

## **ADMINISTRATIVE PANEL DECISION**

Boursorama S.A. v. sharon dodson  
Case No. D2022-2074

### **1. The Parties**

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

The Respondent is sharon dodson, Germany.

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

The disputed domain name <messagerie-fr-boursorama.com> is registered with PSI-USA, Inc. dba Domain Robot (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 8, 2022. On June 8, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 9, 2022, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on June 10, 2022 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 13, 2022.

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 16, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 6, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 7, 2022.

The Center appointed Johan Sjöbeck as the sole panelist in this matter on July 12, 2022. 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 a financial company that offers banking services.

The Complainant has submitted evidence that it is the owner of several trademark registrations including the European Union trademark registration for BOURSORAMA (word), with registration number 001758614 and registration date October 19, 2001.

The disputed domain name was registered by the Respondent on June 6, 2022. The Complainant has provided evidence that the disputed domain name has active MX-records and resolves to a parking page.

#### 5. Parties' Contentions

##### A. Complainant

The Complainant states that the disputed domain name is confusingly similar to its trademark BOURSORAMA. The addition of the terms "messagerie" and "fr" does not change the overall impression of the designation as being connected to the Complainant's trademark BOURSORAMA. It does not prevent the likelihood of confusion between the disputed domain name and the Complainant and its trademark. It is well-established that "a domain name that wholly incorporates a Complainant's registered trademark may be sufficient to establish confusing similarity for purposes of the UDRP". See *Dr. Ing. h.c. F. Porsche AG v. Vasily Terkin*, WIPO Case No. [D2003-0888](#).

Moreover, the Complainant contends that the addition of the generic Top-Level Domain suffix ".com" does not change the overall impression of the designation as being connected to the Complainant's trademark BOURSORAMA. It does not prevent the likelihood of confusion between the disputed domain name and the Complainant's trademark.

The Complainant asserts that the Respondent is not identified in the Whois-database as the disputed domain name. Past UDRP panels have held that a Respondent was not commonly known by a disputed domain name if the Whois information was not similar to the disputed domain name.

The Respondent is unknown to the Complainant. The Complainant contends that the Respondent is not affiliated with nor authorized by the Complainant in any way. The Complainant argues that the Respondent has no rights or legitimate interests in respect of the disputed domain name. 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 trademark BOURSORAMA, or apply for registration of the disputed domain name.

The Complainant contends that the Respondent did not make any use of disputed domain name since its registration and that the Respondent has no demonstrable plan to use the disputed domain name. It demonstrates a lack of legitimate interests in respect of the disputed domain name except in order to create a likelihood of confusion with the Complainant and its trademark.

The disputed domain name includes the well-known and distinctive trademark BOURSORAMA. Consequently, it is reasonable to infer that the Respondent has registered the disputed domain name with full knowledge of the Complainant's trademark.

The Complainant also refers to *Boursorama SA v. Estrade Nicolas*, WIPO Case No. [D2017-1463](#), where the Panel stated "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".

MX servers are configured which suggests that the disputed domain name may be actively used for email purposes. Furthermore, the disputed domain name resolves to a parking page. The Complainant contends that the Respondent has not demonstrated any further 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, such as by being a passing off, an infringement of consumer protection legislation, or an infringement of the Complainant's rights under trademark law. The incorporation of a famous mark into a domain name, coupled with an inactive website, may be evidence of bad faith registration and use.

## **B. Respondent**

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

## **6. Discussion and Findings**

According to paragraph 4(a) of the Policy, the Complainant must prove each of the following:

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

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

The Complainant is, according to the submitted evidence, the owner of the registered trademark BOURSORAMA. The disputed domain name incorporates the trademark in its entirety with the addition of the French term "messengerie" which can be translated to "messaging" and the letters "fr" which is the country code for France. In the present case, the Complainant's trademark is readily recognizable in the disputed domain name and neither the addition of the term "messengerie" or the letters "fr" to the BOURSORAMA trademark in the disputed domain name prevent a finding of confusing similarity.

Having the above in mind, the Panel concludes that the disputed domain name is confusingly similar to the Complainant's trademarks BOURSORAMA and that the Complainant has proven the requirement under paragraph 4(a)(i) of the Policy.

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

The Complainant must show that the Respondent has no rights or legitimate interests with respect to the disputed domain name. The Respondent may establish rights or legitimate interests in the disputed domain name by demonstrating in accordance with paragraph 4(c) of the Policy any of the following:

- (i) the Respondent uses or has made 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 or services prior to the dispute; or
- (ii) the Respondent is commonly known by the disputed domain name, even if the Respondent has not acquired any trademark 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.

The Complainant's trademark registration for BOURSORAMA predates the Respondent's registration of the disputed domain name. The Complainant has not licensed, approved or in any way consented to the Respondent's registration and use of the trademark in the disputed domain name.

There is no evidence in the case file indicating that the Respondent has used or made any preparations to use the disputed domain name in connection with a *bona fide* offering of goods or services prior to the dispute. The Complainant has submitted evidence that the disputed domain name has active MX-records and redirects to a parking page.

In addition, the Panel finds that the disputed domain name carries a risk of implied affiliation with the Complainant. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 2.5.1.

Although given the opportunity, the Respondent has not rebutted the Complainant's *prima facie* case. The Respondent has not submitted any evidence indicating that it is the owner of any trademark or that it is commonly known by the disputed domain name. Furthermore, there is no evidence indicating that the Respondent intends to make 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.

The Respondent has failed to invoke any circumstances, which could demonstrate, pursuant to paragraph 4(c) of the Policy or otherwise, any rights or legitimate interests in respect of the disputed domain name. Thus, there is no evidence in the case that refutes the Complainant's submissions, and the Panel concludes that the Complainant has also proven the requirement under paragraph 4(a)(ii) of the Policy.

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

Under paragraph 4(b) of the Policy, evidence of bad faith registration and use include without limitation:

- (i) circumstances indicating the disputed domain name was registered or acquired primarily for the purpose of selling, renting, or otherwise transferring the disputed domain name registration to the owner of a trademark or to a competitor of the trademark owner, for valuable consideration in excess of the documented out-of-pocket costs directly related to the disputed domain name; or
- (ii) circumstances indicating that the disputed domain name was registered in order to prevent the owner of a trademark from reflecting the mark in a corresponding disputed domain name, provided there is a pattern of such conduct; or
- (iii) circumstances indicating that the disputed domain name was registered primarily for the purpose of disrupting the business of a competitor; or
- (iv) circumstances indicating that the disputed domain name has intentionally been used in an attempted to attract, for commercial gain, Internet users to the Respondent's website or other online location, by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of the website or location or of a product or service on that website or location.

The Complainant alleges that the Respondent knew or should have known of the Complainant's rights when registering the disputed domain name. The Complainant is based in France and the disputed domain name incorporates the Complainant's trademark and the letters "fr", the country code for France. As previously mentioned, the Complainant's trademark registration for BOURSORAMA predates the registration of the disputed domain name. The Panel notes that the Complainant's trademark is considered well-known according to previous UDRP decisions cited by the Complainant.

Furthermore, the Complainant has provided evidence that the disputed domain name has active MX-records and that it resolves to a parking website. On July 22, 2022, the Panel took upon itself (section 4.8 of the [WIPO Overview 3.0](#)) to visit the website to which the disputed domain name resolves and noted that the

website was blocked by the web browser due to malware or phishing and blacklisted by the search engine as an unsafe website with a warning that visitors may be lured into sharing personal info or downloading software. Panels have held that the use of a domain name for purposes other than to host a website may constitute bad faith. Such purposes include sending email, phishing, identity theft, or malware distribution. See section 3.4 of the [WIPO Overview 3.0](#).

In the absence of any evidence to the contrary, the Panel is persuaded on the balance of probabilities that the Respondent registered and used the disputed domain name with the Complainant's trademark and business in mind. The fact that the Respondent has not bothered to respond to the Complainant's contentions is another factor to weigh in the balance. There is no evidence in the case file that refutes the Complainant's submissions.

The Panel concludes that the Complainant has proved the requirements under paragraph 4(b) of the Policy and that the disputed domain name has been registered and used 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 <messagerie-fr-boursorama.com> be transferred to the Complainant.

*/Johan Sjöbeck/*

**Johan Sjöbeck**

Sole Panelist

Date: July 26, 2002