

ADMINISTRATIVE PANEL DECISION

Boursorama S.A. v. monstercookies
Case No. D2022-1351

1. The Parties

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

The Respondent is monstercookies, Spain.

2. The Domain Name and Registrar

The disputed domain name <news-boursorama.com> is registered with Eranet International Limited (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 14, 2022. On April 14, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 15, 2022, the Registrar transmitted by email to the Center its verification response registrant and contact information for the disputed domain name which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on April 19, 2022 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 April 19, 2022.

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 April 26, 2022. In accordance with the Rules, paragraph 5, the due date for Response was May 16, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 17, 2022.

The Center appointed Christian Schalk as the sole panelist in this matter on May 27, 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.

The Panel has reviewed the record and confirms the Complaint's compliance with the formal requirements. The Complaint was properly notified to the Respondent in accordance with paragraph 2(a) and (b) of the Rules. The language of the proceeding is English.

4. Factual Background

The Complainant is a French company which is active in the field of providing financial services online. It was founded in 1995. The Complainant's core business activities are in the fields of online banking, online brokerage and providing financial information via the Internet. According to the Complainant's company report which has been presented before the Panel, the Complainant has over 3 million customers and the Complainant's portal "www.boursorama.com" receives broad attention as a financial and economic information site.

The Complainant is the owner of the European Union trademark No. 001758614 BOURSORAMA, with registration date of October 19, 2001, which covers goods and services in International classes 9, 16, 35, 36, 38, 41 and 42.

The Complainant owns also domain names featuring the term BOURSORAMA, such as, for instance, the domain name <boursorama.com> which has been registered since March 1, 1998.

The Respondent registered the disputed domain name on April 13, 2022. The disputed domain name resolves to a website featuring the Complainant's branding elements in a prominent manner on its top. The centre of this website depicts a login field in French language, which looks like it has been designed for the Complainant's customers.

5. Parties' Contentions

A. Complainant

The Complainant alleges that the disputed domain name is confusingly similar to its trademark BOURSORAMA. The Complainant argues in this context that the addition of the term "news" does not change the overall impression of the disputed domain name as being connected to the Complainant's BOURSORAMA trademark. Furthermore, it does not prevent the likelihood of confusion between the disputed domain name and the Complainant's trademark BOURSORAMA. The Complainant refers in this context to *Dr. Ing. h.c. F. Porsche AG v. Vasilij Terkin*, WIPO Case No. [D2003-0888](#) to support this argument.

The Complainant alleges further that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant asserts that the Respondent is not identified in the Whois database as the disputed domain name and therefore is not commonly known by the disputed domain name since the Whois information is not similar to the disputed domain name.

The Complainant argues also that the Respondent is neither known by the Complainant nor is there any affiliation between the parties. Furthermore, the Complainant has neither authorized the Respondent to register the disputed domain name nor granted a licence to make any use of the Complainant's BOURSORAMA trademark. Moreover, there are no business relationships between the parties.

The Complainant finally states that the fact, that disputed domain name resolves to a login page copying the Complainant's official customer access cannot be considered as a *bona fide* offering of services or fair use since such a website could mislead customers into believing that they are accessing the Complainant's website. In this context, the Complainant fears that the website to which the disputed domain name resolves could also be abused in order to collect personal information of the Complainant's clients.

The Complainant contends finally, that the disputed domain name was registered and is being used in bad faith. In this context the Complainant states that the disputed domain name includes the Complainant's distinctive BOURSORAMA trademark and therefore, the Complainant believes that the Respondent registered the disputed domain name with full knowledge of the Complainant's trademark rights and refers in this context to *Boursorama SA v. Estrade Nicolas*, WIPO Case No. [D2017-1463](#) to support this argument.

The Complainant is also convinced that the Respondent is using the disputed domain name in bad faith. The Complainant explains that the disputed domain name resolves to a login page copying the Complainant's official customer access page which in his view is a clear indication that the Respondent uses the disputed domain name in order to intentionally attract, for commercial gain, Internet users to the Respondent's website by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of his website. The Complainant argues further that the Respondent could collect personal information through the website, namely credentials.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

The Panel finds that the Complainant has established trademark rights in the trademark BOURSORAMA. The disputed domain name is not identical to the Complainant's trademark. However, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark.

As it has been decided by previous UDRP panels, incorporating a trademark in its entirety can be sufficient to establish that a domain name is identical or confusingly similar to a registered trademark (see for instance, *Yahoo! Inc. v. Blue Q Ltd., et al.*, WIPO Case No. [D2011-0702](#); *Casa Editorial El Tiempo, S.A. v. Montanya Ltd*, WIPO Case No. [D2009-0103](#); *Todito.com v. Francisco Gómez Ceballos*, WIPO Case No. [D2002-0717](#); *Bayerische Motoren Werke AG v. bmwcar.com*, WIPO Case No. [D2002-0615](#); *Compagnie Générale des Etablissement MICHELIN v. Lost in Space, SA*, WIPO Case No. [D2002-0504](#); *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#); *Magnum Piering, Inc. v. The Mudjacks and Garwood S. Wilson, Sr.*, WIPO Case No. [D2000-1525](#); and *Eauto, L.L.C. v. Triple S. Auto Parts d/b/a Kung Fu Yea Enterprises, Inc.*, WIPO Case No. [D2000-0047](#)).

Furthermore, in accordance with many decisions rendered under the Policy, the addition of terms to a trademark does not prevent confusing similarity where the trademark remains recognizable within the domain name (see section 1.8 of the [WIPO Overview 3.0](#), and cases cited therein). Therefore, the addition of the term "news" in the disputed domain name cannot avoid a finding of confusing similarity.

Furthermore, the ".com" generic Top-Level Domain suffix in the disputed domain name does not affect the determination that the disputed domain name is confusingly similar with the BOURSORAMA trademark in which the Complainant has rights (see also *Compagnie Générale des Etablissements Michelin v. Trendimg*, WIPO Case No. [D2010-0484](#); *Köstrizer Schwarzbierbrauerei v. Macros-Telekom Corp.*, WIPO Case No. [D2001-0936](#); and *Laboratoire Pharmafarm (SAS) v. M. Sivaramakrishan*, WIPO Case No. [D2001-0615](#) and cases cited therein).

For all these reasons, the Panel finds that the Complainant has fulfilled the first element under paragraph 4(a) of the Policy.

B. Rights or Legitimate Interests

Based on the submissions and materials filed in this case, the Panel finds that the Respondent does not have rights or legitimate interests in the disputed domain name.

It is the consensus view of UDRP panels that once the complainant has made out a *prima facie* showing on this element, the burden of production shifts to the respondent (see also section 2.1 of the [WIPO Overview 3.0](#), and *Ustream.TV, Inc. v. Vertical Axis, Inc.*, WIPO Case No. [D2008-0598](#); *mVisible Technologies, Inc v. Navigation Catalyst Systems, Inc.*, WIPO Case No. [D2007-1141](#); as well as *Asian World of Martial Arts Inc. v. Texas International Property Associates*, WIPO Case No. [D2007-1415](#)).

The Respondent has not provided any evidence of circumstances specified in paragraph 4(c) of the Policy or of any other circumstances giving rise to rights to or legitimate interests in the disputed domain name. Specifically, the Panel finds no evidence that the Respondent has been or is commonly known by the disputed domain name. The Respondent is neither affiliated with the Complainant nor has a license to use its trademark. The Respondent has also not rebutted the Complainant's allegations and has not provided the Panel with any explanations as to the Respondent's rights or legitimate interests.

Searches for the term "Boursorama" in a search engine such as Google revealed only the Complainant's business on the first two pages. The Panel is therefore convinced that the Respondent was aware of the Complainant when it registered the disputed domain name and that the "BOURSORAMA" brand has been chosen by the Respondent in order to create an impression of an association with the Complainant (see also: *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#)).

Furthermore, the design of the website to which the disputed domain name resolves may lead Internet users and therewith potential customers of the Complainant to the erroneous assumption that they reached an official website of the Complainant.

Therefore, the only reason for the Respondent to register the disputed domain name was, on balance, to capitalize on the Complainant's goodwill by redirecting Internet traffic intended for the Complainant away from it to the Respondent's website. Such behaviour cannot constitute a *bona fide* or legitimate use of the disputed domain names.

For all these reasons, the Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name and therefore, the requirement of paragraph 4(a)(ii) of the Policy is met.

C. Registered and Used in Bad Faith

The Complainant contends that the Respondent registered and is using the disputed domain name in bad faith. The Policy, paragraph 4(b) sets forth four non-exclusive circumstances, which evidence bad faith registration and use of domain names:

(i) circumstances indicating that the Respondent has registered or has acquired the disputed domain name primarily for the purpose of selling, renting, or otherwise transferring the disputed domain name registration to the Complainant who is owner of the trademark or service mark or to a competitor of the Complainant, for valuable consideration in excess of the Respondent's documented out-of-pocket costs directly related to the domain name; or

(ii) the Respondent has registered the disputed 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 disputed domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the disputed 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.

According to the materials brought before the Panel, the Panel finds that the disputed domain name has been registered and is used by the Respondent in bad faith in accordance with paragraph 4(b)(iv) of the Policy.

It is a principle considered under prior UDRP decisions (see, for instance, *Carolina Herrera, Ltd. v. Alberto Rincon Garcia*, WIPO Case No. [D2002-0806](#); *Six Continents Hotels, Inc. v. Seweryn Nowak*, WIPO Case No. [D2003-0022](#)) and under the Policy (see paragraph 2), that a domain name registrant represents and warrants to the concerned registrar that to its knowledge, the registration of the disputed domain name will not infringe the rights of any third party.

The Panel finds that the Respondent must have been aware of the Complainant's trademark and its products when it registered the disputed domain name. A simple search in a search engine such as Google or Bing reveals many references to the Complainant on the first two pages of such a search list and would have made the Respondent immediately aware of the Complainant. Moreover, the website to which the disputed domain resolved features essential branding elements of the Complainant.

Therefore, the Panel is convinced that the Respondent was aware of the Complainant when registering the disputed domain names.

The Panel finds further, that the Respondent is also using the disputed domain names in bad faith.

The use, to which the disputed domain name is put, is calculated to attract Internet users to the site in the mistaken belief that they are visiting a site of or associated with the Complainant. When Internet users type in their login details on the website in the erroneous assumption that this is an official website of the Complainant, there is a strong likelihood that the Respondent or any third parties will take advantage of this information in order to reap profit from it.

Therefore, the Panel is convinced that the Respondent's main purpose was to attract, for commercial gain, Internet users to the Respondent's website by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website.

Furthermore, the Respondent has apparently also provided inaccurate contact details when it registered the disputed domain name or failed at least to correct such false contact details. The Center has used the contact details given in the Whois record for the disputed domain name and those provided by the Registrar when it tried to send communications to the Respondent. The delivery of the Center's written notice failed because the contact details including the Respondent's alleged physical address were not accurate. Therefore, the Panel notes that the Respondent may have given incorrect contact details to frustrate or at least to delay this proceeding (see *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#)).

Accordingly, in light of the circumstances, the Panel finds that the Respondent has engaged in the bad faith registration and use of the disputed domain name.

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 <news-boursorama.com> be transferred to the Complainant.

/Christian Schalk/

Christian Schalk

Sole Panelist

Date: June 8, 2022