

ADMINISTRATIVE PANEL DECISION

FXDirectDealer, LLC v. BAHADURALEMAGAR PURNA
Case No. DCC2022-0014

1. The Parties

The Complainant is FXDirectDealer, LLC, United States of America (“United States”), represented by Kolitch Romano Dascenzo Gates, United States.

The Respondent is BAHADURALEMAGAR PURNA, Nepal.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 20, 2022. On December 21, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On the same day, 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 6, 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 amendment to the Complaint on January 6, 2023.

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 January 9, 2023. In accordance with the Rules, paragraph 5, the due date for Response was January 29, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 7, 2023.

The Center appointed Manuel Moreno-Torres as the sole panelist in this matter on February 10, 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

The Complainant is an international provider on online foreign exchange trading (“Forex”) and education services based in the United States.

The Complainant is the owner of numerous trademark registration for FXDD. By way of example, the United States Patent and Trademark Office registration No. 3,991,011 FXDD (design) trademark, registered on July 5, 2011.

The Complainant has received numerous awards throughout the world, including in the United States, the Middle East, and Europe. As such, “Most Trusted Forex Broker Europe 2012”.

The Complainant is the legal owner of the domain name <fxdd.com> since May 22, 2002, which directs to its corporate website.

Previous panel decisions have recognized the fame of the FXDD trademark. See *FXDirectDealer, LLC v. WhoisGuard Protected, WhoisGuard, Inc. / Saint Biology, FxddTrade*, WIPO Case No. [D2020-3159](#).

The Respondent registered the disputed domain name on August 16, 2022, which redirects to a website that reproduces the Complainant’s trademark rights and where services similar to those of the Complainant are purportedly offered.

5. Parties’ Contentions

A. Complainant

The Complainant contends that the disputed domain name is identical and/or confusingly similar to marks in which has rights.

The Complainant alleges to be the owner of the FXDD registration trademark in a number of jurisdictions, as well to have established common law rights for its FXDD marks.

The disputed domain name is identical and/or confusingly similar to the Complainant’s FXDD marks, including the Complainant’s mark FXDD. Then the Complainant refers to the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.7, to support a finding of confusing similarity.

The addition of the term “ex” to the Complainant’s FXDD mark in the disputed domain name fails to prevent confusing similarity between the disputed domain name and the FXDD trademarks since the term “ex” appears to be a common abbreviation of the word “exchange” in the foreign currency exchange trading industry, indicating that the website located at the disputed domain name is associated with online foreign exchange trading services.

Regarding the country code Top-Level Domain (“ccTLD”) the Complainant notes that it “is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test...irrespective of the particular TLD”.

The Complainant submits that the Respondent has not received any license, authorization, or permission from the Complainant to use its FXDD marks in any manner, including in domain names. Further, to the best of the Complainant’s knowledge, the Respondent is not commonly known by the disputed domain name or any name that incorporates the letters “fxdd”.

Moreover, the Respondent’s use of the disputed domain name appears to be for the purpose of disrupting and diverting the business of Complainant, and not for any legitimate interest or *bona fide* offering of goods

and/or services because falsely suggest affiliation with the Complainant by reproducing its trademarks and similar logo. Indeed, the disputed domain name redirects to a financial service platform which purports to offer financial trading. Arguably it appears to be for commercial use. Accordingly, the Respondent cannot claim any legitimate non-commercial or fair use rights in the disputed domain name.

The Complainant alleges that the Respondent registered and used the disputed domain name in bad faith. For such finding refers to the above allegation as well as the following considerations:

Based on the extensive use and widespread recognition of the Complainant and its FXDD trademarks, the Respondent knew or should have known of the Complainant and its FXDD marks at the moment of the registration of the disputed domain name.

The Respondent is intentionally attempting to attract Internet users to the Respondent's website and divert them from the Complainant's website, by creating a likelihood of confusion with the Complainant's FXDD trademarks as to the source, sponsorship, affiliation, or endorsement of the disputed domain name's website, for commercial gain.

The mere act by the Respondent of registering the disputed domain name that is identical and/or confusingly similar to the Complainant's widely known FXDD marks is willful blindness

The Respondent is using a privacy service to hide its identity in order to prevent efficient enforcement of legitimate trademark rights by the Complainant.

B. Respondent

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

6. Discussion and Findings

Under paragraph 4(a) of the Policy, to succeed the Complainant must satisfy the Panel that:

- (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.

There are no exceptional circumstances within paragraph 5(f) of the Rules to prevent the Panel from determining the dispute based upon the Complaint, notwithstanding the failure of the Respondent to file a Response. Under paragraph 14(a) of the Rules in the event of such a "default" the Panel is still required "to proceed with a decision on the complaint", whilst under paragraph 14(b) it "shall draw such inferences there from as it considers appropriate". This dispute resolution procedure is accepted by the domain name registrant as a condition of registration.

A. Identical or Confusingly Similar

The Complainant has established trademark rights for the purpose of the Policy.

The Panel finds that the FXDD trademark is entirely reproduced in the disputed domain name. Further, the addition of the letters "ex" does not prevent a finding of confusing similarity. Not surprisingly, a previous panel decision has reached to the same conclusion with respect to <fxddex.com>. See *FXDirectDealer, LLC v. Privacy Service Provided by Withheld for Privacy ehf / Qin Yue*, WIPO Case No. [D2022-1302](#).

Likewise the Panel refers to the [WIPO Overview 3.0](#), section 1.11: “The applicable Top Level Domain (‘TLD’) in a domain name [...] is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test.”

Therefore, the first requirement is met under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Panel looks at [WIPO Overview 3.0](#), section 2.1: “While the overall burden of proof in UDRP proceedings is on the complainant, 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.”

Paragraph 4(c) of the Policy sets out non-exclusive examples in which the Respondent may establish rights or legitimate interests in the disputed domain name, by demonstrating any of the following:

- (i) before any notice to it of the dispute, the Respondent’s 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) that the Respondent has been commonly known by the domain name, even if it has acquired no trademark or service mark rights; or
- (iii) the Respondent is 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.

Upon the allegations and evidence produced by the Complainant, the Panel finds that the Respondent is falsely suggesting affiliation with the Complainant when there is no authorization to use Complainant’s trademark in any manner. Namely, by reproducing Complainant’s trademark in the disputed domain name, by reproducing its logo in the website to which the disputed domain name resolves, and by offering services similar to those of the Complainant, the Respondent is giving the false impression of being associated to the Complainant, contrary to the fact.

The Panel finds that such use by the Respondent reflects the Respondent’s intent to mislead unsuspecting Internet users expecting to find the Complainant at the confusingly similar disputed domain name.

There is no evidence in the records as the Respondent to be commonly known by the disputed domain name neither that the Respondent is using it in connection to a *bona fide* offering of goods or services.

Having said that, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.

Accordingly, the Complainant has made out a *prima facie* case that reverts to the Respondent to produce evidence and allegation. However, there is no response by the Respondent in this proceeding, and there is no rebuttal of the Respondent to the Complainant’s *prima facie* case. Therefore, the Respondent has failed to rebut the Complainant’s *prima facie* case that the Respondent lacks rights or legitimate interests.

Therefore, the second requirement under paragraph 4(a)(ii) of the Policy is met to the satisfaction of the Panel.

C. Registered and Used in Bad Faith

Paragraph 4(a)(iii) of the Policy provides that the Complainant must establish that the Respondent registered and subsequently used the disputed domain name in bad faith.

As noted above, the Panel finds that the Respondent targeted the Complainant and its trademarks. Indeed, the reproduction of the FXDD trademark in the disputed domain name, as well as the reproduction of the Complainant's trademarked logo on the website to which the disputed domain name resolves, shows that the Respondent had the Complainant's trademark in mind at the moment of registration of the disputed domain name. Moreover, the Panel also notes the wide international presence of the Complainant's mark through the years and the addition of the letters "ex" connected to exchange as a financial services, both strengthen the Respondent's previous knowledge of the Complainant and its trademarks at the moment of the registration. See *Lidl Stiftung & Co. KG v. Milan Petrov*, WIPO Case No. [D2022-4460](#). On balance, the Respondent knew about the Complainant when registering the disputed domain name.

The Panel also looks at [WIPO Overview 3.0](#) section 3.1.1. for circumstances indicating bad faith registration: "... the nature of the domain name (e.g., whether a typo of a famous mark, a domain name wholly incorporating the relevant mark plus a geographic term or one related to the complainant's area of commercial activity, or a pure dictionary term) and the distinctiveness of trademark at issue, among other factors, are relevant to this inquiry". Here the reproduction of the FXDD trademark plus the letters "ex" related to the Complainant's services support a finding of registration in bad faith by the Respondent.

The Complainant has established how the Respondent attempts to create an unfair association or affiliation with the Complainant. Noting that the FXDD trademark is reproduced in the disputed domain name as well as in the corresponding website and the similarity of services offered by both Parties, the Panel reaches the conclusion that the Respondent attempts to trade-off the Complainant's trademark by using it to take advantage of its business with no authorization to do so. See *Calvin Klein Trademark Trust and Calvin Klein, Inc. v. rafel bueno de costa*, WIPO Case No. [D2022-3681](#). Therefore, the use of the disputed domain name fits with the circumstances described in 4(b)(iv) of the Policy.

Accordingly, the Panel finds that the Complainant has satisfied the requirements of 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 disputed domain name, <fxddex.cc>, be transferred to the Complainant.

/Manuel Moreno-Torres/

Manuel Moreno-Torres

Sole Panelist

Date: February 24, 2023