

ADMINISTRATIVE PANEL DECISION

Boursorama S.A. v. Xavier Mengelle
Case No. D2022-0609

1. The Parties

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

The Respondent is Xavier Mengelle, France.

2. The Domain Names and Registrar

The disputed domain names <boursqrama.site> and <mon-bourssorama.online> are registered with Beget LLC (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on February 22, 2022. On February 22, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On February 24, 2022, the Registrar transmitted by email to the Center its verification, disclosing registrant and contact information for the disputed domain name <mon-bourssorama.online>, which differed from the named Respondent and contact information in the Complaint, as well that the Registration Agreement language was Russian. In response to the additional requests for registrar verification in connection with the disputed domain name <boursqrama.site> transmitted by the Center by email to the Registrar on March 11 and March 17, on March 18, 2022 the Registrar transmitted by email to the Center its verification, disclosing registrant and contact information for the disputed domain name <boursqrama.site>, which differed from the named Respondent and contact information in the Complaint, as well that the Registration Agreement language was Russian.

On March 21, 2022, the Center sent an email in English and Russian to the Complainant, 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 March 21, 2022.

The Center sent an email communication in English and Russian to the Complainant on March 21, 2022, informing the Parties of the Registration Agreement language. On March 21, 2022, the Complainant replied and submitted that the proceedings should proceed in English. The Respondent did not comment on the language of the proceedings.

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(a) and 4(a), the Center formally notified the Respondent of the Complaint in English and Russian, and the proceedings commenced on April 1, 2022. In accordance with the Rules, paragraph 5, the due date for Response was April 21, 2022. The Respondent did not submit any response.

Accordingly, the Center notified the Respondent’s default on May 2, 2022.

The Center appointed Kateryna Oliinyk as the sole panelist in this matter on May 12, 2022. 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

Founded in 1995, the Complainant is a financial services company headquartered in France with online activities including online brokerage, financial information on the Internet and online banking. The banking activity of the Complainant was launched in 2005.

The Complainant has more than 800 employees, based in Boulogne-Billancourt (92) and Nancy (54), and has been named one of the Best Employers 2022, in France, by Capital et Statistics. In France, the Complainant is an online banking reference with over 3 million customers.

The Complainant created the domain name <boursorama.com> on March 1, 1998 which is used by the Complainant for the economic and financial information portal which broadcasts stock market and economic news (stock prices, company information, dispatches from agencies) and, as a content integrator, the portal also offers more general information and provides access to constantly updated videos, articles, discussion forums and news. The website under the domain name <boursorama.com> is the 17th most visited digital media in France according to the ACPM.

The Complainant is the owner of several trademarks BOURSORAMA, among which European Union Trade mark BOURSORAMA No. 001758614, registered on October 19, 2001 (the “BOURSORAMA trademark”).

The disputed domain names were created on February 19, 2022, and resolve to parking pages.

5. Parties’ Contentions

A. Complainant

Identical or Confusingly Similar

The Complainant contends that the disputed domain names and the BOURSORAMA trademark are confusingly similar.

According to the Complainant’s contentions, the substitution of the letter “o” by the letter “q” in the BOURSORAMA trademark is not sufficient to exclude the likelihood of confusion between the BOURSORAMA trademark and the disputed domain name <boursqrama.site>. The Complainant asserts that this is the case of “typosquatting” as the disputed domain name contains an obvious misspelling of the Complainant’s BOURSORAMA trademark.

The Complainant further contends that the disputed domain name <mon-bourssorama.online> is confusingly similar to the BOURSORAMA trademark, as the addition of the term “mon” (meaning “my” in French) and the letter “s” does not prevent the likelihood of confusion between the disputed domain name and the Complainant, the BOURSORAMA trademark and domain names associated.

No rights or legitimate Interests

The Respondent has no connection with the Complainant or any of its affiliates and has never sought or obtained any trademark registrations for the BOURSORAMA trademark. The Complainant does not carry out any activity for, nor has any business with the Respondent.

The Complainant contends that the Respondent is neither commonly known by the disputed domain names as the Whois data are not similar to the disputed domain names.

Inactive holding of the disputed domain names is neither a *bona fide* offering of goods or services nor a legitimate noncommercial or fair use. The Respondent, therefore, has no rights or legitimate interests in the disputed domain names.

Registered and used in bad faith

The Complainant submits that the Respondent has registered the disputed domain names with full knowledge of the Complainant’s BOURSORAMA trademark as the disputed domain names include the well-known and distinctive BOURSORAMA trademark.

The Complainant contends that the Respondent has not demonstrated any activity in respect of the disputed domain names, and it is not possible to conceive of any plausible actual or contemplated active use of the domain names 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 in the BOURSORAMA trademark.

B. Respondent

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

6. Discussion and Findings

6.1. Procedural Issue – Language of the Proceedings

The language of the Registration Agreement for the disputed domain names is Russian. Paragraph 11(a) of the Rules provides that “Unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding”. In particular, it is established practice to take paragraphs 10(b) and (c) of the Rules into consideration for the purpose of determining the language of the proceeding, in order to ensure fairness to the Parties and the maintenance of an inexpensive and expeditious avenue for resolving domain name disputes. Language requirements should not lead to undue burdens being placed on the Parties and undue delay to the proceeding. (see, e.g., *Zappos.com, Inc. v. Zufu aka Huahaotrade*, WIPO Case No. [D2008-1191](#) stating that “[o]ne important consideration of this issue is the fairness to both Parties in their abilities to prepare the necessary documents and protect their own interests”).

The Center has provided both Parties with an opportunity to comment on the language of the proceedings by sending both Parties a Language of Proceeding communication, as well as other communications in both Russian and English. The Complainant has provided submissions regarding the proper language of proceedings, while the Respondent did not raise any objection or reply thereto.

In exercising its discretion to use a language other than that of the Registration Agreement, the Panel has to exercise such discretion judicially in the spirit of fairness and justice to both Parties, taking into account all relevant circumstances of the case, including matters such as the Parties' ability to understand and use the proposed language, time and costs.

Considering that both Parties have been given fair opportunities to present their cases and the Respondent has been given an opportunity to object to the proceedings being conducted in English but has not responded, the Panel finds that in the circumstances of this case, paragraph 11 of the Rules is best served by allowing the proceedings to be conducted in English in accordance with the Complainant's request as the Complainant could suffer significant disadvantages if the proceedings are conducted in Russian (see, e.g., *Zappos.com, Inc. v. Zufu aka Huahaotrade*, WIPO Case No. [D2008-1191](#)).

Having considered all the matters above, the Panel determines under paragraph 11(a) of the Rules that the language of the proceeding shall be English.

6.2. Substantive Elements of the Policy

Paragraph 15(a) of the Rules instructs the Panel as to the principles the Panel is to use in determining the dispute: "[a] Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable".

Considering that the Respondent did not reply to the Complainant's contentions, in order to determine whether the Complainant has met its burden as stated in paragraph 4(a) of the Policy, the Panel bases its Decision on the statements and documents submitted and in accordance with the Policy and the Rules. 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".

Paragraph 4(a) of the Policy directs that the Complainant must prove each of the following: (i) that the disputed domain names are identical or confusingly similar to a trademark or service mark in which the Complainant has rights; (ii) that the 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.

A. Identical or Confusingly Similar

Ownership of a nationally or regionally registered trademark serves as a *prima facie* evidence that the Complainant has trademark rights for the purposes of standing to file this Complaint. See section 1.2 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"). The Complainant submitted evidence that the BOURSORAMA trademark enjoys regional protection, and was registered well before the disputed domain names were created by the Respondent. Thus, the Panel finds that the Complainant's rights in the BOURSORAMA trademark have been established pursuant to the first element of the Policy.

The only remaining question under the first element of the Policy is whether the disputed domain names are identical or confusingly similar to the Complainant's BOURSORAMA trademark.

It is well established that domain names, which consist of common, obvious or intentional misspellings of trademarks are considered to be confusingly similar for the purposes of the first element of the Policy. [WIPO Overview 3.0](#), section 1.9 ("Examples of such typos include (i) adjacent keyboard letters, (ii) substitution of similar-appearing characters (iii) the use of different letters that appear similar in different fonts, (iv) the use of non-Latin internationalized or accented characters, (v) the inversion of letters and numbers, or (vi) the addition or interspersing of other terms or numbers"). See e.g. *Edmunds.com, Inc. v. Digi Real Estate Foundation*, WIPO Case No. [D2006-1043](#) ("This is clearly a 'typosquatting' case where the disputed domain name is a slight misspelling of a registered trademark to divert Internet traffic. In fact, the [...] domain name comprises the Complainant's trademark [...] with a single misspelling of an element of the mark: a double

consonant 'S' at the end").

The disputed domain name <boursqrama.site> includes sufficiently recognizable aspects of the Complainant's BOURSORAMA trademark. The disputed domain name <mon-bourssorama.online> includes the Complainant's BOURSORAMA trademark in its entirety with an additional letter "s".

The Panel finds that the substitution of the letter "o" by the letter "q" in the BOURSORAMA trademark does not prevent a finding of confusing similarity between the BOURSORAMA trademark and the disputed domain name <boursqrama.site>.

Respectively, the Panel finds that the mere addition of the letter "s" does not dispel the confusing similarity arising from the incorporation of the Complainant's BOURSORAMA trademark in the disputed domain name <mon-bourssorama.online>.

As provided in section 1.8 of the [WIPO Overview 3.0](#), the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element.

Once the generic Top-Level-Domain ("gTLD") is ignored as a standard registration requirement, as reflected in section 1.11.1 of the [WIPO Overview 3.0](#), the addition of the term "mon" (meaning "my" in French) followed with the hyphen does not avoid a finding of confusing similarity between the Complainant's trademark and the disputed domain name <mon-bourssorama.online> as the disputed domain name includes the Complainant's BOURSORAMA trademark in its entirety with an additional letter "s", which remains recognizable in the disputed domain name.

Accordingly, the Panel finds that the disputed domain names are confusingly similar to the BOURSORAMA trademark in which the Complainant has rights.

The first element of paragraph 4(a) of the Policy is therefore satisfied.

B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, a complainant must make at least a *prima facie* showing that a respondent possesses no rights or legitimate interests in a disputed domain name. See, e.g., *Malayan Banking Berhad v. Beauty, Success & Truth International*, WIPO Case No. [D2008-1393](#). Once a complainant makes such a *prima facie* showing, the burden of production shifts to the respondent, though the burden of proof always remains on the complainant. If the respondent fails to come forward with evidence showing rights or legitimate interests, the complainant will have sustained its burden under the second element of the UDRP.

Based on the Complainant's contentions, the Respondent is not a licensee of, or otherwise affiliated with, the Complainant, and has not been authorized by the Complainant to use its BOURSORAMA trademark.

The Complainant further contends that the Respondent is not known under the disputed domain names and does not make any *bona fide* use - neither commercial nor noncommercial, of the same.

Based on the case records, the Panel finds that there is no evidence that the Respondent has been commonly known by the disputed domain names, and there is no similarity or association between the name of the Respondent and the disputed domain names, which could demonstrate rights or legitimate interests of the Respondent. See, e.g., *World Natural Bodybuilding Federation, Inc. v. Daniel Jones TheDotCafe*, WIPO Case No. [D2008-0642](#)).

The disputed domain names resolve to a parking page. Prior UDRP panels have found that the passive holding of a disputed domain name is neither a *bona fide* offering of goods or services nor a legitimate noncommercial or fair use. See, by way of example, *Skyscanner Limited v. WhoisGuard Protected*,

WhoisGuard, Inc. / petrov petya, WIPO Case No. [DCC2020-0003](#), *Instagram, LLC v. Zafer Demir, Yok*, WIPO Case No. [D2019-1072](#) “The passive holding of the disputed domain name does not amount to use or preparations to use it in connection with a bona fide offering of goods and services. Nor is there any evidence which indicates that the Respondent is commonly known by the disputed domain name. Nor does a passive holding of the disputed domain name comprise a legitimate noncommercial or fair use of it.”).

The Panel agrees and holds the passive holding of the disputed domain names by the Respondent in this case as evidence that the Respondent did not register the disputed domain names in connection with any *bona fide* offering of goods or services.

In the Panel's view, the use of the disputed domain names by the Respondent does not constitute either a *bona fide* use or a legitimate noncommercial or fair use of the disputed domain names,.

By not submitting a Response, the Respondent has failed to invoke any circumstances which could demonstrate any rights or legitimate interests in the disputed domain names. Under such circumstances the Panel draws adverse inferences from this failure, where appropriate, in accordance with the Rules, paragraph 14(b).

The second element of paragraph 4(a) of the Policy is therefore satisfied.

C. Registered and Used in Bad Faith

The disputed domain names were created on February 19, 2022, and are passively held by the Respondent. In particular, the disputed domain names resolve to registrar parking pages.

Under section 3.3 of the [WIPO Overview 3.0](#), the non-use of a domain name (including a “coming soon” page), would not prevent a finding of bad faith under the doctrine of passive holding. Previous UDRP panels have held that the passive holding of a domain name that incorporates a well-known trademark may confirm the bad faith use of a disputed domain name. See, *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#).

While panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put. See, *Andrey Ternovskiy dba Chatroulette v. WhoisGuard Protected, WhoisGuard, Inc. / Armando Machado*, WIPO Case No. [D2018-0082](#).

The Complainant has produced evidence showing that it owns registrations for the BOURSORAMA trademark, of which registration dates significantly precede the date of the registration of the disputed domain names.

In addition, the Complainant has credibly submitted that over the years it has developed substantial goodwill in the BOURSORAMA trademark. The Panel is convinced that the Complainant's trademark is well established through long and widespread use and the Complainant has acquired a significant reputation and goodwill in its trademark. See, e.g., *Carrefour SA v. hanib bas*, WIPO Case No. [D2020-1798](#); *Carrefour SA. v. Reliant-web Domain Admin / Jean Marie Grolleau / Joanne Elvert*, WIPO Case No. [D2021-2389](#); *Carrefour v. Andre Machado*, WIPO Case No. [DIO2020-0004](#).

Furthermore, according to section 3.1.4 of the [WIPO Overview 3.0](#), 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.

The Complainant submits that it is well settled that bad faith can be found where a domain name is so obviously connected with a well-known trademark that its very use by someone with no connection to the trademark suggests opportunistic bad faith. The Panel endorses that view. Given the reputation of the BOURSORAMA trademark, registration in bad faith can be inferred. See, e.g., *Charles Jourdan Holding AG v. AAJM*, WIPO Case No. [D2000-0403](#).

Taking the above facts into consideration, it is not possible to conceive of any plausible actual or contemplated active use of the disputed domain names by the Respondent that would not be illegitimate. See *Telstra Corporation Limited v. Nuclear Marshmallows*, *supra*.

Finally, the Respondent has failed to submit a response or to provide any evidence of actual or contemplated good faith use of the disputed domain names.

In light of the aforesaid and applying the above-referenced factors, the Panel establishes that the Respondent registered and is using the disputed domain names in bad faith.

The third element of paragraph 4(a) of the Policy is therefore satisfied.

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 <boursqrama.site> and <mon-bourssorama.online> be transferred to the Complainant.

/Kateryna Oliinyk/

Kateryna Oliinyk

Sole Panelist

Date: May 26, 2022