

## **ADMINISTRATIVE PANEL DECISION**

Boursorama v. HOAREAU FLORENT

Case No. D2024-1342

### **1. The Parties**

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

The Respondent is HOAREAU FLORENT, France.

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

The disputed domain name <s-boursorama-fr.store> (the “Disputed Domain Name”) is registered with Beget LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on March 28, 2024. On March 28, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On April 2, 2024, 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 (Privacy Protect, LLC (PrivacyProtect.org)) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 2, 2024, 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 April 2, 2024.

Also, on April 2, 2024, the Center informed the parties in Russian and English, that the language of the registration agreement for the Disputed Domain Name is Russian. On April 2, 2024, the Complainant requested English to be the language of the proceeding. The Respondent did not submit any comment on the Complainant’s submission.

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 in Russian and English of the Complaint, and the proceedings commenced on April 11, 2024. In accordance with the Rules, paragraph 5, the due date for Response was May 1, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on May 2, 2024.

The Center appointed Mariia Koval as the sole panelist in this matter on May 23, 2024. 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, founded in 1998, is a leading digital bank in France, as well as a pioneer and leader in its three core businesses: online brokerage, financial information on the Internet and online banking. In France, the Complainant has over 6 million customers; and also is present in Germany through its subsidiary OnVista and in Spain through Self Bank.

The Complainant is the owner of BOURSORAMA trademark registration (the "BOURSORAMA Trademark") under the European Union Trademark Registration No. 001758614, registered on October 19, 2001, in respect of goods and services in classes 9, 16, 35, 36, 38, 41, and 42.

The Complainant operates numerous domain names identical to, or comprising, the BOURSORAMA Trademark, for instance, <boursorama.com> which has been registered since 1998. The website "www.boursorama.com" has over 41.5 million visits each month.

The registration date of the Disputed Domain Name is March 28, 2024. As at the dates of filing of the Complaint and this Decision, the Disputed Domain Name resolves to an inactive webpage. Moreover, according to the evidence presented by the Complainant (Annex 7 to the Complaint) MX servers are configured.

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

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

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the Disputed Domain Name.

Notably, the Complainant contends that the Disputed Domain Name is confusingly similar to its BOURSORAMA Trademark since the Disputed Domain Name includes the BOURSORAMA Trademark in its entirety. The addition of the letter "s", hyphens, and the country code for France "fr" is not sufficient to escape the finding that the Disputed Domain Name is confusingly similar to the Complainant's BOURSORAMA Trademark. Also, the addition of the generic Top-Level Domain ("gTLD") ".store" does not change the overall impression of the Disputed Domain Name as being connected to the BOURSORAMA Trademark.

The Complainant further claims that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name in view of the following:

- the Respondent was not commonly known by the Disputed Domain Name;
- the Respondent is not affiliated with nor authorized by the Complainant in any way: the Complainant does not carry out any activity for, nor has any business with, the Respondent;
- neither license nor authorization has been granted to the Respondent to make any use of the Complainant's BOURSORAMA Trademark, or apply for registration of the Disputed Domain Name;

- the Disputed Domain Name resolves to a parking page (Annex 6 to the Complaint), so, the Respondent did not use and has no demonstrable plan to use the Disputed Domain Name.

The Complainant further claims that the Respondent has registered and is using the Disputed Domain Name in bad faith. The Disputed Domain Name includes the well-known and distinctive Complainant's BOURSORAMA Trademark. Given the distinctiveness of the Complainant's BOURSORAMA Trademark and reputation, it is reasonable to infer that the Respondent has registered the Disputed Domain Name with full knowledge of the Complainant's BOURSORAMA Trademark.

The Complainant contends that the Respondent has not demonstrated 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 the Disputed Domain Name by the Respondent that would not be illegitimate.

Finally, MX servers are configured which suggests that the Disputed Domain Name may be actively used for email purposes.

## **B. Respondent**

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

## **6. Discussion and Findings**

Under paragraph 4(a) of the Policy, a complainant to succeed must satisfy the panel that:

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

### **6.1. Preliminary Issue: Language of the Proceeding**

The language of the Registration Agreement for the disputed domain name is Russian. Pursuant to the Rules, paragraph 11(a), in the absence of an agreement between the parties, or unless specified otherwise in the registration agreement, the language of the administrative proceeding shall be the language of the registration agreement.

The Complaint was filed in English. The Complainant requested that the language of the proceeding be English for several reasons, including the following:

- the choice of language is related to the combined fact that the English language is the language most widely used in international relations;
- the Disputed Domain Name is formed by words in Roman characters (ASCII) and not in Cyrillic script;
- in order to proceed in Russian, the Complainant would have had to retain specialized translation services at a cost very likely to be higher than the overall cost of these proceedings;
- the use of Russian in this case would therefore impose a burden on the Complainant which must be deemed significant in view of the low cost of these proceedings;
- the Respondent is located in France.

The Respondent did not make any submissions with respect to the language of the proceeding.

In exercising its discretion to use a language other than that of the registration agreement, the Panel has to exercise such discretion judicially in the spirit of fairness and justice to both parties, taking into account all relevant circumstances of the case, including matters such as the parties' ability to understand and use the

proposed language, time and costs (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#)), section 4.5.1).

The Complainant and its representative are French companies. Accordingly, neither the Complainant nor its representative are able to understand and to communicate in Russian. Forcing the Complainant to translate the Complaint, would result in unfair additional expenses for the Complainant and would delay this UDRP proceeding. The Panel further notes that the Center notified the Parties in Russian and English of the language of the proceeding as well as notified the Respondent in Russian and English of the Complaint. Furthermore, according to the Respondent’s contact details the Respondent is located in France where the Russian language is not the official language. The Disputed Domain Name fully incorporates the Complainant’s BOURSORAMA Trademark in Roman script that suggests that the Respondent is able to understand English for purposes of understanding this Complaint. Moreover, the Respondent did not file any suggestions or objections regarding the language of this proceeding.

Having considered all the matters above, the Panel determines under paragraph 11(a) of the Rules that the language of the proceeding shall be English.

### **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 3.0](#), section 1.7.

The Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Disputed Domain Name completely reproduces the Complainant’s BOURSORAMA Trademark in combination with letter “s”, two hyphens, geographical abbreviation “fr”, and the gTLD “.store”. According to the [WIPO Overview 3.0](#), section 1.8, where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element. In this case, the addition of the letter “s” and the country code “fr”, to the BOURSORAMA Trademark does not prevent a finding of confusing similarity.

According to the [WIPO Overview 3.0](#), section 1.11, the applicable gTLD in a domain name (e.g., “.com”, “.club”, “.nyc”) is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test.

Furthermore, the use of hyphens in the Disputed Domain Name is irrelevant in a finding of confusing similarity as the BOURSORAMA Trademark is recognizable within the Disputed Domain Name.

Accordingly, the Panel finds that the Disputed Domain Name is confusingly similar to the Complainant’s BOURSORAMA Trademark pursuant to paragraph 4(a)(i) of the Policy.

### **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.

Although 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 difficult 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 (although the burden of

proof always remains on the complainant). 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 available 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 such as those enumerated in the Policy or otherwise.

There is no evidence that the Complainant has licensed or otherwise permitted the Respondent to use its BOURSORAMA Trademark or to register the Disputed Domain Name which is confusingly similar to the BOURSORAMA Trademark. There is also no evidence that the Respondent is commonly known by the Disputed Domain Name.

The Panel is of opinion that there is no evidence that the Respondent is using the Disputed Domain Name to offer bona fide goods or services or making a legitimate noncommercial or fair use. On the contrary, as at the dates of filing of the Complaint and this Decision the Disputed Domain Name resolves to an inactive website.

Moreover, in accordance with the [WIPO Overview 3.0](#), section 2.5.1, even where a domain name consists of a trademark plus an additional term, UDRP panels have largely held that such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner. The addition of the term "fr", which is the two-letter country code for France where the Complainant has a primary place for its business and has a website in the French language tailored to French customers, to the Complainant's BOURSORAMA Trademark in the Disputed Domain Name, is further evidence, that the Respondent was very well aware of the Complainant's BOURSORAMA Trademark and business at the time of registration of the Disputed Domain Name and has done so for the only purpose of creating an impression that the Disputed Domain Name is connected with the Complainant's BOURSORAMA Trademark.

The Respondent did not file any response to the Complaint and did not participate in this proceeding, as such, the Respondent did not present any evidence for supporting any rights or legitimate interests in the Disputed Domain Name.

In view of the foregoing, the Panel finds that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name and that the Complainant succeeds under the second element of paragraph 4(a) of the Policy.

### **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.

In the present case, the Panel comes to the conclusion that the Disputed Domain Name was registered and is being used in bad faith in view of the following. The Complainant obtained the registration of the BOURSORAMA Trademark more than 23 years earlier than the Respondent registered the Disputed Domain Name in 2024. Taking into account all circumstances of this case, the Panel finds that the Respondent was very well aware of the Complainant's business and its BOURSORAMA Trademark when registering the confusingly similar Disputed Domain Name that completely incorporates the Complainant's BOURSORAMA Trademark. The Panel considers it is obvious bad faith that the Respondent deliberately chose the Disputed Domain Name to create a likelihood of confusion with the Complainant's BOURSORAMA Trademark, so as to create a false association or affiliation with the Complainant.

Moreover, while the Disputed Domain Name resolves to an inactive website, it has been established that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding. Section 3.3 of the [WIPO Overview 3.0](#). Given the Complainant's well-reported involvement and reputation in the financial industry, the composition of the Disputed Domain Name, such passive holding does not prevent a finding of bad faith.

Furthermore, taking into account that MX records on the server hosting the Disputed Domain Name have been activated suggests that the Disputed Domain Name may be actively used for email purposes. Noting the composition of the Disputed Domain Name, the Panel is of the opinion that recipients of any such emails would be under the impression that the emails are associated with or endorsed by the Complainant.

In view of the absence of any evidence to the contrary and that the Respondent did not file any response to claim otherwise, the Panel concludes that the Respondent has registered and is using the Disputed Domain Name in bad faith.

## 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 <s-boursorama-fr.store> be transferred to the Complainant.

*/Mariia Koval/*

**Mariia Koval**

Sole Panelist

Date: June 6, 2024