

## **ADMINISTRATIVE PANEL DECISION**

Boursorama S.A. v. Magnus Domain

Case No. D2023-1967

### **1. The Parties**

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

The Respondent is Magnus Domain, Russian Federation.

### **2. The Domain Name and Registrar**

The disputed domain name <boursorama-banque.site> is registered with Registrar of Domain Names REG.RU LLC (the "Registrar").

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on May 3, 2023. On May 3, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 10, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name which differed from the named Respondent (Private Person) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 10, 2023, 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 May 10, 2023.

The Registrar also indicated that the language of the registration agreement is Russian. On June 22, 2023, the Center sent an email communication to the Parties in both Russian and English inviting the Complainant to submit satisfactory evidence of an agreement between the Complainant and the Respondent to the effect that the proceedings should be in English; or submit the Complaint translated into Russian; or submit a request for English to be the language of the administrative proceedings. On June 23, 2023, the Complainant filed a request for English to be 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 and 4, the Center formally notified the Respondent of the

Complaint, and the proceedings commenced on May 22, 2023. In accordance with the Rules, paragraph 5, the due date for Response was June 11, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on June 12, 2023.

The Center appointed Assen Alexiev as the sole panelist in this matter on July 3, 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 has three core businesses - online brokerage, financial information on the Internet and online banking, and has over 4,7 million customers in France. The Complainant's website at "www.boursorama.com" is the first national financial and economic information website and the first French online banking platform.

The Complainant is the owner of the European Union trademark BOURSORAMA with registration No. 001758614, registered on October 19, 2001 for goods and services in International Classes 9, 16, 35, 36, 38, 41 and 42 (the "BOURSORAMA trademark"), and of the French trademark BOURSORAMA BANQUE (figurative) with registration No. 3676762, registered on September 16, 2009 for services in International Classes 35, 36 and 38 (the "BOURSORAMA BANQUE trademark").

The Complainant is also the owner of the domain names <boursorama.com>, registered on March 1, 1998, which resolves to its official website, and <boursoramabanque.com>, registered on May 26, 2005.

The disputed domain name was registered on April 27, 2023, and resolves to a Registrar parking page.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant states that the disputed domain name is confusingly similar to its BOURSORAMA trademark, which it includes in its entirety. The Complainant asserts that the addition of the word "banque" increases the likelihood of confusion, as it directly refers to the Complainant's BOURSORAMA BANQUE trademark and its domain name <boursoramabanque.com>.

According to the Complainant, the Respondent has no rights or legitimate interests in respect of the disputed domain name, as it is not commonly known under it and is not affiliated to the Complainant, who has not given any authorization to the Respondent to use the Complainant's BOURSORAMA and BOURSORAMA BANQUE trademarks. The Complainant maintains that it does not carry out any activity with the Respondent and adds that the Respondent does not use the disputed domain name, which resolves to a parking webpage of the Registrar.

The Complainant contends that the disputed domain name was registered and is being used in bad faith. According to the Complainant, its BOURSORAMA trademark is distinctive and well known, so the Respondent must have known it when it registered the disputed domain name. The Complainant points out that the Respondent is not carrying out any activity in respect of the disputed domain name, and it is not possible to conceive of any plausible actual or contemplated active use of it by the Respondent that would not be illegitimate.

##### **B. Respondent**

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

## 6. Discussion and Findings

### 6.1. Procedural issue – Language of the Proceeding

According to the information provided by the Registrar, the language of the Registration Agreement for the disputed domain name is Russian. Under paragraph 11 of the Rules, 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.

The Complainant requests that the language of the proceedings be English. The Center has sent all its communications to the Respondent in both English and Russian, and has invited the Respondent to express its views on the language of the proceeding. The Respondent has not submitted a Response or any objections to the Complainant's request that the proceedings be held in English. The disputed domain name does not contain Russian language elements; rather, it is composed of the Complainant's BOURSORAMA BANQUE trademark and a hyphen.

The above leads the Panel to the conclusions that the Respondent is not likely to be disadvantaged if the language of the proceeding is English, and that using the English language in this proceeding would be fair and efficient.

Therefore, in exercise of its powers under paragraph 11 of the Rules, the Panel decides that the language of this administrative proceeding will be English.

### 6.2. Substantive Issues

#### A. Identical or Confusingly Similar

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

The Panel finds the entirety of the BOURSORAMA BANQUE trademark is reproduced within the disputed domain name with the addition of a hyphen. Accordingly, the disputed domain name is confusingly similar to this trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

The Panel finds the BOURSORAMA trademark is recognizable within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to this trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

While the addition of other terms (here, the French word "banque") may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the BOURSORAMA 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

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

While 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 often-impossible 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. 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 record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant’s *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name. It has not provided any explanation of the reasons why it has registered the disputed domain name and how it intends to use it.

The Panel considers that the record of this case reflects that:

- before any notice to the Respondent of the dispute, the Respondent did not use, nor has it made demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services. Paragraph 4(c)(i) of the Policy, and [WIPO Overview 3.0](#), section 2.2.
- the Respondent (as an individual, business, or other organization) has not been commonly known by the disputed domain name. Paragraph 4(c)(ii) of the Policy, and [WIPO Overview 3.0](#), section 2.3.
- the Respondent is not making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue. Paragraph 4(c)(iii) of the Policy, and [WIPO Overview 3.0](#), section 2.4.
- the record contains no other factors demonstrating rights or legitimate interests of the Respondent in the disputed domain name.

The circumstances of this case do not support a finding that the Respondent has rights and legitimate interests in the disputed domain name. It includes the French dictionary word “banque”, which refers to the Complainant’s banking business, and is confusingly similar to the Complainant’s distinctive BOURSORAMA trademark and almost identical to the Complainant’s BOURSORAMA BANQUE trademark and its domain name <boursoramabanque.com>. This is likely to create an impression in Internet users that the disputed domain name refers to the official website of the Complainant. In the lack of any arguments or evidence to the contrary, the above leads the Panel to the conclusion that it is more likely than not that the Respondent, being aware of the goodwill of the Complainant and of its trademarks, has registered the disputed domain name targeting them in an attempt to exploit their goodwill by confusing Internet users that the disputed domain name belongs to the Complainant. There seems to be no legitimate activity for which it could be used without the consent of the Complainant. The Panel does not regard such combination of circumstances as supporting a finding that the Respondent has rights or legitimate interests in the disputed domain name.

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

### **C. Registered and Used in Bad Faith**

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.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

Panels have found that the non-use of a domain name (including a blank or "coming soon" page) would not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the record, the Panel finds the non-use of the disputed domain name does not prevent a finding of bad faith in the circumstances of this proceeding. 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. [WIPO Overview 3.0](#), section 3.3.

Having reviewed the record, the Panel finds that each of these factors is present here. The Complainant's BOURSORAMA trademark is distinctive and the disputed domain name is composed in such a way that to make it appear as being the official online location of the Complainant. The Respondent has failed to submit a Response or to provide any evidence of actual or contemplated good-faith use of the disputed domain name, and has seemingly provided false contact details that suggest that the city of San Francisco is located in the Russian Federation. Any good faith use to which the disputed domain name may be put appears implausible without the consent of the Complainant. Therefore, the Panel finds that in the circumstances of this case the passive holding of the disputed domain name does not prevent a finding of bad faith under the Policy.

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

### **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 <boursorama-banque.site> be transferred to the Complainant.

*/Assen Alexiev/*

**Assen Alexiev**

Sole Panelist

Date: July 17, 2023