

ADMINISTRATIVE PANEL DECISION

Boursorama S.A. v. James Boone, BooneSolutions
Case No. D2023-2052

1. The Parties

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

The Respondent is James Boone, BooneSolutions, United States of America.

2. The Domain Name and Registrar

The disputed domain name <boursorama-login.com> is registered with Nicenic International Group Co., Limited (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on May 9, 2023. On May 9, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 9, 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 (Unknown) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 15, 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 15, 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").

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on May 30, 2023. In accordance with the Rules, paragraph 5, the due date for Response was June 19, 2023. Accordingly, the Center notified the Respondent's default on June 21, 2023.

The Center appointed Tobias Malte Müller as the sole panelist in this matter on July 4, 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 company, active in online brokerage, financial information on the Internet and online banking with over 4,7 million customers in France.

It further results from the Complainant's documented allegations, which remained undisputed, that it holds European Union trademark registration no 001758614 for BOURSORAMA (verbal), registered on October 19, 2001 for goods and services in classes 9, 16, 35, 36, 38, 41, and 42. This mark has duly been renewed and is in force.

The disputed domain name was registered on May 4, 2023. The language of the Registration agreement is English.

The Complainant has provided – undisputed – evidence demonstrating that the disputed domain name resolves to the Complainant's official website. Besides, MX servers are configured.

5. Parties' Contentions

A. Complainant

The Complainant asserts that the disputed domain name is confusingly similar to its trademark BOURSORAMA, since it incorporates the mark entirely. The addition of the generic term "login" is not sufficient to escape the finding of confusing similarity.

Secondly, the Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name. The Complainant asserts that the Respondent is not commonly known under the disputed domain name. In addition, the Respondent is not known to the Complainant either, in particular, it is not affiliated with nor authorized by the Complainant in any way. Moreover, the disputed domain name resolves to the Complainant's official website, which is not a *bona fide* offering of goods or services by means of the disputed domain name, or a legitimate noncommercial or fair use of it.

Thirdly, the Complainant finds that the Respondent's registration and use of the disputed domain name constitutes bad faith. Since the disputed domain name entirely contains the Complainant's trademark and resolves to the Complainant's official website, the Complainant considers it reasonable to infer that the Respondent has registered the disputed domain name with full knowledge of the Complainant's trademarks. The Complainant therefore concludes that the disputed domain name has been registered in an effort to take advantage of the good reputation of the BOURSORAMA trademark, with the sole aim to create a likelihood of confusion with the Complainant's trademarks. Finally, the disputed domain name has been set up with MX records which suggests that it may be actively used for email purposes. This is also indicative of bad faith registration.

B. Respondent

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

6. Discussion and Findings

Paragraph 15(a) of the Rules instructs this Panel to "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".

Paragraph 4(a) of the Policy requires the Complainant to prove each of the following three elements in order to obtain an order that the disputed domain name should be transferred or cancelled:

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

The Panel is satisfied that the registrant of record for the disputed domain name is the Respondent and will, therefore, proceed to analyze whether the three elements of paragraph 4(a) of the Policy are satisfied.

A. Identical or Confusingly Similar

Pursuant to paragraph 4(a)(i) of the Policy, the Complainant must establish rights in a trademark or service mark and secondly establish that the disputed domain name is identical or confusingly similar to a trademark in which the Complainant has rights.

It results from the evidence provided that the Complainant is the registered owner of European Union trademark registration no 001758614 for BOURSORAMA, registered on October 19, 2001. This mark has duly been renewed and is in force.

Many UDRP panels have found that a disputed domain name is confusingly similar to a complainant's trademark for purposes of the first element where the relevant trademark is recognizable within the disputed domain name. Under such circumstances, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element (*cf.* section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"). This Panel shares the same view and notes that the disputed domain name contains the Complainant's registered trademark BOURSORAMA, which is placed at the beginning of the disputed domain name. In particular, the Panel considers the addition of the term "-login" to the Complainant's trademark in the disputed domain name would not prevent a finding of confusing similarity under the first element of the UDRP. The Panel has no doubts that in a side-by-side comparison of the disputed domain name and the relevant trademark BOURSORAMA, the latter mark remains clearly recognizable within the disputed domain name, not least because of its separation by a hyphen from the second element "login".

Finally, the generic Top-Level Domain ("gTLD") ".top" of the disputed domain name may be disregarded under the first element confusing similarity test (see section 1.11.1 of the [WIPO Overview 3.0](#)).

In light of the above, the Panel finds that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights.

B. Rights or Legitimate Interests

Pursuant to paragraph 4(a)(ii) of the Policy, the Complainant must secondly establish that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

Paragraph 4(c) of the Policy contains a non-exhaustive list of circumstances which, if found by the Panel to be proved, shall demonstrate the Respondent's rights or legitimate interests in a disputed domain name. In the Panel's view, based on the undisputed allegations stated above, the Complainant has made a *prima facie* case that none of these circumstances are found in the case at hand and, therefore, that the Respondent lacks rights or legitimate interests in the disputed domain name.

First, it results from the Complainant's uncontested evidence that the disputed domain name resolves to the Complainant's official website and therefore giving the false appearance of being linked to the Complainant, which is, however, not the case as the Complainant undisputedly confirmed. In this Panel's view, such use cannot be qualified as a *bona fide* offering of goods or services in accordance with paragraph 4(c)(i) of the

Policy, since such use is likely to mislead Internet users. In addition, the Respondent did not submit any evidence of *bona fide* pre-Complaint preparations to use the disputed domain name. In particular, the Complainant's uncontested allegations demonstrate that it has not authorized or licensed the Respondent's use of the BOURSORAMA trademark for registering the disputed domain name which is confusingly similar to the Complainant's trademark.

Furthermore, the Panel notes that there is no evidence in the record or Whois information showing that the Respondent might be commonly known by the disputed domain name in the sense of paragraph 4(c)(ii) of the Policy.

Finally, the Panel notes that there is no evidence in the record either showing that the Respondent might be making a noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark at issue pursuant to paragraph 4(c)(iii) of the Policy. In particular, the Panel considers it obvious that the disputed domain name which entirely incorporates the trademark BOURSORAMA carries a high risk of implied affiliation. In addition, the connection to the Complainant's official website effectively impersonates or suggests sponsorship or endorsement of the disputed domain name (and eventual emails sent under this domain name) by the trademark owner. This assessment is facilitated by the following factors by comparative reference to the criteria set forth in section 2.5.2 of the [WIPO Overview 3.0](#):

- (i) the absence of any indications as to whether or not the respondent reasonably believes its use to be truthful and well-founded;
- (ii) it is not clear to Internet users typing the disputed domain name into their browser that they are redirected to the Complainant's website without its consent, and
- (iii) no explanation is provided.

It is acknowledged that once the Panel finds a *prima facie* case has been established, the burden of production shifts to the Respondent to come forward with relevant and concrete evidence demonstrating rights or legitimate interests in the disputed domain name. Since the Respondent in the case at hand failed to come forward with any allegations or evidence, this Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.

The Complainant has therefore satisfied paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

According to paragraph 4(a)(iii) of the Policy, the Complainant must thirdly establish that the disputed domain name has been registered and is being used in bad faith.

The Policy indicates that certain circumstances specified in paragraph 4(b) of the Policy may, "in particular but without limitation", be evidence of the disputed domain name's registration and use in bad faith. One of these circumstances that the Panel finds applicable to the present dispute is that the Respondent by using the disputed domain name, 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 (paragraph 4(b)(iv) of the Policy).

It is the view of this Panel that these circumstances are met in the case at hand:

It results from the documented and undisputed evidence provided by the Complainant that the disputed domain name, which contains the Complainant's trademark BOURSORAMA identically, resolves to the Complainant's official website. Panels have moreover found redirecting to the complainant's website to support a finding that a respondent has registered a domain name to attract, for commercial gain, Internet

users to its website by creating a likelihood of confusion with the complainant's mark (see section 3.1.4 of the [WIPO Overview 3.0](#)).

Furthermore, and in the absence of any evidence to the contrary, the Panel is convinced that the Respondent positively knew the Complainant's trademarks and website. Registration of a domain name which contains a third party's trademark, in awareness of said trademark and in the absence of rights or legitimate interests is suggestive of registration in bad faith (see *e.g. Vorwerk International AG v. ayoub lagnadi, Lagnadi LTD*, WIPO Case No. [D2022-1592](#) with further references).

Finally, the above findings of bad faith registration and use is supported by the following further circumstances resulting from the case at hand:

- (i) the distinctiveness of the Complainant's trademark BOURSORAMA which has existed since more than twenty years the date the Respondent registered the disputed domain name;
- (ii) the fact that the details disclosed for the Respondent by the Registrar were incomplete, noting the mail courier's inability to deliver the Center's written communications;
- (iii) the fact that the Respondent connected the disputed domain name to a MX server;
- (iv) the Respondent's failure to submit a formal response and to reply to the communications sent to before starting the present UDRP proceedings;
- (v) the Respondent's failure to provide any evidence of actual or contemplated good-faith use; and
- (vi) the implausibility of any good faith use to which the disputed domain name may be put.

In the light of the above the Panel finds that the disputed domain name has been registered and is being used in bad faith pursuant to paragraph 4(a)(iii) 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 disputed domain name, <boursorama-login.com>, be transferred to the Complainant.

/Tobias Malte Müller/

Tobias Malte Müller

Sole Panelist

Date: July 18, 2023