

ADMINISTRATIVE PANEL DECISION

XNT LTD. v. Privacy service provided by Withheld for Privacy ehf / RedBlue Pandas

Case No. D2022-3044

1. The Parties

The Complainant is XNT LTD., Malta, internally represented.

The Respondent is Privacy service provided by Withheld for Privacy ehf, Iceland / RedBlue Pandas, Belize.

2. The Domain Name and Registrar

The disputed domain name <exantefx.com> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 15, 2022. On August 18, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 18, 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 August 19, 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 amendment to the Complaint on August 22, 2022.

The Center verified that the Complaint together with the amendment to 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 August 24, 2022. In accordance with the Rules, paragraph 5, the due date for Response was September 13, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 14, 2022.

The Center appointed Assen Alexiev as the sole panelist in this matter on September 16, 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 company providing brokering and financial services. Its official website is located at the domain name <exante.eu>.

The Complainant is the owner of the following trademark registrations for the sign EXANTE (the “EXANTE trademark”):

- the United States of America trademark EXANTE (device) with registration No. 6213473, registered on December 8, 2020, for goods and services in International Classes 9 and 36;
- the European Union Trade Mark EXANTE (device) with registration No. 015567928, registered on October 24, 2016, for services in International Class 36;
- the Russian trademark EXANTE (device) with registration No. 745664, registered on February 7, 2020, for goods and services in International Classes 9 and 36.

The disputed domain name was registered on April 28, 2022. It is currently inactive. At the time of filing of the Complaint, the disputed domain name resolved to a website that offered financial services.

5. Parties’ Contentions

A. Complainant

The Complainant states that the disputed domain name is confusingly similar to its EXANTE trademark, which it incorporates entirely and the trademark is recognizable in the disputed domain name. The Complainant adds that the EXANTE trademark is used on the website at the disputed domain name, which according to it shows that the Respondent registered the disputed domain name because it believed that the disputed domain name was confusingly similar to the same trademark.

The Complainant submits that the Respondent has no rights or legitimate interests in respect of the disputed domain name. According to it, the Respondent is using the Complainant’s EXANTE trademark for commercial purposes, attempting to monetize it by diverting the Complainant’s customers and making them open a trading account with the Respondent and place money in that account, without informing them that the disputed domain name and the associated website are not operated by the Complainant. The Complainant notes that there are no contact details on the Respondent’s website under the disputed domain name and no notice that there is no affiliation with the Complainant. The Complainant adds that the Respondent does not use the disputed domain name in good faith, because it impersonates the Complainant or suggests sponsorship or endorsement by the same.

The Complainant contends that the disputed domain name was registered and is being used in bad faith. It notes that the disputed domain name was registered long after the registration of the Complainant’s EXANTE trademark and the launch of the Complainant’s website where financial services are offered. According to the Complainant, the disputed domain name was registered primarily for the purpose of diverting the Complainant’s customers and using the Complainant’s name to gain profits. In the Complainant’s view, by using the disputed domain name, the Respondent intentionally attempts to attract for commercial gain Internet users to the website under the disputed domain name, by creating a likelihood of confusion with the Complainant’s EXANTE trademark as to the source, sponsorship, affiliation, or endorsement of the website or of a product or service on the website under the disputed domain name.

The Complainant points out that the disputed domain name resolves to a website that contains the Complainant’s EXANTE trademark at the top and refers to financial services, which is the main activity of the Complainant, and notes that it includes buttons such as “Start Trading Now” and “Open Demo Account” which both resolve into one form that gathers potential customers’ personal data, but contains no information about the entity offering financial services on this website or information about the license issued to perform such services. The Complainant concludes that the Respondent divulges potential customers by using the

Complainant's reputation in the financial circles and the Complainant's EXANTE trademark to get commercial gains when they register "trading accounts" with them and deposit money.

B. Respondent

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

6. Discussion and Findings

Pursuant to the Policy, paragraph 4(a), the Complainant must prove each of the following to justify the transfer of the disputed domain name:

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

In this case, the Center has employed the required measures to achieve actual notice of the Complaint to the Respondent, in compliance with the Rules, paragraph 2(a), and the Respondent was given a fair opportunity to present its case.

By the Rules, paragraph 5(c)(i), it is expected of a respondent to: "[r]espond specifically to the statements and allegations contained in the complaint and include any and all bases for the Respondent (domain name holder) to retain registration and use of the disputed domain name [...]".

The Respondent however did not make any submission in this proceeding.

A. Identical or Confusingly Similar

The Complainant has provided evidence that it is the owner of the EXANTE trademark and has thus established its rights in this trademark for the purposes of the Policy.

The Panel notes that a common practice has emerged under the Policy to disregard in appropriate circumstances the Top-Level Domain ("TLD") section of domain names for the purposes of the comparison under the Policy, paragraph 4(a)(i). See section 1.11.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"). The Panel sees no reason not to follow the same approach here, so it will disregard the ".com" TLD section of the disputed domain name.

The relevant part of the disputed domain name for purposes of the first element analysis is therefore the sequence "exantefx", which reproduces the EXANTE trademark entirely with the addition of the element "fx". The EXANTE trademark is easily recognizable. As discussed in section 1.8 of the [WIPO Overview 3.0](#), where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element.

In view of the above, the Panel finds that the disputed domain name is confusingly similar to the EXANTE trademark in which the Complainant has rights.

B. Rights or Legitimate Interests

While the overall burden of proof in UDRP proceedings is on the complainant, UDRP panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the

often-impossible task of “proving a negative”, requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. See section 2.1 of the [WIPO Overview 3.0](#).

The Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name, because it has not used it in connection with a *bona fide* offering of goods or services, but impersonates the Complainant or suggests sponsorship or endorsement by it. The Complainant points out that the Respondent operates a website at the disputed domain name that appears as belonging to the Complainant to confuse and attract Internet users and offer them to open a trading account with the Respondent and place money to that account. The Complainant notes that the Respondent’s website does not inform visitors that there is no affiliation with the Complainant. The Complainant has thus established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name.

The Respondent has not submitted a Response and has not provided any arguments for the existence of rights or legitimate interests in the disputed domain name or disputed the Complainant’s contentions or evidence.

The disputed domain name is confusingly similar to the EXANTE trademark, and the evidence in the case file shows that it resolves to a website that offers financial services related to trading with various financial instruments. According to the Complainant, these services are similar to the services offered by it. As submitted by the Complainant and not disputed by the Respondent, it appears that these services are offered for financial gain. There is no disclaimer for the lack of relationship with the Complainant.

The above satisfies the Panel that the Respondent knew the Complainant and targeted it when registering and using the disputed domain name in an attempt to impersonate the Complainant and deceive Internet users that the website at the disputed domain name is operated by the Complainant or is affiliated to it and that the financial services offered on this website are provided by the Complainant or an entity affiliated to it, with the expectation to receive an income from the provision of these services. The Panel does not regard such conduct as legitimate or giving rise to rights or legitimate interests of the Respondent in the disputed domain name.

For the foregoing reasons, the Panel finds that the Respondent does not have rights or legitimate interests in the disputed domain name.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy lists four illustrative alternative circumstances that shall be evidence of the registration and use of a domain name in bad faith by a respondent, namely:

“(i) circumstances indicating that you have registered or you have 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 that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or

(ii) you have 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 you have engaged in a pattern of such conduct; or

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

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your 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 your website or location or of a product or service on your website or location.”

As discussed above in this decision, the disputed domain name is confusingly similar to the Complainant's EXANTE trademark and is being used for a website that includes the Complainant's EXANTE trademark and offers financial services similar to those offered by the Complainant without disclosing the lack of relationship between the Parties. This leads the Panel to the conclusion that the Respondent is aware of the Complainant, its services and trademark, and has targeted them with the registration and use of the disputed domain name. It also appears that this targeting was done to unfairly capitalize on the Complainant's goodwill for commercial gain by attracting Internet users to the Respondent's website and misleading them that they are being offered services by the Complainant itself or by an entity affiliated to the Complainant.

Therefore, the Panel finds that the disputed domain name was registered and is being used in bad faith under Paragraph 4(b)(i) 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 disputed domain name <exantefx.com> be transferred to the Complainant.

/Assen Alexiev/

Assen Alexiev

Sole Panelist

Date: September 29, 2022