

ADMINISTRATIVE PANEL DECISION

Boursorama S.A. v. 葛荣凯 (Ge Rong Kai)

Case No. D2022-4242

1. The Parties

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

Respondent is 葛荣凯 (Ge Rong Kai), China.

2. The Domain Name and Registrar

The disputed domain name <boursor.xyz> (the “Domain Name”) is registered with Alibaba Cloud Computing Ltd. d/b/a HiChina (“www.net.cn”) (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on November 8, 2022. On November 8, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On November 9, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to Complainant on November 10, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint in English on November 10, 2022.

On November 10, 2022, the Center transmitted an email communication to the Parties in English and Chinese regarding the language of the proceeding. On November 10, 2022, Complainant submitted its request that English be the language of the proceeding. Respondent did not comment on the language of the proceeding.

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 in English and Chinese of the Complaint, and the proceedings commenced on November 21, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 11, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on December 12, 2022.

The Center appointed Kimberley Chen Nobles as the sole panelist in this matter on December 19, 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

Complainant provides a range of financial products online, including online brokerage, financial information on the Internet, and online banking. In France, Complainant provides an online financial, economic, and banking platform with over 3.3 million customers. The portal “www.boursorama.com” is the first national financial and economic information site and first French online banking platform.

Complainant is the owner of French registered trademark number 3009973 for the BOURSO word mark, which was registered on July 28, 2000. Complainant also owns a number of domain names with the BOURSO trademark, including the domain name <boursocom>, which has been registered since January 11, 2000.

The Domain Name was registered on November 4, 2022 and reverts to an inactive page.

5. Parties' Contentions

A. Complainant

Complainant contends that (i) the Domain Name is identical to Complainant's trademarks; (ii) Respondent has no rights or legitimate interests in the Domain Name; and (iii) Respondent registered and is using the Domain Name in bad faith.

In particular, Complainant contends that it has trademark registrations for BOURSO and owns domain names incorporating the BOURSO trademarks. Complainant contends that Respondent registered and is using the Domain Name for profit, to mislead unsuspecting individuals interested in BOURSO goods or services.

Complainant notes that it has no affiliation with Respondent, nor authorized Respondent to register or use a domain name, which includes Complainant's trademarks, and that Respondent has no rights or legitimate interests in the registration and use of the Domain Name. Rather, Complainant contends that Respondent has acted in bad faith in acquiring and setting up the Domain Name, when Respondent clearly knew of Complainant's rights.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

6.1. Preliminary Procedural Issue – Language of the Proceeding

The Rules, in paragraph 11(a), provide that unless otherwise agreed by the parties or specified otherwise in the registration agreement between the respondent and the registrar in relation to the domain name, the language of the 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.

Complainant submitted its Complaint and amended Complaint in English. In its email dated November 10, 2022, Complainant submitted a request that the language of the proceeding be English. According to the information received from the Registrar, the language of the Registration Agreement for the Domain Name is Chinese.

Complainant contends that: the Domain Name is registered in Latin characters and not in Chinese script. Complainant further notes that if it had to proceed in Chinese, Complainant would have to retain specialized translation services which would be very costly and burdensome.

In exercising its discretion to use a language other than that of the Registration Agreement for the Domain Name, 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.

The Panel accepts Complainant's submission regarding the language of the proceeding. The Panel notes that the Center notified the Parties in Chinese and English of the language of the proceeding as well as notified the Parties in Chinese and English of the Complaint. Respondent chose not to comment on the language of the proceeding nor did Respondent choose to file a Response either in Chinese or English.

The Panel is also mindful of the need to ensure that the proceeding is conducted in a timely and cost-effective manner. Complainant may be unduly disadvantaged by having to translate the Complaint into Chinese and to conduct the proceeding in Chinese.

Having considered all the circumstances of this case, the Panel determines that English be the language of the proceeding.

6.2. Substantive Issues

Under paragraph 4(a) of the Policy, to succeed Complainant must satisfy to the Panel that:

- (i) the Domain Name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (ii) Respondent has no rights or legitimate interests in respect of the Domain Name; and
- (iii) the Domain Name was registered and is being used in bad faith.

Section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") states that failure to respond to the complainant's contentions would not by itself mean that the complainant is deemed to have prevailed; a respondent's default is not necessarily an admission that the complainant's claims are true.

Thus, although in this case Respondent has failed to respond to the Complaint, the burden remains with Complainant to establish the three elements of paragraph 4(a) of the Policy by a preponderance of the evidence. See, e.g., *The Knot, Inc. v. In Knot We Trust LTD*, WIPO Case No. [D2006-0340](#).

A. Identical or Confusingly Similar

Ownership of a trademark registration is generally sufficient evidence that a complainant has the requisite rights in a mark for purposes of paragraph 4(a)(i) of the Policy. See [WIPO Overview 3.0](#), section 1.2.1. Complainant has provided evidence of its rights in the BOURSO trademarks, as noted above. Complainant has also submitted evidence which supports that the BOURSO trademarks are widely known and a distinctive identifier of Complainant's products and services. Complainant has therefore proven that it has the requisite rights in the BOURSO trademarks.

With Complainant's rights in the BOURSO trademarks established, the remaining question under the first element of the Policy is whether the Domain Name, typically disregarding the Top-Level Domain ("TLD") in which it is registered (in this case, ".xyz"), is identical or confusingly similar to Complainant's trademark. See, e.g., *B & H Foto & Electronics Corp. v. Domains by Proxy, Inc. / Joseph Gross*, WIPO Case No. [D2010-0842](#).

Here, the Domain Name is identical to Complainant's BOURSO trademark.

Thus, the Panel finds that Complainant has satisfied the first element of the Policy.

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 domain name. See, e.g., *Malayan Banking Berhad v. Beauty, Success & Truth International*, WIPO Case No. [D2008-1393](#). Once the 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.

From the record in this case, it is evident that Respondent was, and is, aware of Complainant and the BOURSO trademarks, and does not have any rights or legitimate interests in the Domain Name. Complainant has confirmed that Respondent is not affiliated with Complainant, or otherwise authorized or licensed to use the BOURSO trademarks or to seek registration of any domain name incorporating the trademarks. Respondent is also not known to be associated with the BOURSO trademarks. Moreover, there is no evidence showing that Respondent has been commonly known by the Domain Name.

In addition, Respondent has not used the Domain Name in connection with a *bona fide* offering of goods or services or a legitimate noncommercial or fair use. The Domain Name resolves to an error or inactive page. In addition, the Whois record also noted that the Domain Name is listed for sale on a partner site for USD 1,450. Such use does not constitute a *bona fide* offering of goods or services or a legitimate noncommercial or fair use and cannot under the circumstances confer on Respondent any rights or legitimate interests in the Domain Name. See, e.g., *Intesa Sanpaolo S.p.A. v. Charles Duke / Oneandone Private Registration*, WIPO Case No. [D2013-0875](#).

Moreover, the nature of the Domain Name, which is identical to Complainant's trademark, carries a high risk of implied affiliation as it effectively impersonates or suggests sponsorship or endorsement by Complainant. See [WIPO Overview 3.0](#), section 2.5.1.

Accordingly, Complainant has provided evidence supporting its *prima facie* claim that Respondent lacks any rights or legitimate interests in the Domain Name. Respondent has failed to produce countervailing evidence of any rights or legitimate interests in the Domain Name. Thus, the Panel concludes that Respondent does not have any rights or legitimate interests in the Domain Name and Complainant has met its burden under paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Panel finds that Respondent's actions indicate that Respondent registered and is using the Domain Name in bad faith.

Paragraph 4(b) of the Policy provides a non-exhaustive list of circumstances indicating bad faith registration and use on the part of a domain name registrant, namely:

"(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is

the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or

(ii) you have registered the 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 you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your 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 your website or location or of a product or service on your website or location."

The Panel finds that Complainant has provided ample evidence to show that registration and use of the BOURSO trademarks predate the registration of the Domain Name. Complainant is also well established and known. Indeed, the record shows that Complainant's BOURSO trademarks and related services are widely known and recognized. Therefore, and also noting the composition of the Domain Name itself which is identical to Complainant's BOURSO trademarks and domain name <bourso.com> (disregarding the TLD as discussed above), Respondent was likely aware of the BOURSO trademarks when he registered the Domain Name, or knew or should have known that the Domain Name was identical to Complainant's trademarks. See [WIPO Overview 3.0](#), section 3.2.2; see also *TTT Moneycorp Limited v. Privacy Gods / Privacy Gods Limited*, WIPO Case No. [D2016-1973](#).

The Panel therefore finds that Respondent's awareness of Complainant's trademark rights at the time of registration suggests bad faith. See *Red Bull GmbH v. Credit du Léman SA, Jean-Denis Deletraz*, WIPO Case No. [D2011-2209](#); *Nintendo of America Inc v. Marco Beijen, Beijen Consulting, Pokemon Fan Clubs Org., and Pokemon Fans Unite*, WIPO Case No. [D2001-1070](#); *BellSouth Intellectual Property Corporation v. Serena, Axel*, WIPO Case No. [D2006-0007](#).

In addition, the Domain Name currently resolves to an in active or error page, and the evidence further shows that it is also listed on the Whois record as being offered for sale at USD 1,450. From the inception of the UDRP, panels have also found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding. See section 3.3 of the [WIPO Overview 3.0](#). Such offer of the Domain Name for sale also shows opportunistic bad faith by Respondent to capitalize on Complainant's business and trademarks.

In the present circumstances, including the reputation and distinctiveness of the BOURSO trademarks, the failure of Respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, and the implausibility of any good-faith use to which the Domain Name may be put, the Panel finds that Respondent has registered and is using the Domain Name in bad faith and Complainant succeeds under the third element of paragraph 4(a) of the Policy.

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 Domain Name, <bourso.xyz>, be transferred to Complainant.

/Kimberley Chen Nobles/

Kimberley Chen Nobles

Sole Panelist

Date: January 2, 2023