

ADMINISTRATIVE PANEL DECISION

FXCM Global Services, LLC. v. Dmitrii Vasilev
Case No. D2023-0036

1. The Parties

The Complainant is FXCM Global Services, LLC., United States of America (“U.S.”), represented by SafeNames Ltd., United Kingdom.

The Respondent is Dmitrii Vasilev, Russian Federation.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 4, 2023. On January 5, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 9, 2023, 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 January 10, 2023, 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 January 11, 2023.

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 January 18, 2023. In accordance with the Rules, paragraph 5, the due date for Response was February 7, 2023. The Respondent did not submit any formal response, however an informal communication email was on February 7, 2023. Accordingly, the Center notified Parties of the commencement of panel appointment process on February 8, 2023.

The Center appointed Pablo A. Palazzi as the sole panelist in this matter on February 13, 2023. 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

Founded in 1999, the Complainant is London-based retail brokerage company in the foreign exchange (“Forex”) market with international offices. The Complainant offers educational courses on Forex trading and has been recognized and awarded for its brokerage and trade-related services.

The Complainant primary website is at “www.fxcm.com” and offers its services in several languages including Chinese and English. The FXCM trademark is part of the Complainant’s brand logo and the Complainant uses this mark to establish and promote their social media presence.

The Complainant owns several registrations for FXCM, including:

- U.S. Trademark Number 2,620,953 in class 36, registered on September 17, 2002;
- European Union Trademark Number 003955523 in classes 35, 36, and 41, registered on November 3, 2005;
- Australian Trademark Number 1093998 in classes 36 and 41, registered on June 13, 2006;
- Hong Kong Trademark Number 301708173 in classes 16, 36, and 41, registered on March 29, 2011;
- China Registration Number 12457692 in class 36, registered on March 28, 2016; and
- China Registration Number 12458056 in class 41, registered on September 7, 2016.

The disputed domain name was registered on January 11, 2022, and, upon the evidence submitted by the Complainant, resolved to a website with pay-per-click (“PPC”) advertising at the time of filing the Complaint.

5. Parties’ Contentions

A. Complainant

The Complainant requests that the disputed domain name be transferred to the Complainant.

According to the Complainant, each of the three elements specified in paragraph 4(a) of the Policy are satisfied in the present case.

First, the Complainant submits that the disputed domain name is identical or confusingly similar to the FXCM trademark registrations of the Complainant.

Second, the Complainant argues that the Respondent has neither rights nor legitimate interests in the disputed domain name.

Third, the Complainant submits that the disputed domain name was registered and is being used in bad faith.

On this point, the Complainant asserts, among other things, that:

- The Complainant submits that the Respondent has used the disputed domain name to present PPC categories and links that are based, and capitalize, on the value of the Complainant’s globally-distinctive FXCM trademark. Many of these categories and links clearly compete with the Complainant.
- the Respondent has attached an MX (mail exchange) record to the disputed domain name. The Respondent can therefore send and receive emails ending in ‘@fxcmrussian.com’, and such emails

can give Internet users the false impression that they originate from the Complainant. Previous UDRP panels have held that the presence of MX records, particularly in circumstances where there is a likelihood of Internet-user confusion, can reflect bad faith within the meaning of paragraph 4(b)(iv) of the Policy.

B. Respondent

The Respondent did not submit any formal response, however an informal communication email was submitted to the Center on February 7, 2023, stating as follows:

“Hi

This domain has zero value for me, and was set to expire

If someone decided to waist funds on lawyers for getting it via UDRP, have no comment about such a decision

other than LOL.

It can be acquired for regular reg fee after expiration data by anyone, or Complaints can get it now, if they wish

so.

Best regards

Dmitry”

6. Discussion and Findings

Paragraph 4(a) of the Policy lists three elements which a complainant must satisfy in order to succeed. The Complainant must satisfy that:

- (i) the 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 respect of such domain name; and
- (iii) the domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The first element that the Complainant must establish is that the disputed domain name is identical or confusingly similar to the Complainant’s trademark.

The Complainant holds several valid FXCM trademark registrations, which precede the registration of the disputed domain name.

The disputed domain name is confusingly similar to the Complainant’s trademarks since it merely reproduces the FXCM trademark with the addition of the term “russian”.

The disputed domain name incorporates the Complainant’s FXCM trademark in its entirety. As numerous UDRP panels have held, where a domain name incorporates the entirety of a trademark, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing.

The Panel finds the first element of the Policy has therefore been met.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances any of which is sufficient to demonstrate that the Respondent has rights or legitimate interests in the disputed domain name:

- (i) “before any notice to you [the Respondent] 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.”

There is no evidence of the existence of any of those rights or legitimate interests. The Complainant has not authorized, licensed, or permitted the Respondent to register or use the disputed domain name or its trademarks. The Complainant has prior rights in the trademarks which precede the Respondent’s registration of the disputed domain name. The Respondent’s evidenced use of the Complainant’s trademark to offer competing services cannot constitute a *bona fide* offering of goods or services, nor a legitimate noncommercial or fair use. Moreover, the Respondent has used the disputed domain name to resolve to a website with PPC advertising relevant to the Complainant’s field of activities, which cannot constitute a *bona fide* offering of goods or services, nor a legitimate noncommercial or fair use. The Complainant has therefore established a *prima facie* case that the Respondent has no rights and legitimate interests in the disputed domain name and thereby shifted the burden to the Respondent to produce evidence to rebut this presumption.

The Respondent has failed to rebut the Complainant’s *prima facie* case. Moreover, in its informal communication, the Respondent implies and accepts to have no rights or legitimate interests in the disputed domain name, by stating that “[t]his domain has zero value for me, and was set to expire”.

Furthermore, the Panel notes the composition of the disputed domain name, wholly incorporating the Complainant’s FXCM trademark with the additional term “russian”, carries a risk of implied affiliation (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 2.5.1).

Therefore, the Panel finds that the Complainant has satisfied the second requirement of paragraph 4(a) of the Policy.

C. Registered and Used in Bad Faith

The Policy requires a complainant to establish that the disputed domain name was registered and is being used in bad faith. The Policy describes several non-exhaustive circumstances demonstrating a respondent’s bad faith registration and use. Under paragraph 4(b)(iv) of the Policy, a panel may find bad faith when a respondent “[uses] the domain name to intentionally attempt to attract, for commercial gain, Internet users to [respondent’s] website or other online location, by creating a likelihood of confusion with complainant’s mark as to the source, sponsorship, affiliation, or endorsement of [respondent’s] website or location or a product or service on [respondent’s] website or location”.

Because the Complainant’s FXCM mark is well known and subject to registration in multiple jurisdictions (See *FXCM Global Services, LLC v. Registration Private by Domains By Proxy, LLC/John Lay*, WIPO Case No. [D2021-3474](#)), the Panel finds that the Respondent was aware of the FXCM mark when it registered the disputed domain name. The Panel finds, on these facts, that the Respondent targeted the Complainant and its FXCM mark when it registered the disputed domain name. These facts show bad faith registration of the disputed domain name.

The Respondent in all likelihood registered the disputed domain name with the expectation of taking advantage of the reputation of the Complainant’s trademark. The disputed domain name has been used to contain PPC ads, which seem to be competing with or capitalizing on the reputation and goodwill of the

Complainant's mark. The Panel finds such use indicates an intent to attract, for commercial gain, Internet users to the Respondent's website by creating a likelihood of confusion with the Complainant's trademark.

Furthermore, the Respondent's establishment of MX records associated with the disputed domain name tends to support an inference of bad faith in these circumstances. If the Respondent is using the disputed domain name to send fraudulent emails – which the MX records suggest is a possibility – then bad faith use is further apparent. *ESMOD v. Domains By Proxy, LLC, Registration Private / Carolina Rodrigues, Fundacion Comercio Electronico*, WIPO Case No. [D2021-2865](#).

Additionally, the content of the informal communication by the Respondent supports a finding of bad faith.

The Complainant has successfully established the third Policy element.

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, <fxcmrussian.com>, be transferred to the Complainant.

/Pablo A. Palazzi/

Pablo A. Palazzi

Sole Panelist

Date: February 27, 2023