

## **ADMINISTRATIVE PANEL DECISION**

**Boursorama S.A. v. FG GFSG**

**Case No. D2023-2729**

### **1. The Parties**

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

The Respondent is FG GFSG, France.

### **2. The Domain Names and Registrars**

The disputed domain names <clients-banque-boursorama.com>, <clients-banque-boursorama-connexion.com>, and <domainebourso.com> are registered with Amazon Registrar, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 26, 2023. On June 26, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On June 28, 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 (On behalf of clients-banque-boursorama.com, Identity Protection Service,) and contact information in the Complaint. The Center sent an email communication to the Complainant on June 29, 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 June 29, 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 June 30, 2023. In accordance with the Rules, paragraph 5, the due date for Response was July 20, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 21, 2023.

The Center appointed William Lobelson as the sole panelist in this matter on August 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 BOURSORAMA and operates in France in the fields of online brokerage, finance and banking, through its portal "www.boursorama.com". It is ranked as first French online banking platform.

The Complainant is the owner of several trademarks BOURSORAMA and BOURSO:

- French trademark BOURSO n°3009973 registered on July 28, 2000;
- European trademark BOURSORAMA n°001758614 registered since October 19, 2001;
- French trademark BOURSORAMA BANQUE n°3676762 registered since February 19, 2010.

It also owns a number of domain names: <boursorama.com>, registered on March 1st, 1998, <bourso.com>, registered on January 11th, 2000, and <boursoramabanque.com>, registered on May 26th, 2005.

The disputed domain names: <clients-banque-boursorama.com>, <clients-banque-boursorama-connexion.com>, and <domainebourso.com>, were registered on June 22 and 24, 2023, and resolve to parked or error pages.

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

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

The Complainant claims that the disputed domain name is confusingly similar to its earlier trademark, that the Respondent has no rights or legitimate interests in the disputed domain names, and that the disputed domain names have been registered and is being used in bad faith. The Complainant requests the transfer of the disputed domain names.

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

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

#### **6. Discussion and Findings**

Notwithstanding the default of the Respondent, it remains incumbent on the Complainant to make out its case in all respects under the Rules set out in paragraph 4(a) of the Policy. Namely, the Complainant must prove that:

- (i) the disputed domain name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights (paragraph 4(a)(i));
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name (paragraph 4(a)(ii)); and
- (iii) the disputed domain name has been registered and is being used in bad faith (paragraph 4(a)(iii)).

##### **A. Identical or Confusingly Similar**

The Complainant is the owner of numerous BOURSORAMA and BOURSO trademarks, all registered and used in relation with finance and banking services.

The disputed domain names reproduce the Complainant's trademarks in their entirety.

Where the relevant trademarks are recognizable within the disputed domain names, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise), in this case the terms “clients”, “banque” and “domaine”, would not prevent a finding of confusing similarity under the first element; see section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”).

Furthermore, the addition of the generic Top-Level Domain (“gTLDs”) “.com” does not prevent a finding of confusing similarity.

Consequently, the Panel finds that the Complainant has satisfied the requirements of paragraph 4(a)(i) of the Policy.

## **B. Rights or Legitimate Interests**

To demonstrate rights or legitimate interests in a domain name, non-exclusive respondent defenses under UDRP paragraph 4(c) include the following:

- (i) before any notice of the dispute, the Respondent’s use of, or 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 and services;
- (ii) the Respondent (as an individual, business or other organization) has been commonly known by the disputed domain name, even if the Respondent has acquired no trademark or service mark rights; or
- (iii) the Respondent is 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.

The Panel notes that the Respondent has not filed a response and thus did not deny the Complainant’s assertions, nor brought any information or evidence demonstrating any rights or legitimate interests.

The Complainant has made a *prima facie* showing that the Respondent does not have any rights or legitimate interests in the disputed domain names, particularly by asserting that the Respondent is not affiliated with it in any way and that it never authorized the Respondent to use its trademark as part of the disputed domain names.

The Complainant further contends that the Respondent is not known under the disputed domain names and does not make any *bona fide* use of the same, being emphasized that the disputed domain names do not resolve towards any active web page.

The Panel finds that the Complainant has met the requirement under the Policy of showing that the Respondent does not have any rights or legitimate interests in the disputed domain names.

Accordingly, the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

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

The Complainant has substantiated the fact that its trademarks BOURSORAMA and BOURSO, that have been registered and used for years, are distinctive and now benefits from a certain level of public awareness, particularly in France.

Earlier UDRP decisions have acknowledged the Complainant’s trademark rights: *Boursorama SA v. Estrade Nicolas*, WIPO Case No. [D2017-1463](#): “Given the circumstances of the case including the evidence on record of the longstanding of use of the Complainant’s trademark, and the distinctive nature of the mark BOURSORAMA, it is inconceivable to the Panel in the current circumstances that the Respondent registered the disputed domain name without prior knowledge of the Complainant and the Complainant’s mark.”

When the identity of the Respondent was disclosed by the Registrar, it was found that the Respondent is located in France. Due to the longstanding and use of the Complainant's mark in France, the Respondent could not reasonably be unaware of the Complainant's rights when it registered the disputed domain names.

The Panel observes besides that the Respondent made the choice of associating the trademarks BOURSORAMA with terms that directly refer to the Complainant's banking services ("clients", "banque").

For this Panel, it is a clear indication that it necessarily had the Complainant's trademarks in mind when it registered the disputed domain names, and intended to divert Internet users.

The Panel infers from the above that the Respondent acted in bad faith when it registered the disputed domain names.

It is further noted by the Panel that the disputed domain names are not being actively used by the Respondent, and do not resolve to any active web page with substantive content.

It is a consensus view among UDRP panels that, with comparative reference to the circumstances set out in paragraph 4(b) of the UDRP it is deemed to establish bad faith registration and use, the apparent lack of so-called active use (e.g., to resolve to a website) of the domain name, does not prevent a finding of bad faith.

The Panel must examine all the circumstances of the case to determine whether the Respondent is acting in bad faith. Examples of what may be cumulative circumstances found to be indicative of bad faith include the Complainant having a well-known trademark and no response to the Complaint having been filed. UDRP panels may draw inferences about whether a domain name is used in bad faith given the circumstances surrounding registration.

As stated in [WIPO Overview 3.0](#), section 3.3, there is a consensus view about "passive holding":

"From the inception of the UDRP, panelists 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. 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." In this case, the Panel takes into account (i) the degree of distinctiveness and reputation of the Complainant's BOURSORAMA and BOURSO trademarks, (ii) the Respondent concealing its identity, and (iii) the implausibility of any good faith use to which the inherently misleading disputed domain name may be put. The Panel finds that passive holding of the disputed domain names in this case does not prevent a finding of bad faith.

Such passive holding is to be regarded as use in bad faith (*Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#); *Jupiters Limited v. Aaron Hall*, WIPO Case No. [D2000-0574](#); *Ladbroke Group Plc v. Sonoma International LDC*, WIPO Case No. [D2002-0131](#); *Westdev Limited v. Private Data*, WIPO Case No. [D2007-1903](#); *Malayan Banking Berhad v. Beauty, Success & Truth International*, WIPO Case No. [D2008-1393](#); *Intel Corporation v. The Pentium Group*, WIPO Case No. [D2009-0273](#)). See also, *Confédération Nationale du Crédit Mutuel v. Nicola Bazar*, WIPO Case No. [D2013-1572](#): "Respondent knew or should have known that the Domain Name included Complainant's CREDIT MUTUEL well-known trademark. [...] However, passive holding of the website does not prevent the Panel from finding registration and use in bad faith."

Besides, given that the Complainant operates in financial and banking services, the Panel suspects that the registration of the disputed domain names, which have been found confusingly similar with the Complainant's trademarks, is very likely intended to phishing purposes or similar fraudulent activities.

Accordingly, the Complainant has satisfied 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 names, <clients-banque-boursorama.com>, <clients-banque-boursorama-connexion.com>, and <domainebourso.com>, be transferred to the Complainant.

*/William Lobelson/*

**William Lobelson**

Sole Panelist

Date: August 14, 2023