

## **ADMINISTRATIVE PANEL DECISION**

TSX Inc. v. Gija Raj, An Zhou Hua Sheng Ri Ji Wang Lao Ke Ji You Xian  
Gong Si  
Case No. D2022-0868

### **1. The Parties**

The Complainant is TSX Inc., Canada, represented by Bereskin & Parr, Canada.

The Respondent is Gija Raj, An Zhou Hua Sheng Ri Ji Wang Lao Ke Ji You Xian Gong Si, United States of America (“United States”).

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

The disputed domain name <tmxapp.com> (the “Domain Name”) is registered with GoDaddy.com, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 11, 2022. On March 14, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On March 15, 2022, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that the 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 March 17, 2022. In accordance with the Rules, paragraph 5, the due date for Response was April 6, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 8, 2022.

The Center appointed Nicholas Smith as the sole panelist in this matter on April 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 Canadian financial services company that, together with its parent company TMX Group Limited, operate the Toronto Stock Exchange and also offer computer software for analyzing and trading in financial products. The Complainant provides these services under the trademark TMX (the "TMX Mark") and a logo ("TMX Logo") consisting a stylized version of the TMX Mark which it displays at its website at "www.tmx.com" (the "Complainant's Website") and on its social media pages. Since 2014, the Complainant has offered a mobile "app" allowing users to manage their investment portfolio on their phones.

The Complainant is the owner of trademark registrations for the TMX Mark in various jurisdictions including a Canadian trademark with a registration date of May 27, 2010 (registration number TMA 767860) and a United States trademark with a registration date of October 11, 2011 (registration number 4036697).

The Domain Name <tmxapp.com> was registered on September 14, 2021. The Domain Name resolves to a website (the "Respondent's Website") that reproduces many of the elements of the Complainant's Website including the TMX Mark and the TMX Logo. The Respondent's Website also makes reference to the Montreal Exchange, which is owned by an affiliate of the Complainant. The Respondent's Website purports to offer financial services and encourages users to transfer money to the Respondent. The Complainant has received various complaints from individuals who transferred their money to the Respondent, under the misunderstanding that the Respondent was the Complainant, and have subsequently been unable to withdraw their money.

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

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

The Complainant makes the following contentions:

- (i) that the Domain Name is identical or confusingly similar to the Complainant's TMX Mark;
- (ii) that the Respondent has no rights nor any legitimate interests in respect of the Domain Name; and
- (iii) that the Domain Name has been registered and is being used in bad faith.

The Complainant is the owner of the TMX Mark, having registered the TMX Mark in Canada, the United States and other jurisdictions. The Domain Name is confusingly similar to the TMX Mark, the only differences being the addition of the abbreviation "app" and the ".com" generic Top Level Domain ("gTLD").

There are no rights or legitimate interests held by the Respondent in respect of the Domain Name. The Respondent is not commonly known by the Domain Name nor does the Respondent have any authorization from the Complainant to register the Domain Name. The Respondent is not making a legitimate noncommercial or fair use of the Domain Name. Rather the Respondent is using the Domain Name to resolve to a website that passes off as being connected to the Complainant for the purpose of committing a fraud on the Complainant's customers. This does not amount to a legitimate use of the Domain Name.

The Domain Name was registered and is being used in bad faith. By using the Domain Name to resolve to a website which passes off as being connected with the Complainant, the Respondent is using the Domain Name to divert Internet users searching for the Complainant to the Respondent's Website to commit illegal activities such as fraud. Such conduct amounts to registration and use of the Domain Name in bad faith.

## **B. Respondent**

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

## **6. Discussion and Findings**

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

To prove this element the Complainant must have trade or service mark rights and the Domain Name must be identical or confusingly similar to the Complainant's trade or service mark.

The Complainant is the owner of the TMX Mark, having registrations for the TMX Mark as a trademark in Canada and the United States. The Domain Name incorporates the TMX Mark with the addition of the term "app" and the ".com" gTLD, which can be discounted as an essential element of any domain name.

UDRP panels have repeatedly held that the addition of other terms to a wholly incorporated trademark (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element; see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0"), section 1.8. See also *The Bank of Nova Scotia v. Whois Protection*, WIPO Case No. D2007-0884; and *Valero Energy Corporation, Valero Marketing and Supply Company v. Domain Name Proxy, LLC, Navigation Catalyst Systems, Inc.*, WIPO Case No. D2011-1227.

The Panel finds that the Domain Name is confusingly similar to the Complainant's TMX Mark. Consequently, the requirement of paragraph 4(a)(i) of the Policy is satisfied.

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

To succeed on this element, a complainant must make out a *prima facie* case that the respondent lacks rights or legitimate interests in the domain name. If such a *prima facie* case is made out, then the burden of production shifts to the respondent to demonstrate rights or legitimate interests in the domain name.

Paragraph 4(c) of the Policy enumerates several ways in which a respondent may demonstrate rights or legitimate interests in a domain name:

"Any of the following circumstances, in particular but without limitation, if found by the panel to be proved based on its evaluation of all evidence presented, shall demonstrate your rights or legitimate interests to the domain name for purposes of paragraph 4(a)(ii):

(i) before any notice to you of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or

(ii) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or

(iii) you are making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue."

The Respondent is not affiliated with the Complainant in any way. It has not been authorized by the Complainant to register or use the Domain Name or to seek the registration of any domain name incorporating the TMX Mark or a mark similar to the TMX Mark. There is no evidence that the Respondent is commonly known by the Domain Name or any similar name. There is no evidence that the Respondent has

used or made demonstrable preparations to use the Domain Name in connection with a legitimate noncommercial or fair use.

The Respondent has used the Domain Name to operate a website that clearly impersonates the Complainant's Website which, absent any explanation of its conduct by the Respondent and based on the evidence supplied in the Complaint, appears to be used in order to defraud the Complainant's customers by persuading them to transfer money to the Respondent on the misunderstanding that they are investing with the Complainant. Such conduct is illegal and fraudulent and does not amount to the use of the Domain Name for a *bona fide* offering of goods or services.

The Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the Domain Name. The Respondent has had the opportunity to put on evidence of its rights or legitimate interests, including submissions as to why its conduct amounts to a right or legitimate interest in the Domain Name under the Policy. In the absence of such a Response, the Panel finds that the Respondent has no rights or legitimate interests in respect of the Domain Name under paragraph 4(a)(ii) of the Policy.

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

For the purposes of paragraph 4(a)(iii) of the Policy, the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

(i) circumstances indicating that the respondent has registered or has acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of the complainant, for valuable consideration in excess of its documented out-of-pocket costs directly related to the domain name; or

(ii) the respondent has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct; or

(iii) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the respondent's website or location or of a product or service on the respondent's website or location (Policy, paragraph 4(b)).

The Panel finds that the Respondent was aware of the Complainant and its reputation in the TMX Mark at the time the Domain Name was registered. The Respondent's Website reproduces significant aspects of the Complainant's Website including the TMX Logo. The registration of the Domain Name in awareness of the TMX Mark and in the absence of rights or legitimate interests amounts under these circumstances to registration in bad faith.

The Panel finds, on the balance of probability, that the Respondent has used the Domain Name, which wholly incorporates the TMX Mark, to take advantage of user confusion in order to commit fraud from individuals who access the Respondent's Website under the impression that they are accessing a website connected with the Complainant. Consequently the Panel finds that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant and the Complainant's TMX Mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's Website (Policy, paragraph 4(b)(iv)).

Accordingly, the Panel finds that the Respondent has registered and is using the Domain Name in bad faith under paragraph 4(a)(iii) of the Policy.

## 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 Domain Name, <tmxapp.com> be transferred to the Complainant.

*/Nicholas Smith/*

**Nicholas Smith**

Sole Panelist

Date: April 19, 2022