# Panel Decision for dispute CAC-ADREU-007513

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| Case number | CAC-ADREU-007513 |
| Time of filing | 2017-09-13 08:44:04 |
| Domain names | clients-boursorama.eu |

## Case administrator

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| | Aneta Jelenová (Case admin) |

## Complainant

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| Organization | BOURSORAMA SA |

## Respondent

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| Organization | chuck |

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

The Panel is not aware of any other legal proceedings which relate to the disputed domain name.

FACTUAL BACKGROUND

The Complainant, Boursorama S.A. provides services in the fields of online brokerage, the provision of financial information and online banking. It was founded in 1995 and is based in France. Its website at www.boursorama.com was the first French online banking platform. As at late 2015, it had over 757,000 customers.

The Complainant is the owner of a number of trade mark registrations for BOURSORAMA, the first of which was registered in France on March 13, 1998, registration number 98723359, in classes 9, 16, 35, 36, 38 and 42. It also has an EU TM for BOURSORAMA, registration number 001758614, registered on October 19, 2001 in classes 9, 16, 35, 36, 38, 41 and 42. It owns a number of domain names which include its BOURSORAMA trade mark, including <boursorama.com>, registered on March 13, 1998, and <clients-boursorama.com>, registered on March 23, 2017.

The Respondent registered the domain name <clients-boursorama.eu> (“the disputed domain name”) on June 3 2017. A screen print of the website to which the disputed domain name pointed, as at June 6, 2017, establishes that it contained an image of a login screen for Boursorama Banque which is identical in appearance to the portal used by the Complainant’s banking customers when logging into the Complainant’s website

On June 6, 2017, the Complainant submitted its Complaint to the ADR Center for .eu (“the ADR Center” which was deemed filed on June 8, 2017. On June 9, 2017, the ADR Center verified that the Complaint had been filed in accordance with the ADR Rules and the ADR Supplemental Rules and notified the Respondent of the commencement of the proceedings against it. The Respondent was notified that, in accordance with Paragraph B3 (a) of the Rules, its Response was required within 30 working days from delivery of the notification. On August 8, 2017, no Response having been delivered by the Respondent, the Respondent was notified by the ADR Center of its default.

On August 16, 2017, after receiving from Antony Gold the Statement of Acceptance and Declaration of Impartiality, the ADR Center appointed Antony Gold as a Single Member Panel in these proceedings. On August 21,2017, the ADR Center transmitted the case file to the Panel.

A. COMPLAINANT

The Complainant says that the disputed domain name is confusingly similar to a trade mark, BOURSORAMA, in which it has rights. In support of this claim, the Complainant has supplied details about of its many registered trade marks for BOURSORAMA. Specific information about two of the Complainant’s trade marks is set out above.

The Complainant says that the addition of the generic term “clients” before its BOURSORAMA trade mark, coupled with a hyphen, does not serve to prevent the overall impression of the disputed domain name from being confusingly similar to the Complainant’s trade mark. It points out that BOURSORAMA is a distinctive term with no meaning in English or French or, so far as the Complainant is aware, any other language. The confusing similarity is heightened, the Complainant says, because the Complainant uses the sub-domain “clients.boursorama.com” as the account service connection page for its customers. Not only is this sub-domain very similar to the disputed domain name but the web page to which the disputed domain name points uses the Complainant’s figurative BOURSORAMA trade mark and the same graphical design as the login page which is used by the Complainant’s customers.

The Complainant also asserts that the Respondent has no rights or legitimate interests in respect of the domain name. The Complainant draws attention to the decision of the panel in WIPO Case No. D2003-0455, Croatia Airlines d.d. v. Modern Empire Internet Ltd which held that, once a complainant had made out a prima facie case that a respondent lacked rights or legitimate interests in a domain name, the burden shifted to the respondent to show that it had rights or legitimate interests. This was a decision under the Uniform Dispute Resolution Policy (“UDRP”) but as the considerations relating to the presence or absence of a legitimate interest are substantially the same under the ADR Rules, the Complainant suggests that the same approach be taken here.

The Complainant says that the Respondent is not known by the name “Boursorama”, that the Respondent is not affiliated with it nor authorized by the Complainant in any way to use its trade mark, nor does the Respondent have any connection with the Complainant. Moreover, the website to which the disputed domain name points displays content which is highly similar to the official website of the Complainant and uses both the Complainant’s figurative trade marks and its general appearance as well as a false account connection page. The Complainant says that an intention by the Respondent to divert or deceive Internet users by using its trade marks does not constitute a bona fide offering of goods and services nor is it non-commercial or fair use. The Complainant says that the disputed domain name has been registered as part of a fraudulent scheme to deceive Internet users into providing false information. It says that the circumstances of this case are similar to those considered by the panel in Wells Fargo & Co. v. Nadim, NAF decision number 127720, where the respondent’s use of the complainant’s mark to redirect Internet users to a domain name featuring magazine subscriptions was found to be neither a bona fide offering of goods or services nor a legitimate non-commercial or fair use of the domain name.

Lastly, the Complainant says that the disputed domain name was registered and used by the Respondent in bad faith. It says that, given the distinctive character of its BOURSORAMA trade mark, it is reasonable to infer that the Respondent was aware of the Complainant and its business as at the date of registration of the disputed domain name. The Complainant says that the disputed domain name was registered in an effort to take advantage of the goodwill the Complainant has built up in its BOURSORAMA trade mark and to benefit the Respondent by diverting Internet users seeking the Complainant by pretending to be the Complainant’s official website. For these reasons the Complainant says that the Respondent has registered the disputed domain name in bad faith and is also using it in bad faith in order to attract Internet users to its website by creating a likelihood of confusion with the Complainant as to the source, affiliation or endorsement of its website.

## B. RESPONDENT

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

## DISCUSSION AND FINDINGS

Article 21,1 of Commission Regulation (EC) No 874/2004 and paragraph B 11 (d) (1) of the ADR Rules provide that a registered domain name shall be subject to revocation if each of the following elements is established;

(a) the domain name is identical or confusingly similar to a trademark or service mark in which a complainant has a rights which is recognised or established the national law of a Member state and/or Community law and; either

(b) the domain name has been registered by the respondent without rights or legitimate interests in the name; or

(c) the domain name has been registered or is being used in bad faith.

Paragraph B 10 (a) of the ADR Rules provides that the Panel may consider the failure to comply with the time limits established by the ADR Rules as grounds to accept the claims of the other party. Paragraph B 10 (b) of the ADR Rules states that if a party does not comply with any provision of, or requirement under, the Rules or the Supplemental Rules or any request from the Panel, the Panel shall draw such inferences therefrom as it considers appropriate.

1 Identical or confusingly similar to the Complainant´s trademark

The details the Complainant has provided of its many registered trade marks for BOURSORAMA, including the two trade marks in respect of which full details are provided above, establish that it has rights in BOURSORAMA.

For the purpose of considering whether the disputed domain name is confusingly similar to the Complainant's trade mark, it is usual to disregard the Top Level Domain ("TLD") suffix, .eu. The disputed domain name comprises the word "clients" followed by a hyphen and then the Complainant's BOURSORAMA trade mark. In the context of a business which is known to provide banking facilities to customers (also often termed "clients"), the use of "clients" in the disputed domain name does not serve to distinguish it from the Complainant's trade mark. Indeed, the use of "clients" in combination with the Complainant's trade mark accentuates the likelihood that Internet users will infer some sort of connection between the disputed domain name and the Complainant, particularly with respect to its banking services.

The Panel accordingly finds that the disputed domain name is confusingly similar to a name in which the Complainant has rights.

2 No rights or legitimate interests

Paragraph B11 (e) of the ADR Rules lists examples of circumstances, without limitation, by which a respondent may demonstrate rights or legitimate interests in a disputed domain name, namely that:
(i) before any notice of the dispute, the respondent can show use of 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

(ii) the respondent can show that it has been commonly known by the domain name, even if no trade mark or service mark rights have been acquired; or

(iii) a respondent is making a legitimate and noncommercial or fair use of the domain name, without intent to mislead consumers or harm the reputation of a name in which a right is recognized or established by national law and/or Community law.

As the Complainant has said, it is generally accepted by Panels that if the Complainant is able to make out a prima facie case that the Respondent does not have a legitimate interest in the disputed domain name, the burden shifts to the Respondent to show that it does.

There is no information before the Panel which would suggest that the Respondent has any basis for asserting a right or legitimate interest in the disputed domain name. Indeed, the evidence points strongly to the Respondent having no such basis. Specifically, its offering of services is plainly not in good faith, it is not known by the disputed domain name and it is not making a legitimate and non-commercial or fair use of the disputed domain name. As no response of any sort has been served by the Respondent, the Panel has no information which might lead it to revise that assessment Accordingly, the Panel finds that the Respondent has no rights or legitimate interest in respect of the disputed domain name.

3 Registered and used in bad faith

Although, under the ADR Rules, the need to establish bad faith registration and use is an alternative requirement to showing no rights or legitimate interests on the part of the Respondent and not an additional requirement, the Panel will briefly consider this issue. It accepts the Complainant's submission that its BOURSORAMA trade mark has no known meaning in any language. Moreover, the purpose to which the disputed domain name has been put by the Respondent very shortly after the date of registration, namely to point to a website which masquerades as a portal for the Complainant's online banking facility clearly indicates an awareness by the Respondent of the Complainant and its online banking services as well an intention on the part of the Respondent to use the disputed domain name for this purpose as at the date of registration. Use of the disputed domain name for these purposes is considered bad faith use.

Paragraph B11 (f) sets out a non-exhaustive list of circumstances in which will be considered bad faith registration and use of a domain name. Paragraph B11(f) (4) provides that such evidence may be found if a disputed domain name was intentionally used to attract Internet users to a respondent's website by creating a likelihood of confusion with a name on which a right is recognised or established, by national or Community law, as to the source, sponsorship, affiliation or endorsement of the respondent's website or service on the website.

The Respondent's conduct falls squarely within these provisions; the website to which the disputed domain name has pointed has been designed to capture web traffic from Internet users who have been seeking the Complainant's online banking portal. The design of the website indicates the Respondent's intention to confuse such users into thinking that the Respondent's website is operated by, or with the authority of, the Complainant.

Accordingly the Panel finds that the disputed domain name was registered and used by the Respondent in bad faith.

The Panel therefore finds that all the requirements of Article 21, para. 1 of the Commission Regulation (EC) No 874/2004 and of paragraph B 11(d)(1) of the ADR Rules are met.

DECISION

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

## PANELISTS

| Name | **Antony Gold** |
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DATE OF PANEL DECISION 2017-09-13

## Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: clients-boursorama.eu

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

III. Date of registration of the domain name: 3, June, 2017

IV. Rights relied on by the Complainant (Art. 21 (1) Regulation (EC) No 874/2004) on which the Panel based its decision:

The Complainant is the owner of a number of multiple trade mark registrations for BOURSORAMA, the first of which was registered in France on March 13, 1998, registration number 98723359, in classes 9, 16, 35, 36, 38 and 42. It also has an EU TM for BOURSORAMA, registration number 001758614, registered on October 19, 2001 in classes 9, 16, 35, 36, 38, 41 and 42.

V. Response submitted: No

VI. Domain name is confusingly similar to the protected rights of the Complainant

VII. Rights or legitimate interests of the Respondent (Art. 21 (2) Regulation (EC) No 874/2004):
1. No
2. Domain name being used for fraudulent purposes and no evidence that Respondent either known by the Domain Name or authorised by the Complainant to use its trade mark in a domain name.

VIII. Bad faith of the Respondent (Art. 21 (3) Regulation (EC) No 874/2004):
1. Yes
2. The use for which the Domain Name was evidently acquired and the use to which it has been put is to attempt to confuse the Complainant's banking customers into believing that the website to which the Domain Name points is the Complainant's online banking portal.

IX. Other substantial facts the Panel considers relevant: None

X. Dispute Result: Transfer of the disputed domain name

XI. Procedural factors the Panel considers relevant: None

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