by Nameshield, France.

Respondent is OPUSM, OPUSM, Republic of Korea.

2. The Domain Names and Registrar

The disputed domain names <espace-clients-bourso-bank.com>, <espace-clients-boursobank.com>, and <imageboursobank.com> are registered with Amazon Registrar, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 19, 2023. On the same day, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On October 25, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondent (REDACTED FOR PRIVACY) and contact information in the Complaint.

The Center sent an email communication to Complainant on October 26, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. The Center also sent an email communication in English and French to the parties on October 26, 2023, regarding the language of the proceeding, as the Complaint has been submitted in French and the language of the registration agreement for the disputed domain name is English. Complainant filed an amended Complaint in English on October 27, 2023.

Respondent did not submit any comment on Complainant’s submission.

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 Respondent of the Complaint, and the proceedings commenced on November 1, 2023. In accordance with the Rules, paragraph 5, the due date for Response was November 21, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent's default on November 23, 2023.

The Center appointed Stephanie G. Hartung as the sole panelist in this matter on November 28, 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

Complainant is a company organized under the laws of France that is active in the financial industry, specialized in online banking, online brokerage and financial information on the Internet.

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:

- National French trademark (word) BOURSO, Institut National de la Propriété Industrielle ("INPI"), registration number: 3009973; registration date: February 22, 2000; status: active.

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

Respondent, according to the disclosed Whois information for the disputed domain name, is a resident of the Republic of Korea who registered the disputed domain name <espace-clients-boursobank.com> ("disputed domain name No. 1") on October 19, 2023, as well as the disputed domain name <espace-clients-boursobank.com> ("disputed domain name No. 2") and <imageboursobank.com> ("disputed domain name No. 3") on October 18, 2023. By the time of rendering this decision, the disputed domain names Nos. 1 and 2 do not resolve to any content on the Internet, while the disputed domain name No. 3 is blocked because of suspected fraudulent use. Complainant, however, has demonstrated that, at some point before the filing of the Complaint (e.g., on October 19, 2023), the disputed domain name No. 1 resolved to a website at "www.espace-clients-boursobank.com" which was set up in the French language and reproduced Complainant's official customer login page inviting Internet users to provide sensitive personal information, thereby prominently displaying Complainant's official BOURSOBANK logo without any authorization to do so, while at the same time the disputed domain names Nos. 2 and 3 redirected to the website under the disputed domain name No. 1.

Complainant requests that the disputed domain names be transferred to Complainant.

5. Parties' Contentions

A. Complainant

Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain names.

Notably, Complainant contends to be a pioneer and leader in its three core businesses of online banking, online brokerage and financial information on the Internet with over five million customers in France and its portal at "www.boursorama.com" being the first national financial and economic information website and first French online banking platform.

Complainant submits that the disputed domain names are confusingly similar to Complainant's well-known and distinctive BOURSO trademark, because the latter is wholly incorporated in the disputed domain names, and the addition of the terms "espace clients" (meaning "client area") or "image" and "bank" is not sufficient to avoid a likelihood of confusion.

Moreover, Complainant asserts that Respondent has no rights or legitimate interests in respect of the disputed domain names since (1) Respondent is not known by the disputed domain names, (2) Respondent is neither affiliated with nor authorized or licensed by Complainant in any way, and Complaint does not carry out any activity for, nor has it any business with Respondent, and (3) the disputed domain names point to a login page copying Complainant's official client access and so may be used for the purpose of collecting personal information from Complainant's customers.

Finally, Complainant argues that Respondent has registered and is using the disputed domain names in bad faith because (1) Complainant's BOURSO trademark has been in use since 1995 and has significant reputation in France and abroad in connection with online financial services, so that Respondent could not have been unaware thereof at the time of registration of the disputed domain names, (2) Respondent used the disputed domain names to point to a login page copying Complainant's official client access and, thus, attempted to attract, for commercial purposes, Internet users to its own website, by creating a likelihood of confusion with Complainant's BOURSO trademark, and (3) in doing so, Respondent may collect personal information through its website, including passwords.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

Under paragraph 4(a) of the Policy, Complainant carries the burden of proving:

- (i) That the disputed domain names are identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (ii) That Respondent has no rights or legitimate interests in respect of the disputed domain names; and
- (iii) That the disputed domain names have been registered and are being used in bad faith.

Respondent's default in the case at hand does not automatically result in a decision in favor of Complainant, however, paragraph 5(f) of the Rules provides that if Respondent does not submit a response, in the absence of exceptional circumstances, the Panel shall decide the dispute solely based upon the Complaint. Further, according to paragraph 14(b) of the Rules, the Panel may draw such inferences from Respondent's failure to submit a Response as it considers appropriate.

A. Identical or Confusingly Similar

First, 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 Complainant's BOURSO trademark and the disputed domain names. 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 Complainant has shown rights in respect of the BOURSO trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

Also, the Panel finds the entirety of the BOURSO trademark is reproduced within the disputed domain names, simply added by the terms "espace clients" (French for "client area") or "image" plus "bank" (pointing

to Complainant's core business). Accordingly, the disputed domain names are confusingly similar to the BOURSO trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7. Although the addition of other terms (here, "espace clients" or "image" and "bank") may bear on assessment of the second and third elements, the Panel finds the addition of such terms does not prevent a finding of confusing similarity between the disputed domain name and the BOURSO trademark 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

Second, paragraph 4(c) of the Policy provides a list of circumstances in which Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although 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 difficult 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 domain name (although the burden of proof always remains on the complainant). 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 available record, the Panel finds Complainant has established a *prima facie* case that Respondent lacks rights or legitimate interests in the disputed domain names. Respondent has not rebutted Complainant's *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain names such as those enumerated in the Policy or otherwise.

In particular, Respondent has neither been granted a license nor has it been otherwise authorized by Complainant to use its BOURSO trademark, either as a domain name or in any other way. Also, there is no reason to believe that Respondent's name somehow corresponds with the disputed domain names, and Respondent does not appear to have any trademark rights associated with e.g., the term "bourso" on its own. Finally, the disputed domain names resolved at some point in the past (e.g., on October 19, 2023) to an active website at "www.espace-clients-bourso-bank.com", which was set up in the French language and reproduced Complainant's official customer login page inviting Internet users to provide sensitive personal information, thereby prominently displaying Complainant's official BOURSOBANK logo without any authorization to do so. Such use of the disputed domain names, therefore, neither qualifies as *bona fide* nor as legitimate noncommercial or fair within the meaning of paragraph 4(c) of the Policy. In this context, panels have long held that the use of a domain name for illegal activity (here: impersonating/passing off Complainant for some unlawful purpose) can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

Based on the available record, the Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

Finally, 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.

The circumstances to this case leave no doubt that Respondent was fully aware of Complainant's online financial business and its rights in the BOURSO trademark when registering the disputed domain names and that the latter clearly are directed thereto. Moreover, using the disputed domain names to resolve or redirect

to an active website at “www.espace-clients-bourso-bank.com”, which is set up in the French language and reproduces Complainant’s official customer login page inviting Internet users to provide sensitive personal information, thereby prominently displaying Complainant’s official BOURSOBANK logo without any authorization to do so, is a clear indication that Respondent intentionally attempted to attract, for commercial gain, Internet users to its own website by creating a likelihood of confusing with Complainant’s BOURSO trademark as to the source, sponsorship, affiliation or endorsement of Respondent’s website. Such circumstances are evidence of registration and use of the disputed domain names in bad faith within the meaning of paragraph 4(b)(iv) of the Policy. Again, panels have long held that the use of a domain name for illegal activity (here: impersonating/passing off Complainant for some unlawful purpose) constitutes bad faith. [WIPO Overview 3.0](#), section 3.4.

Having reviewed the record, the Panel, therefore, finds Respondent’s registration and use of the disputed domain names constitutes bad faith under the Policy, so that Complainant has established the third element of the Policy, too.

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 names, <espace-clients-bourso-bank.com>, <espace-clients-boursobank.com>, and <imageboursobank.com>, be transferred to Complainant.

/Stephanie G. Hartung/

Stephanie G. Hartung

Sole Panelist

Date: December 12, 2023