Panel Decision for dispute CAC-ADREU-007519

Case number	CAC-ADREU-007519
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Domain names	référenceboursorama.eu

Case administrator

	Aneta Jelenová (Case admin)

Complainant

Organization	BOURSORAMA SA

Respondent

Name	Laurene Corbeil

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 are pending or decided and which relate to the disputed domain name.

FACTUAL BACKGROUND

The Complainant is a French corporation, founded in 1995. It is a pioneer and leader in France in its three core businesses of online brokerage, financial information on the Internet and online banking.
The Complainant owns several trademarks, including the following:

• French Trademark BOURSORAMA, registered under No. 98723359 on March 13th of 1998;
• French Trademark BOUSORAMA BANQUE, registered under No. 3676762 on September 16th of 2009;
• French Trademark Boursorama banque, registered under No. 3370460 on July 13th of 2005; and
• Community Trademark BOURSORAMA, registered under No. 001758614 on October 19th of 2001.

(Together referred to as the “Marks”)

The Complainant also owns a number of domain names, among which the domain name “bousorama.com”, registered since March 1st of 1998.

On June 15th of 2017, the Respondent registered the disputed domain name “référenceboursorama.eu”, hereafter the “Domain Name”, for which the Complainant claims the transfer.

On June 16th of 2017, BOURSORAMA SA (the “Complainant”) filed a complaint against the registration of the Domain Name.

A. COMPLAINANT

1. The Complainant claims that the disputed Domain Name is confusingly similar to the term "BOURSORAMA" contained in the Marks, in which it has prior rights. In support of this claim, the Complainant has supplied details about its Marks. Specific information about some of the Complainant’s Marks are set out above.

The Complainant claims that the addition of the generic term "reference" before its Marks does not serve to prevent the overall impression of the disputed Domain Name from being confusingly similar to the Complainant’s Marks. 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 Complainant details a list of UDPR decisions having confirmed the Complainant's right.

2. 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. The Complainant suggests that the same approach be taken here as the considerations relating to the legitimate interests are substantially the same under the ADR Rules and the UDPR.

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 Marks, nor does the Respondent have any connection with the Complainant.

The Complainant claims that the website in relation with the disputed Domain Name "référenceboursorama.eu" redirects to a registrar parking page. The Respondent is using the URL Address "http://authentificat.référenceboursorama.eu/auth/215467bd40343e4c797345034e2f1ecb/index.php" which appears as an attempt to make a phishing event against the Complainant currently displaying a blank page.

The Complainant asserts that the use of an URL address with the term “authentificat” and “auth” demonstrates an intention to divert or deceive Internet users by using the Marks in the Domain Name. The Complainant draws attention to the decision NAF case FA 758981, Summit Group, LLC v. SLO, Ltd to argue that it does not constitute a bona fide offering of goods and services or a legitimate noncommercial or fair use.

3. Lastly, the Complainant claims that the disputed Domain Name was registered and used by the Respondent in bad faith. It claims that, given the distinctive character of its Marks, it is reasonable to infer that the Respondent was aware of the Complainant´s rights and its business as of 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 Marks. The Complainant says that the Respondent used the Complainant's Marks in the Domain Name associated to the generic term "reference" to unduly benefit from creating a diversion of the internet users of the Complainant. For these reasons, the Complainant concludes 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.

4. The Complainant sought the following remedy: Transfer of the disputed Domain Name to the complainant.

B. RESPONDENT

The Respondent did not reply to the Complainant’s contentions. A notification of Respondent’s Default was sent the 6th of September 2017.

DISCUSSION AND FINDINGS

The Panel has reviewed and considered the parties' submissions, such as they are.

1. No response submitted

The Panel draws attention to paragraph B 10 (a) of the ADR Rules that 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, and to article 22 (10) of Regulation (EC) No. 874/2004 that establishes the following principle: “Failure of any of the parties involved in an ADR procedure to respond within the given deadlines or appear to a panel hearing may be considered as grounds to accept the claims of the counterparty”.

2. Eligibility

The Panel notes that the Complainant satisfies the general eligibility criteria for registration according to paragraph 4 (2) (b) of Regulation (EC) No. 733/2002

3. Legal basis

In order for the Complaint to succeed, the Complainant must show, in accordance with Article 21 (1) of Commission Regulation (EC) No. 874/2004 and Paragraph B11(d)(1) of the ADR Rules, that:

(a) the disputed domain name is identical with or confusingly similar to a name in respect of which a right is recognized or established by 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 interest in the name; or

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

4. The issue of speculative or abusive registration

4.1. Identical or confusingly similar to the Complainant´s trademark

The first requirement is that the Domain Name is identical or confusingly similar to a name in respect of which a right is recognized or established by the national law of a Member State and/or Community law. The Panel finds as follows:

- The details the Complainant has provided of its many prior registered Marks establish that it has rights in the name "BOURSORAMA".

- The disputed Domain Name comprises the Complainant's name "BOURSORAMA" as they include the name "BOURSORAMA" in its entirety and then the mere addition of the generic term and non-distinctive word "référence".

- The name "BOURSORAMA" is a distinctive term that has no meaning in English, French, so far as the Panel is aware, in any other language.

Based on the foregoing consideration, the disputed Domain Name is confusingly similar to name (Marks) in which the Complainant has right. The Panel concludes that the requirements under Article 21 (1) (a) of the Regulation (EC) No. 874/2004 are met.

4.2. No rights or legitimate interests

The second (alternative) requirement is that the Domain Name has been registered by the Respondent without rights or legitimate interest in the name. The Panel finds as follow:

- The Respondent has been duly given a proper chance to provide argumentation and evidence on having rights or legitimate interest in the disputed Domain Name, but the Respondent has not made any submissions in this respect. The Respondent has thus failed to present any evidence of rights or legitimate interest in the disputed Domain Name, although it was duly given a chance to do so.

- 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.

- It is generally accepted 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. The Complainant has invoked different elements, making out a prima facie case that the Respondent does not have a legitimate interest in the disputed Domain Name. Among other things, the Complainant has shown that the Respondent is not affiliated with or authorized by the Complainant in any way.

- 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. Moreover, paragraph B 10 (a) of the ADR Rules and the article 22 (10) of Regulation (EC) No. 871/2004 provide 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.

The Panel finds that the Respondent has no rights or legitimate interest in respect of the disputed Domain Name.

Based on the foregoing, the Panel concludes that it finds the requirements to conclude to a speculative or abusive registration (article 21 (1) of the Regulation (EC) No. 874/2004) are already met.

4.3. Bad faith

The third (alternative) requirement is that the Domain Name has been registered or is being used in bad faith. The Panel finds as follows:

- 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 registration or the use of the Domain Name in bad faith does not have to be examined since the other criteria to revoke speculative or abusive registration (Article 21 (1) (a) of the Regulation (EC) No. 874/2004) are fulfilled.

DECISION

For all the foregoing reasons, in accordance with Paragraphs B12 (b) and (c) of the Rules, the Panel orders that

the domain name RÉFÉRENCEBOURSORAMA.EU be transferred to the Complainant

PANELISTS

Name	**Paul Van den Bulck**

DATE OF PANEL DECISION 2017-09-26

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: référenceboursorama.com

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

III. Date of registration of the domain name: June 15th of 2017

IV. Rights relied on by the Complainant (Art. 21 (1) Regulation (EC) No 874/2004) on which the Panel based its decision:
1. French Trademark BOURSORAMA, registered under No. 98723359 on March 13th of 1998;
2. French Trademark BOUSORAMA BANQUE, registered under No. 3676762 on September 16th of 2009;
3. French Trademark Boursorama banque, registered under No. 3370460 on July 13th of 2005;
4. Community Trademark BOURSORAMA, registered under No. 001758614 on October 19th of 2001

V. Response submitted: No

VI. Domain name 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. Why: The Complainant states, among other things, that the Respondent is not affiliated with or authorized by the Complainant in any way. In absence of a Response, the Panel finds that the Complainant has made a prima facie case that the Respondent has no rights or legitimate interest in the disputed Domain Name.

VIII. Bad faith of the Respondent (Art. 21 (3) Regulation (EC) No 874/2004):
1. Bad faith does not have to be examined
2. Why: The registration or the use of the Domain Name in bad faith does not have to be examined since the criteria to revoke speculative or abusive registration (Article 21 (1) (a) of the Regulation (EC) No. 874/2004) are fulfilled.

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. Is Complainant eligible? Yes