

ADMINISTRATIVE PANEL DECISION

FXCM Global Services, LLC v. HEIN MAC

Case No. D2023-1879

1. The Parties

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

Respondent is HEIN MAC, United States.

2. The Domain Name and Registrar

The disputed domain name <truistfxcmc.com> is registered with NameSilo, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 26, 2023. On April 26, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 27, 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 (Redacted for Privacy, PrivacyGuardian.org llc) and contact information in the Complaint. The Center sent an email communication to Complainant on April 28, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on May 2, 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 Respondent of the Complaint, and the proceedings commenced on May 3, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 23, 2023. Respondent sent an informal email regarding possible settlement to the Center on May 3, 2023, but did not submit a formal Response. On May 3, 2023, the Center sent an email concerning possible settlement to the Parties, to which only the Complainant responded. On May 24, 2023, the Center proceeded with Commencement of Panel Appointment Process.

The Center appointed Ingrīda Kariņa-Bērziņa as the sole panelist in this matter on June 2, 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

Complainant is a retail broker in the foreign exchange (“Forex”) market. Founded in 1999, Complainant is a leading provider of online Forex trading, CFD trading, and related services to customers around the world.

Complainant operates its primary business website at the domain name <fxcm.com>. It is the proprietor of numerous registrations for the FXCM mark, including United States Trademark Registration 2620953 for FXCM (word mark), registered on September 17, 2002, for services in class 36:

The disputed domain name was registered on December 19, 2022. At the time of this Decision, it did not resolve to an active website. The record contains evidence that it previously resolved to a website on which an entity identifying itself as “TruistFxcMc” purported to offer bitcoin mining services. The record contains evidence that email exchange (“MX”) records have been configured for the disputed domain name.

The record contains evidence that Complainant sent a cease-and-desist letter to Respondent on February 6, 2023, to which the record does not reflect that Respondent responded to by the time of the submission of the Complaint.

5. Parties’ Contentions

A. Complainant

Complainant’s contentions may be summarized as follows:

Under the first element, Complainant states that the disputed domain name incorporates Complainant’s FXCM mark in full, only preceded by the term “truist” and followed by the letter “c”. Complainant notes that the “truist” part of the disputed domain name’s string appears to refer to the brand of an unconnected third party, TRUIST (controlled by Truist Financial Corporation) which operates in the field of banking and financial services.

Under the second element, Complainant states that Respondent has not registered any trademarks for “fxcm”, “truistfxcmc”, or any similar terms. Complainant also cannot find any evidence to suggest Respondent retains unregistered trademark rights in any such terms. Moreover, Respondent has not been licensed by Complainant to register domain names featuring the FXCM trademark. The disputed domain name resolves to a site which, under the heading “TRUIST FXCMC”, purports to offer financial investment trading services. The website offers no contact or regulatory information, but invites Internet users to submit personal information. Complainant believes the website is being used to perpetuate a fraudulent scheme to collect users’ personal information.

Under the third element, Complainant states that its rights in the FXCM mark predate the registration of the disputed domain name by 20 years. Given the international distinctiveness of the FXCM mark and the fact that the disputed domain name combines the names of Complainant and that of another entity that operates in the field of financial services, it is clear that Respondent was aware of Complainant’s rights in the FXCM term prior to registering the disputed domain name. The website repeatedly brandishes the heading “TRUISTFXCMC”, which is confusingly similar to Complainant’s FXCM mark, and purports to offer financial investment services. Respondent’s website does not disclose the lack of connection to Complainant. The configuration of MX records further indicates an intention to use the disputed domain name for illegitimate purposes. The presence of the third-party TRUIST mark should not prevent the transfer of the disputed domain name to Complainant.

Complainant requests transfer of the disputed domain name.

B. Respondent

On May 3, 2023, Respondent sent two-emails to the Center. In the first, Respondent asked, “Two names like a twins, is that a wrong thing?”. In the second, Respondent stated, “Thanks for writing. I understood clearly that my domain is similar to an existing name. How can I transfer the domain to you because I have taken down the site in connection to the said domain name. Thank you”.

6. Discussion and Findings

Paragraph 4(a) of the UDRP requires Complainant to make out all three of the following:

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

Under paragraph 15(a) of the Rules, “[a] Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable”.

A. Identical or Confusingly Similar

Complainant has provided evidence establishing that it has trademark rights in the FXMC mark through registration in the United States and other jurisdictions. Complainant thereby satisfies the threshold requirement of having trademark rights for purposes of standing to file a UDRP case. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.2.1.

In comparing Complainant’s FXMC mark with the disputed domain name, the Panel finds that the disputed domain name is confusingly similar to this mark as the mark is clearly recognizable within the disputed domain name. The disputed domain name reflects Complainant’s mark, preceded by the term “truist” and followed by the letter “c”. It is the consensus view of UDRP panels that, where a domain name incorporates the entirety of a trademark, the domain name will normally be considered confusingly similar to that mark. Moreover, 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. See [WIPO Overview 3.0](#), sections 1.7 and 1.8.

The Panel is aware that TRUIST, a mark of a third party, is also found in the disputed domain name. According to previous panel decisions, however, the existence of another mark does not avoid a finding of confusing similarity to Complainant’s mark under the first element. See, for example, *Chevron Corporation v. Young Wook Kim*, WIPO Case No. [D2001-1142](#), <chevron-texaco.com>, and [WIPO Overview 3.0](#), section 1.12.

It is the well-established view of UDRP panels that a generic Top Level Domain (“gTLD”) such as “.com” is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test. See [WIPO Overview 3.0](#), section 1.11.1.

Accordingly, the Panel finds that Complainant has established the first element under paragraph 4(a) of the Policy.

B. Rights or Legitimate Interests

The Panel finds that the evidence submitted by Complainant establishes a *prima facie* case that Respondent has no rights or legitimate interests in the disputed domain name. Respondent is not authorized by Complainant and has no rights in the FXMC mark, nor is Respondent commonly known by the disputed domain name.

Pursuant to [WIPO Overview 3.0](#), section 2.1, and cases thereunder, where Complainant makes out a *prima facie* case that Respondent lacks rights or legitimate interests, the burden of production on this element shifts to Respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain name.

Respondent has not provided any rebuttal of Complainant's *prima facie* case and has therefore not proved rights or legitimate interests in the disputed domain name. There is no evidence that Respondent is commonly known by the disputed domain name, or that there are any circumstances or activities that would establish Respondent's rights therein. There is no evidence of legitimate noncommercial use or a *bona fide* offering of goods or services. The disputed domain name reflects Complainant's FXMC mark following a third-party mark and preceding the letter "c". Such composition cannot constitute fair use as it impersonates or suggests sponsorship or endorsement by the trademark owner. See [WIPO Overview 3.0](#), section 2.5.1.

The evidence in the record establishes that the disputed domain name was used by Respondent to impersonate Complainant and/or a third-party right holder in an apparent attempt to obtain the personal information of Internet users. Such use can never confer rights or legitimate interests. See [WIPO Overview 3.0](#), section 2.13.1. Lastly, the last informal communication from Respondent appears to reflect that Respondent concedes to not using the disputed domain name in connection with a *bona fide* offering given that Respondent took down the website and offered to transfer the disputed domain name to Complainant.

Accordingly, the Panel finds that Complainant has established the second element under paragraph 4(a) of the Policy.

C. Registered and Used in Bad Faith

Complainant's rights in the FXMC mark predate the registration of the disputed domain name by more than two decades. It is not credible that Respondent, which purports to be engaged in the field of financial services, was unaware of Complainant's mark when he registered the disputed domain name. Moreover, Respondent does not refute this in its informal communications, wherein Respondent notes the use of similar names. The Panel finds that the addition of the third-party mark TRUIST, a company that is active in financial services, is a deliberate choice to appropriate the marks of these specific companies. The disputed domain name reflects Complainant's well-established FXMC mark together with the third-party TRUIST mark. UDRP panels have consistently found that the mere registration of a domain name that is identical or confusingly similar to a famous or widely-known trademark by an unaffiliated entity, as in this case, can by itself create a presumption of bad faith on the part of Respondent. See [WIPO Overview 3.0](#), section 3.1.4.

The Panel finds that Complainant has demonstrated bad faith use of the disputed domain name. The evidence on record supports a finding that Respondent has, by using the disputed domain name to point to its website offering cryptocurrency mining services, intentionally attempted to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with Complainant's mark.

The evidence in the record raises doubts about the nature of Respondent's business at that website. The website provides no contact or regulatory information. The record reflects that MX records have been configured for the disputed domain name. It appears more likely than not that Respondent is using the website to obtain the personal information of Internet users or in the perpetuation of other fraudulent activities. There is nothing in the record to indicate otherwise.

While the disputed domain name no longer resolves to an active website, given the totality of the circumstances, the current passive holding does not prevent a finding of bad faith. See [WIPO Overview 3.0](#), section 3.3. Rather, given the change of use and Respondent's apparent role in removing the website content following notice of this dispute, the Panel finds that this reinforces the finding that Respondent had no good faith explanation for its registration and prior use of the disputed domain name.

On balance, the Panel finds that Respondent has registered and is using the disputed domain name in bad faith. See [WIPO Overview 3.0](#), section 3.1.4.

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 <truistfxcmc.com> be transferred to Complainant.

Following established panel practice, the transfer of the disputed domain name shall be ordered without prejudice to any rights of the third party TRUIST in the disputed domain name. See [WIPO Overview 3.0](#), section 4.13. See also *Philip Morris USA Inc. v. Whoisguard Protected, Whoisguard, Inc. / MARK JAYSON DAVID*, WIPO Case No. [D2016-2194](#).

/Ingrīda Kariņa-Bērziņa/

Ingrīda Kariņa-Bērziņa

Sole Panelist

Date: June 16, 2023