

ADMINISTRATIVE PANEL DECISION

Boursorama S.A. v. Porco Mano and Rachel Monto Case No. D2023-1676

1. The Parties

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

The Respondents¹ are Porco Mano, France, and Rachel Monto, France.

2. The Domain Names and Registrar

The disputed domain names <astucesboursomaintenance.com>, <espaceclientboursobienvenue.com>, <etudesdesactionsbourso.com>, <programmebienvenuebourso.com>, <solutionpopulairesbourso.com> and <transformationdesastucesbourso.com> are registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 17, 2023. On April 18, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On April 18, 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 (Registration Private, Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 19, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint or to submit a separate complaint for each of the domain names. The Complainant filed an amended Complaint on April 19, 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”).

¹ The Complaint was originally filed against “Registration Private, DomainsBy Proxy, LLC”, as found in the publicly available WhoIs details for the disputed domain names. The identity of the Respondents was subsequently disclosed by the Registrar in response to the Center’s request for registrar verification in connection with the disputed domain names. The amended Complaint lists the persons disclosed by the Registrar as the Respondents.

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondents of the Complaint, and the proceedings commenced on April 27, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 17, 2023. The Respondents did not submit any response. Accordingly, the Center notified the Respondents' default on May 24, 2023.

The Center appointed Louis-Bernard Buchman as the sole panelist in this matter on June 7, 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 French corporation, founded in 1995, now part of the Société Générale banking group. The Complainant is a pioneer and leader in France in its three core businesses of online brokerage, financial information on the Internet and online banking, with over 4.7 million customers.

The Complainant owns the French trademark BOURSO, registered under No. 3009973 on July 28, 2000 ("the Mark").

The Complainant is the registrant of many domain names, including, *inter alia*, <boursorama.com>, registered since March 1, 1998 (which directs to its official website) and <bourso.com>, registered since January 11, 2000.

The Complainant's official website is the top financial and economic information site and online banking platform in France.

Four out of the six disputed domain names (<espaceclientboursobienvenue.com>, <programmebienvenuebourso.com>, <solutionpopulairesbourso.com> and <transformationdesastucesbourso.com>) were registered on April 13, 2023. The other two disputed domain names (<astucesboursomaintenance.com> and <etudesdesactionsbourso.com>) were registered on April 14, 2023.

The Complainant has submitted evidence that the websites at the disputed domain names are inactive and resolve either to an error page or an HTTP server test page.

5. Parties' Contentions

A. Complainant

- (i) The Complainant submits that the disputed domain names reproduce the Mark, in which the Complainant has rights, and are confusingly similar to the Mark insofar as the disputed domain names contain the Mark in its entirety preceded (or preceded and followed) by terms in French, such additions not being capable of dispelling the confusing similarity with the Mark which remains recognizable in the disputed domain names.
- (ii) The Complainant contends that the Respondents have no rights or legitimate interests in respect of the disputed domain names. Furthermore, the Complainant contends that it never authorized the Respondents to use the Mark in any manner and that the Respondents have never had any affiliation with the Complainant.
- (iii) The Complainant submits that the Respondents have registered and are using the disputed domain names in bad faith. The Complainant alleges that the Respondents had knowledge of the Mark when registering the disputed domain names.

- (iv) The Complainant submits that any plausible actual or contemplated use of the disputed domain names could only be illegitimate and that by creating confusion with the Mark, the Respondents are using the disputed domain names in bad faith.
- (v) The Complainant requests that the disputed domain names be transferred to the Complainant.

B. Respondents

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

6. Discussion and Findings

6.1. Procedural Aspects

A. Request for Consolidation

In its amended Complaint, the Complainant requested a consolidation of the Respondents.

Under paragraph 3(c) of the UDRP Rules, the Complaint may relate to more than one domain name, so long as the person or entity that is the registrant of the domain names specified in the Complaint is the same.

Pursuant to Article 10(e) of the UDRP Rules, a "Panel shall decide a request by a Party to consolidate multiple domain name disputes in accordance with the Policy and these Rules".

In this case, it is notable that:

- the disputed domain names are all registered with the same Registrar;
- the disputed domain names were registered in quick succession over a period of twenty-four hours;
- the disputed domain names share the same registrant's country of residence on the Whois, which is France;
- the disputed domain names are similar to each other beyond the simple fact of containing the Mark, insofar as they all combine the Mark with generic words in French ("solution", "populaires", "espace", "client", "bienvenue", "transformation", "astuces", "programme", "maintenance", "etudes", "actions", "de" or "des"), all correctly spelled save on one occasion ("client");
- the similarity in their structures combined with their registration over a short period of twenty-four hours is very unlikely to be a coincidence.

The combination of the above circumstances may indicate that the disputed domain names have been, in fact, registered by the same person or entity and are subject to common control.

After giving due consideration to paragraph 4.11.2 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), the Panel notes that the Complainant's above arguments have not been rebutted, that no objection was raised on the ground that consolidation would be detrimental to the interests of the Respondents, and that none of the disputed domain names is actively used.

Accordingly, on the balance of the probabilities and in the interest of procedural efficiency, the Panel decides that all named registrants of the disputed domain names are, in fact, the same entity and/or that all the disputed domain names are under common control, and accepts consolidation as requested by the Complainant. The Panel will refer to the Respondents as "the Respondent".

B. Failure to Respond

Under the Rules, paragraphs 5(f) and 14(a), the effect of a failure to submit a formal response by the Respondent is that, in the absence of exceptional circumstances, the Panel shall proceed to a decision on the basis of the Complaint.

Under paragraph 4(a) of the Policy, it is the Complainant's burden to establish that all three of the required criteria for a transfer of the disputed domain name have been met, even in the absence of a formal response.

Under paragraph 14(b) of the Rules, the Panel is empowered to draw such inferences from the Respondent's failure to file a formal response as it considers appropriate under the circumstances.

In this case, the Panel finds that the Respondent has failed to rebut any of the reasonable factual assertions that are made and supported by evidence submitted by the Complainant.

In particular, by failing to respond, the Respondent has failed to offer the Panel any of the types of evidence set forth in paragraph 4(c) of the Policy or otherwise, from which the Panel might conclude that the Respondent has any rights or legitimate interests in the disputed domain names, such as making legitimate noncommercial or fair use of the disputed domain names.

Moreover, as discussed below, the Respondent has failed to provide any exculpatory information or reasoning that might have led the Panel to question the Complainant's arguments that the Respondent has acted in bad faith.

6.2. Requirements of paragraph 4(a) of the Policy

A. Identical or Confusingly Similar

In comparing the Mark with the disputed domain names, it is evident that the latter consist of the Mark, preceded by terms in French in four of the six disputed domain names (<etudesdesactionsbourso.com>, <programmebienvenuebourso.com>, <solutionpopulairesbourso.com> and <transformationdesastucesbourso.com>) or preceded and followed by terms in French in two of the six disputed domain names (<astucesboursomaintenance.com> and <espaceclientboursobienvenue.com), and followed by the generic Top-Level Domain ("gTLD") ".com".

It is well established that a gTLD does not generally affect the assessment of a domain name for the purpose of determining identity or confusingly similarity.

The Panel finds that the disputed domain names are confusingly similar to the Mark, which is incorporated in its entirety, and that the addition of terms in French does not prevent a finding of confusing similarity, because the Mark remains sufficiently recognizable within the disputed domain names. See [WIPO Overview 3.0](#), sections 1.7 and 1.8.

Thus, the Complainant has satisfied the requirement of paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Although a complainant bears the ultimate burden of establishing all three elements of paragraph 4(a) of the Policy, UDRP panels have recognized that with regard to paragraph 4(a)(ii) of the Policy, this could result in the often impossible task of proving a negative proposition, requiring information that is primarily, if not exclusively, within the knowledge of a respondent.

Thus, the consensus view of UDRP panels is that paragraph 4(c) of the Policy shifts the burden of production of evidence to the respondent to come forward with evidence of rights or legitimate interests in a

domain name, once the complainant has made a *prima facie* showing, as the Panel finds the Complainant has made in this case, based on the facts and arguments set out above. See *Document Technologies, Inc. v. International Electronic Communications Inc.*, WIPO Case No. [D2000-0270](#), and [WIPO Overview 3.0](#), section 2.1.

As previously noted, the Respondent offered no reason for selecting the disputed domain names. There is no evidence that the Respondent is commonly known by the disputed domain names or uses (or has made *bona fide* preparations to use) the disputed domain names in a business or otherwise.

The disputed domain names are inactive and resolve either to an error page or an HTTP server test page.

No information is provided on what rights or legitimate interests the Respondent may have in the disputed domain names.

To counter any notion that the Respondent has such rights or legitimate interests, the Complainant has argued that the Respondent (i) has no affiliation with the Complainant and (ii) received no authorization from the Complainant to register or use the disputed domain names.

In the circumstances, the Panel concludes that the Complainant has established the requirement of paragraph 4(a)(ii) of the Policy with respect to the disputed domain names.

C. Registered and Used in Bad Faith

As noted above, the Respondent has failed to provide any exculpatory information or persuasive reasoning that might have led the Panel to question the Complainant's arguments that the Respondent acted in bad faith by creating confusion to the detriment of the Complainant in registering domain names confusingly similar to the Mark.

First, the registration of a domain name that is confusingly similar to a trademark by an entity that has no relationship to that mark may be, depending on the circumstances, evidence of opportunistic bad faith. See *Ebay Inc. v. Wangming*, WIPO Case No. [D2006-1107](#); *Veuve Clicquot Ponsardin, Maison Fondée en 1772 v. The Polygenix Group Co.*, WIPO Case No. [D2000-0163](#).

Second, it is well-established that the mere passive holding of a domain name may in appropriate circumstances be evidence not only of bad faith registration, but also of bad faith use. See *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#); *DCI S.A. v. Link Commercial Corporation*, WIPO Case No. [D2000-1232](#); *Mary-Lynn Mondich and American Vintage Wine Biscuits, Inc. v. Shane Brown, doing business as Big Daddy's Antiques*, WIPO Case No. [D2000-0004](#); and *Alitalia –Linee Aeree Italiane S.p.A v. Colour Digital*, WIPO Case No. [D2000-1260](#).

Third, it was established in prior UDRP decisions that where the respondent knew or should have known of a trademark prior to registering the disputed domain name, such conduct may be, in certain circumstances, evidence of bad faith registration. See *Weetabix Limited v. Mr. J. Clarke*, WIPO Case No. [D2001-0775](#).

In this case, considering that several UDRP panels have found that the Mark is well known (see for instance *Boursorama S.A. v. Laetitia Dramais, bourse pret immo*, WIPO Case [D2022-3936](#); *Boursorama S.A. v. Ibraci Links, Ibraci Links SAS*, WIPO Case No. [D2022-4646](#) and *Boursorama S.A. c. jijj conn, utyhf; poussin miss, poussin et michel vrlain, ndgnfd*, WIPO Case No. [D2023-1132](#)), the Panel finds that it is impossible to believe that the Respondent, who is apparently located in France, chose to register the disputed domain names randomly with no knowledge of the Mark.

Furthermore, the Panel notes that many UDRP panels have held that bad faith use of a domain name by a respondent may result from the fact its good faith use is in no way plausible (see *Audi AG v. Hans Wolf*, WIPO Case No. [D2001-0148](#)).

The Panel notes that the Respondent has submitted no evidence of any actual or contemplated good faith use of the disputed domain names and finds it is not possible to imagine any plausible future active use of the disputed domain names that would not be illegitimate, considering the specificity of the banking activity of the Complainant.

Finally, some UDRP panels have held that in certain circumstances, registrants of domain names have an affirmative duty to abstain from registering and using a domain name, which is either identical or confusingly similar to a prior trademark held by others and that contravening that duty may constitute bad faith. See Policy, paragraph 2(b); *Nike, Inc. v. Ben de Boer*, WIPO Case No. [D2000-1397](#); *Nuplex Industries Limited v. Nuplex*, WIPO Case No. [D2007-0078](#); *Mobile Communication Service Inc. v. WebReg, RN*, WIPO Case No. [D2005-1304](#); *BOUYGUES v. Chengzhang, Lu Ciagao*, WIPO Case No. [D2007-1325](#); *Media General Communications, Inc. v. Rarenames, WebReg*, WIPO Case No. [D2006-0964](#); and *mVisible Technologies, Inc. v. Navigation Catalyst Systems, Inc.*, WIPO Case No. [D2007-1141](#).

The Panel concludes in the light of all these circumstances that the Respondent's registration and use of the disputed domain name constitute bad faith, and that the requirement of paragraph 4(a)(iii) of the Policy is also satisfied in this case.

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, <astucesboursomaintenance.com>, <espacecliantboursobienvue.com>, <etudesdesactionsbourso.com>, <programmebienvenuebourso.com>, <solutionpopulairesbourso.com> and <transformationdesastucesbourso.com> be transferred to the Complainant.

/Louis-Bernard Buchman/

Louis-Bernard Buchman

Sole Panelist

Date: June 21, 2023