Panel Decision for dispute CAC-ADREU-007345

Case number	CAC-ADREU-007345
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Domain names	boursovers.eu

Case administrator

	Aneta Jelenová (Case admin)

Complainant

Organization	BOURSORAMA SA

Respondent

Name	Francois Tumerelle

INSERT INFORMATION ABOUT OTHER LEGAL PROCEEDINGS THE PANEL IS AWARE OF WHICH ARE PENDING OR DECIDED AND WHICH RELATE TO THE DISPUTED DOMAIN NAME

None

FACTUAL BACKGROUND

The Complainant is a European company named Boursorama S.A., founded in 1995 and having an address in France. Its business includes online brokerage, financial information on the Internet and online banking.

Nothing of significance is known about the Respondent except for the contact details provided for the registration of the Disputed domain name.

The Disputed domain name <BOURSOVERS.EU> was registered on October 22, 2016 in the name of François Tumerelle, with an address in France.

The Disputed domain name resolves to a website that displays the title Boursorama Banque with apparent login facilities requiring a name and password.

A. COMPLAINANT

The Complainant contends that it owns the following trade marks:

BOURSORAMA, European trade mark, filed July 13, 2000, registered October 19, 2001, registration number 001758614, classes 9, 16, 35, 36, 38, 41, 42;

BOURSORAMA, National Institute of Industrial Property (France), registered March 13, 1998, registration number 98723359, classes 9, 16, 35, 36, 38, 42;

BOURSO, National Institute of Industrial Property (France), registered February 22, 2000, registration number 3009973, classes 9, 35, 36, 38, 41, 42.

The Complainant also owns domain names including <boursorama.com>.

The Complainant says the Disputed domain name <boursovers.eu> is confusingly similar to the trade marks in which it has rights and to its BOURSORAMA branded services. The substitution of the ending of BOURSORAMA to make BOURSOVERS in the disputed domain name does not detract from confusing similarity with the trade marks BOURSO and BOURSORAMA. The trade marks BOURSO and

BOURSORAMA are distinctive words without meaning except to refer to the Complainant. The Complainant submits that the presence of the Top-Level Domain (TLD) .eu is not relevant to the determination of confusing similarity.

The Complainant further contends that the Respondent has no rights or legitimate interests in respect of the Disputed domain name. The Respondent is not affiliated with the Complainant in any way or known by the name of the Complainant. The website to which the Disputed domain name resolves is highly similar to the Complainant's official website and the Respondent must have been aware of the Complainant and its rights.

The Complainant says the Disputed domain name has been used for phishing activities in which Internet users are diverted and deceived, therefore its use cannot be bona fide.

The Complainant also contends that the Disputed domain name was registered and is being used in bad faith. The Disputed domain name leads to a website that pretends to be the official website of the Complainant, the intention of which has been to obtain banking information from the Complainant's customers.

B. RESPONDENT

The Respondent did not file a formal response.

DISCUSSION AND FINDINGS

In accordance with Article 21(1) of the Commission Regulation (EC) No. 874/2004 (the "Regulation"), the Complainant, in order to succeed, is required to prove that:

(i) The domain name is identical or confusingly similar to a name in respect of which a right is recognised or established by national and/or Community law and; either

(ii) The domain name has been registered by the Respondent without rights or legitimate interest in the name; or

(iii) The domain name has been registered or is being used in bad faith.

The Complainant has produced copies of documentary evidence satisfactory to the Panel showing its ownership of and rights in the Community and French trade marks BOURSORAMA and the French trade mark BOURSO. The Disputed domain name is <boursovers.eu>, comprising the word "vers" (meaning "towards" or "verse" in French) added to the Complainant's trade mark BOURSO, which in the finding of the Panel creates confusing similarity by giving an impression that it is about or connected with the Complainant. The Panel also finds the Disputed domain name to be confusingly similar to the Complainant's distinctive trade mark BOURSORAMA. Accordingly the Panel finds the Disputed domain name to be confusingly similar to a name in which the Complainant has established a satisfactory right within the meaning of Article 21(1) of the Regulation.

The Complainant has asserted a prima facie case to the effect that the Respondent is not known to or affiliated with the Complainant, has no business relationship and has no right or legitimate interest in the Disputed domain name.

Article 21(2) of the Regulation provides for the Respondent to demonstrate a legitimate interest in a disputed domain name where, for example, but without limitation:

(a) prior to any notice of an alternative dispute resolution (ADR) procedure, the holder of a domain name has used the domain name or a name corresponding to the domain name in connection with the offering of goods or services or has made demonstrable preparation to do so; or

(b) the holder of a domain name, being an undertaking, organisation or natural person, has been commonly known by the domain name, even in the absence of a right recognised or established by national and/or Community law; or

(c) the holder of a domain name is making a legitimate and non-commercial or fair use of the domain name, without intent to mislead consumers or harm the reputation of a name in which a right is recognised or established by national law and/or Community law.

The Respondent has made no submission. The evidence in the form of screen captures shows that the Disputed domain name has resolved to a website that copied the Complainant's own authentic website at <boursorama.com>, except only for a trivial rearrangement of the representation of a keypad, and in the circumstances, showed no evidence of any genuine offering of goods or services. There is no evidence that the Respondent has been commonly known by the Disputed domain name. Its use has not been legitimately non-commercial or fair since it resolved to a copy of the Complainant's website. The Panel finds for the Complainant in the terms of Article 21(1)(a) of the Regulation and paragraph B11(d)(1)(ii) of the Rules.

Whilst it is not strictly necessary to consider whether the Disputed domain name has been registered or is being used in bad faith, the Panel will do so in the alternative.

Under Article 21(3) of the Regulation, the following circumstances may be evidence of the registration or use of a domain name in bad faith:

(a) circumstances indicating that the domain name was registered or acquired primarily for the purpose of selling, renting, or otherwise transferring the domain name to the holder of a name, in respect of which a right is recognised or established by national and/or Community law, or to a public body; or

(b) the domain name has been registered in order to prevent the holder of such a name in respect of which a right is recognised or established by national and/or Community law, or a public body, from reflecting this name in a corresponding domain name, provided that:

(i) a pattern of such conduct by the registrant can be demonstrated; or

(ii) the domain name has not been used in a relevant way for at least two years from the date of registration; or

(iii) in circumstances where, at the time the ADR procedure was initiated, the holder of a domain name in respect of which a right is recognised or established by national and/or Community law or the holder of a domain name of a public body has declared his/its intention to use the domain name in a relevant way but fails to do so within six months of the day on which the ADR procedure was initiated;

(c) the domain name was registered primarily for the purpose of disrupting the professional activities of a competitor; or

(d) the domain name was intentionally used to attract Internet users, for commercial gain, to the holder of a domain name website or other on-line location, by creating a likelihood of confusion with a name on which a right is recognised or established by national and/or Community law or a name of a public body, such likelihood arising as to the source, sponsorship, affiliation or endorsement of the website or location or of a product or service on the website or location of the holder of a domain name; or

(e) the domain name is a personal name for which no demonstrable link exists between the Respondent and the domain name registered.

A comparison between the Complainant's authentic website, and the one to which the Disputed domain name resolves, is revealing. The Complainant's website has a backdrop of distant snow-capped mountains and an extensive cloud effect. Central is a large box and randomised keypad headed Boursorama Banque for customers login purposes, for which they must furnish their identification name, with an option to have it remembered, and password. The Respondent's website is to all intents and purposes identical, with the same panoramic backdrop and sky, and virtually the same login box asking for identification and password, the randomised keypad headed significantly Boursorama Banque, and an option for the customer identification to be remembered.

The Respondent's effective reproduction of the Complainant's website, replete with the heading Boursorama Banque, eliminates any realistic doubt that the Respondent must have been aware of the Complainant's name, banking business and website. Furthermore the design of the Respondent's website so comprehensively copies the Complainant's website that it would be more probable than not, in the Panel's finding, that a visitor familiar with the authentic website of Boursorama Banque would likely be confused into believing they had returned to the Complainant's website. By providing their Boursorama Banque identification and password to the website of the Disputed domain name, a customer would have been deceived into revealing to the Respondent the confidential information needed to access a bank account. It is not realistically plausible that this activity has been undertaken by the Respondent without advantageous intent.

The Respondent's activity, as found by the Panel on the evidence and on the balance of probabilities, corresponds to what is currently known as phishing. The Respondent's attempt to attract Internet users is found to have been intentional, by confusion with the trade mark in which the Complainant has the requisite rights, pursuant to ultimate commercial gain. It is no consequence that the visitor might quickly realise they had arrived at a website that was not the Complainant's authentic website because the confusion would already have occurred. The Panel finds the Disputed domain name to have been registered and used by the Respondent in bad faith under Article 21(3)(d) of the Regulation and paragraph B11(f)(4) of the Rules.

The provision under Article 21(3)(c) of the Regulation, that the Disputed domain name was registered primarily for the purpose of disrupting the professional activities of a competitor, does not preclude such a finding as an additional ground of bad faith. The Panel finds on the evidence that the inducement of visitors to divulge confidential banking information through the Respondent's website, which would require remedial measures on the part of the Complainant, cannot have been other than disruptive to, and competitive with, the professional activities of the Complainant. Accordingly the Panel finds the Respondent to have acted in bad faith within the meaning of Article 21(3)(c) of the Regulation and paragraph B11(f)(3) of the Rules.

Thus the Respondent is found to be without rights in the Disputed domain name, and, in the alternative, to have registered and used the Disputed domain name in bad faith.

The Complainant has its place of business in France and appears to be an entity eligible to be the holder of a .eu domain name in accordance with Article 4(2)(b)(i) of Regulation 733/2002.

For all the foregoing reasons, in accordance with Paragraph B12 of the ADR Rules, the Panel orders that the Disputed domain name BOURSOVERS.EU be transferred to the Complainant.

DECISION

For all the foregoing reasons, in accordance with Paragraphs B12 (b) and (c) of the Rules, the Panel orders that the Disputed domain name <BOURSOVERS.EU> be transferred to the Complainant

PANELISTS

Name	**Dispute Science Ltd, Dr. Clive Trotman**

DATE OF PANEL DECISION 2017-02-02

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: boursovers.eu

II. Country of the Complainant: France, country of the Respondent: France

III. Date of registration of the domain name: 22 October 2016

IV. Rights relied on by the Complainant (Art. 21 (1) Regulation (EC) No 874/2004) on which the Panel based its decision:
1. word trademark registered in France, reg. No. 3009973, for the term BOURSO, registered on 22 February 2000 in respect of goods and services in classes 9, 35, 36, 38, 41, 42
2. word trademark registered in France, reg. No. 98723359, for the term BOURSORAMA, registered on 13 March 1998 in respect of goods and services in classes 9, 16, 35, 36, 38, 42
3. word CTM, reg. No. 1758614, for the term BOURSORAMA, filed on 13 July 2000, registered on 19 October 2001 in respect of goods and services in classes9, 16, 35, 36, 38, 41, 42

V. Response submitted: No

VI. Domain name/s is confusingly similar to the protected right/s of the Complainant

VII. Rights or legitimate interests of the Respondent (Art. 21 (2) Regulation (EC) No 874/2004):
1. No

2. Respondent has no connection with the Complainant

VIII. Bad faith of the Respondent (Art. 21 (3) Regulation (EC) No 874/2004):
1. Yes
2. Intention to attract by confusion for commercial gain; intention to disrupt the Complainant’s business and disruption of the Complainant's business by phishing for client login details

IX. Other substantial facts the Panel considers relevant:

X. Dispute Result: Transfer of the Disputed domain name

XI. Procedural factors the Panel considers relevant:

XII. [If transfer to Complainant] Is Complainant eligible? Yes