

ADMINISTRATIVE PANEL DECISION

Boursorama S.A. v. ALec Mano

Case No. D2023-2083

1. The Parties

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

The Respondent is ALec Mano, France.

2. The Domain Names and Registrar

The disputed domain names <majbourso.com>, <offrebourso.com>, <profilbourso.com> and <secubourso.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 May 10, 2023. On May 11, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On May 12, 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 May 17, 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 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”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on May 25, 2023. In accordance with the Rules, paragraph 5, the due date for Response was June 14, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 20, 2023.

The Center appointed Benjamin Fontaine as the sole panelist in this matter on July 14, 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 rendering online brokerage, online banking, and financial information services on the Internet. It claims having over 4,7 million clients and receiving over 47 million monthly visits to its websites. Also, it indicates that it administers over 600.000 bank accounts.

The Complainant is the owner of the French trade mark BOURSO No. 3009973, filed on February 22, 2000, and registered on July 28, 2000. The Complainant also owns the domain name <boursocom>, since January 11, 2000.

The disputed domain names were registered on May 8, 2023 through a privacy service. Three of them direct users to a parking page of the Registrar. The disputed domain name <majboursocom> resolves to an error page. The identity of the Respondent, an individual domiciled in France, was disclosed by the Registrar in the course of this proceeding.

5. Parties' Contentions

A. Complainant

The arguments of the Complainant on the three tests of the Policy can be summarized as follows:

First, the Complainant states that the disputed domain names are confusingly similar to its earlier trade mark BOURSO. This element is fully reproduced and the addition of the other generic terms "maj", "offre", "profils", and "secu" has no impact on this assessment. Likewise, the addition of the generic Top-Level Domain ".com" has no impact either, it should be disregarded for the comparison.

Second, the Complainant asserts that the Respondent "is not known as the disputed domain names", and is not known by the Complainant either. The Respondent is not affiliated with nor authorized by the Complainant in any way in respect of the disputed domain names. The Complainant does not carry out any activity for, nor has any business with, the Respondent, and no license or other authorization has been granted to the Respondent to register domain names incorporating the trade mark BOURSO. Moreover, the disputed domain names are not currently subject to a *bona fide* offering of goods or services.

Third, the Complainant claims that its trade mark BOURSO is well known in France. It refers to a previous UDRP decision in *Boursorama S.A. v. Ibraci Links, Ibraci Links SAS*, WIPO Case No. [D2022-4646](#) where it is stated in particular that "On the balance of the probabilities, the Panel determines that Respondent was aware of Complainant and its BOURSO [trade mark], and targeted that mark when registering the Domain Name [...] As discussed above, Complainant's BOURSO mark is well established". Therefore, the Complainant claims that the Respondent specifically targeted it when configuring the disputed domain names. Finally, the Complainant indicates that "it is not possible to conceive of any plausible actual or contemplated active use of the domain names by the Respondent that would not be illegitimate", and that "the incorporation of a famous mark into a domain name, coupled with an inactive website, may be evidence of bad faith registration and use".

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy sets forth the following three requirements, which have to be met for this Panel to order the transfer of the disputed domain names to the Complainant:

- i. the disputed domain names are identical or confusingly similar to a trade mark 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 names; and
- iii. the disputed domain names have been registered and are being used in bad faith.

The Complainant must prove in this administrative proceeding that each of the aforesaid three elements is present so as to have the disputed domain names transferred to it, according to paragraph 4(i) of the Policy.

A. Identical or Confusingly Similar

The Complainant, under the first requirement of paragraph 4(a) of the Policy, needs to establish that the disputed domain names are identical or confusingly similar to a trade mark or a service mark in which it has rights. The first criterion is perceived primarily as a standing requirement for the Complainant.

The Complainant has established rights over the trade mark BOURSO.

The disputed domain names incorporate the Complainant's trade mark in its entirety with the addition of other elements, namely "maj", "offre", "profils", and "secu", respectively. These additions do not prevent the disputed domain names from being confusingly similar with the trade mark BOURSO, which remains immediately recognizable. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.8.

Therefore, the Panel finds that the disputed domain names are confusingly similar to the Complainant's trade mark.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a non-exclusive list of circumstances that may indicate the Respondent's rights or legitimate interests in the disputed domain names. These circumstances are:

- i. before any notice of the dispute, the Respondent's use of, or demonstrable preparations to use, the disputed domain names or a name corresponding to the disputed domain names in connection with a *bona fide* offering of goods or services; or
- ii. the Respondent (as individual, business, or other organization) has been commonly known by the disputed domain names, in spite of not having acquired trade mark or service mark rights; or
- iii. the Respondent is making a legitimate noncommercial or fair use of the disputed domain names, without intent for commercial gain to misleadingly divert consumers or to tarnish the trade mark or service mark at issue.

The Respondent, in not responding to the Complaint, has failed to invoke any of the circumstances, which could demonstrate, pursuant to paragraph 4(c) of the Policy, any rights or legitimate interests in the disputed domain names. This entitles the Panel to draw any inferences from such default as it considers appropriate, pursuant to paragraph 14(b) of the Rules. Nevertheless, the burden of proof is still on the Complainant to make at least a *prima facie* case against the Respondent under the second UDRP element.

In that sense, the Complainant has made a *prime facie* case that the Respondent has not been commonly known by the disputed domain names and is not affiliated with the Complainant, nor has it been licensed or otherwise permitted to use the Complainant's trade mark or to register domain names incorporating it. Also, according to the evidence submitted by the Complainant, the use made by the Respondent of the disputed domain names indicates that it is not making a *bona fide* offering of goods or services or a legitimate noncommercial or fair use. Three of them direct users to a parking page of the Registrar and, the disputed domain name <majbourso.com> resolves to an error page.

Under these circumstances and absent evidence to the contrary, the Panel finds that the Respondent does not have rights or legitimate interests with respect to the disputed domain names.

C. Registered and Used in Bad Faith

In order to prevail under the third element of paragraph 4(a)(iii) of the Policy, a complainant must demonstrate that the disputed domain names have been registered and are being used in bad faith.

Paragraph 4(b) of the Policy lists a number of circumstances which, without limitation, are deemed to be evidence of the registration and use of a domain name in bad faith. These are:

- (i) circumstances indicating that [a respondent has] registered or acquired a disputed domain name primarily for the purpose of selling, renting, or otherwise transferring the disputed domain name to the complainant 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 disputed domain name; or
- (ii) [the respondent has] registered the disputed domain name in order to prevent the complainant from reflecting the complainant's trade mark or service 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 [the respondent's] 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 [the respondent's] website or location or of a product or service on [the respondent's] website or location.

The Complainant claims indirectly the benefit of the doctrine of bad faith passive holding. Normally, the initial test of this doctrine is that the Complainant's trade mark enjoys some reputation. In this case, the Complainant claims that the trade mark BOURSO is well known. However, no evidence supports this assertion. The limited material filed with the Complaint solely mentions the trade mark BOURSORAMA, and the Panel was unable to find any reference to the trade mark BOURSO, as such. Also, in the precedent claimed by the Complainant, the Panel finds that the trade mark BOURSO is "well-established", but it does not indicate that it is well known.

Notwithstanding the above, the Panel is prepared to acknowledge that the disputed domain names were registered, and are being used passively, in bad faith. This is so on account of the following circumstances:

- The Panel has conducted a limited factual search in a search engine online, over the word BOURSO, and the results were directly connected to the Complainant and its trade mark BOURSORAMA;
- The Respondent is domiciled in France, where the Complainant has its main business;
- The words associated to the disputed domain names indicate a clear connection with the banking sector, in which the Complainant operates: "maj" means "mise à jour", "updated" in English. It could

refer to the update of personal data of a client of the Complainant. “Offre” means “offer” in English, and it can be perceived as a special offer of the Complainant to existing or new clients. “Profils” means “profiles” in English, and can be perceived again as a reference to a client’s personal data and preferences. Finally, “secu” is the abbreviated form of “sécurité”, “security” in English, and it could refer to the means of securing the access to a client’s bank account;

- The Respondent has engaged in a pattern of registering several domain names that are confusingly similar to the trade mark of the Complainant.

In other words, the Respondent did target the Complainant and its activities when registering this series of disputed domain names, and the Panel cannot foresee a future legitimate use of those disputed domain names. This risk is significant in the banking sector, in which many fraudulent activities occur.

Accordingly, the third criteria element set out in paragraph 4(a) of the Policy is also satisfied.

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, <majbourso.com>, <offrebourso.com>, <profilbourso.com> and <secubourso.com> be transferred to the Complainant.

/Benjamin Fontaine/

Benjamin Fontaine

Sole Panelist

Date: July 28, 2023