

ADMINISTRATIVE PANEL DECISION

FXDirectDealer, LLC v. John Wilson, Charm Technology Co., Ltd.
Case No. D2022-2865

1. The Parties

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

The Respondent is John Wilson, Charm Technology Co., Ltd., United States.

2. The Domain Name and Registrar

The disputed domain name <fxdd6.com> (the “Disputed Domain Name”) is registered with NameSilo, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 3, 2022. On August 4, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On August 4, 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 9, 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 9, 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 15, 2022. In accordance with the Rules, paragraph 5, the due date for Response was September 4, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 7, 2022.

The Center appointed Lynda M. Braun as the sole panelist in this matter on September 13, 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 well-known financial services company that has been using the FXDD trademark in connection with its goods and services since at least as early as 2002. Specifically, the Complainant has been using its FXDD trademarks in connection with downloadable software and computer programs for use by professionals in the financial market since at least as early as March 2002, and in connection with foreign exchange trading, among other financial services, and related educational services since at least as early as March 2010. The Complainant is an international leader in its online foreign exchange trading and education services offered under its FXDD trademarks. The Complainant offers its goods and services to customers worldwide, including to individual and institutional traders, hedge funds, commercial entities, brokerage firms, and money managers.

The Complainant owns multiple trademark registrations, including, but not limited to: FXDD, United States Trademark Registration No. 4,418,706, registered on October 25, 2013, in international Classes 9, 36, and 41; FXDD (stylized), United States Trademark Registration No. 3,991,011, registered on July 5, 2011, in international classes 9, 36 and 41; and FXDD, International Trademark Registration No. 1175697, registered on August 7, 2013, in international Classes 9, 36, and 41 (designating various jurisdictions). The Complainant also uses its FXDD Mark as part of a family of other FXDD trademarks in connection with its goods and services, including, but not limited to: FXDD TRADING, FXDD CLOUD, and FXDD GLOBAL.

The foregoing trademarks, including the family of FXDD trademarks listed above will hereinafter collectively be referred to as the “FXDD Mark”.

The Complainant owns the domain name <fxdd.com> that resolves to its official website at “www.fxdd.com”.

The Disputed Domain Name was registered on May 16, 2022. The Complainant accessed the website to which the Disputed Domain Name resolved on July 6, 2022, which provided information about the website, including financial services similar to those of the Complainant. The Complainant provided screenshots of the website when it was active to demonstrate the status of the website described herein. When active, the website also displayed a logo modeled on the Complainant’s stylized FXDD Mark. As of July 18, 2022, the website appeared to be deactivated.¹

5. Parties’ Contentions

A. Complainant

The following are the Complainant’s contentions:

- the Disputed Domain Name is confusingly similar to the Complainant’s trademark.
- the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name.
- the Disputed Domain Name was registered and is being used in bad faith.
- the Complainant seeks the transfer of the Disputed Domain Name from the Respondent to the Complainant in accordance with paragraph 4(i) of the Policy.

¹ As of the writing of this Decision, the Disputed Domain Name resolves to a landing page that states: “This site can’t be reached. fxdd6.com’s server IP address could not be found.”

B. Respondent

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

6. Discussion and Findings

In order for the Complainant to prevail and have the Disputed Domain Name transferred to the Complainant, the Complainant must prove the following (Policy, paragraph 4(a)(i-iii)):

(i) the Disputed 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 the Disputed Domain Name; and

(iii) the Disputed Domain Name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

This element consists of two parts: first, does the Complainant have rights in a relevant trademark and, second, is the Disputed Domain Name identical or confusingly similar to that trademark. The Panel concludes that the Disputed Domain Name is confusingly similar to the FXDD Mark as set forth below.

It is uncontroverted that the Complainant has established rights in the FXDD Mark based on its several years of use plus its registered trademarks for the FXDD Mark in the United States and other jurisdictions worldwide. The consensus view is that "registration of a mark is *prima facie* evidence of validity, which creates a rebuttable presumption that the mark is inherently distinctive". *CWI, Inc. v. Domain Administrator c/o Dynadot*, WIPO Case No. [D2015-1734](#). The Respondent has not rebutted this presumption, and therefore the Panel finds that the Complainant has rights in the FXDD Mark. Moreover, the registration of a mark 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. Thus, the Panel finds that the Complainant has rights in the FXDD Mark.

The Disputed Domain Name consists of the FXDD Mark in its entirety followed by the number "6", and then followed by the generic Top-Level Domain ("gTLD") ".com". It is well established that a domain name that wholly incorporates a trademark may be deemed confusingly similar to that trademark for purposes of the Policy despite the addition of other terms. As stated in section 1.8 of [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". The mere addition of a single digit number, such as 6, to the Complainant's FXDD Mark to create the Disputed Domain Name <fxdd6.com> cannot prevent confusing similarity. See e.g, *Government Employees Insurance Company v. Domain Admin, Whois Privacy Corp.*, WIPO Case No. [D2021-1401](#) (finding confusing similarity for <1geico.com> with GEICO, stating that "[t]he addition of a number to a trademark does not prevent the confusing similarity that exists between the disputed domain name and the Complainant's trademark").

Finally, the addition of a gTLD such as ".com" in a domain name is technically required. Thus, it is well established that such element may typically be disregarded when assessing whether a disputed domain name is identical or confusingly similar to a trademark. See *Proactiva Medio Ambiente, S.A. v. Proactiva*, WIPO Case No. [D2012-0182](#) and [WIPO Overview 3.0](#), section 1.11. Thus, the Disputed Domain Name is confusingly similar to the Complainant's FXDD Mark.

Accordingly, the Panel finds that the first element of paragraph 4(a) of the Policy has been met by the Complainant.

B. Rights or Legitimate Interests

Under the Policy, a complainant has to make out a *prima facie* case that the respondent lacks rights or legitimate interests in the disputed domain name. Once such a *prima facie* case is made, the respondent carries the burden of production of evidence that demonstrates rights or legitimate interests in the disputed domain name. If the respondent fails to do so, the complainant may be deemed to have satisfied paragraph 4(a)(ii) of the Policy. See [WIPO Overview 3.0](#), section 2.1.

In this case, the Panel finds that the Complainant has made out a *prima facie* case. The Respondent has not submitted any arguments or evidence to rebut the Complainant's *prima facie* case. Furthermore, the Complainant has not authorized, licensed or otherwise permitted the Respondent to use its FXDD Mark. Nor does the Complainant have any type of business relationship with the Respondent. Based on the initial use made of the Disputed Domain Name to resolve to the Respondent's website that offered similar goods and services, the Panel finds that the Respondent was not making a *bona fide* offering of goods or services nor making a legitimate noncommercial or fair use of the Disputed Domain Name. Past UDRP panels have held that using a disputed domain name to resolve to a website offering competing goods or services to that of the complainant is not a use indicative of rights or legitimate interests. On the contrary, here, the Respondent used the FXDD Mark for commercial gain and to deceive Internet users who mistakenly believed that they arrived at the Complainant's official website.

Finally, the composition of the Disputed Domain Name, comprising the entirety of the FXDD Mark, carries a risk of implied affiliation and cannot constitute fair use here, as it effectively suggests sponsorship or endorsement by the Complainant. See [WIPO Overview 3.0](#), section 2.5.1.

In this case, the Panel finds that the Complainant has made out a *prima facie* case that the Respondent has no rights or legitimate interests in the Disputed Domain Name. The Respondent has not submitted any substantive arguments or evidence to rebut the Complainant's *prima facie* case. As such, the Panel determines that the Respondent does not have rights or legitimate interests in the Disputed Domain Name.

Accordingly, the Panel finds that the second element of paragraph 4(a) of the Policy has been met by the Complainant.

C. Registered and Used in Bad Faith

The Panel finds that based on the record, the Complainant has demonstrated the existence of the Respondent's bad faith pursuant to paragraph 4(b) of the Policy.

First, based on the circumstances here, the Panel concludes that the Respondent registered and was using the Disputed Domain Name in bad faith in an attempt to attract Internet users to the Respondent's website by creating a likelihood of confusion with the Complainant's FXDD Mark as to the source, sponsorship, affiliation or endorsement of the Disputed Domain Name. The Respondent's registration and initial use of the Disputed Domain Name to impersonate the Complainant and create a website providing similar goods and services as those of the Complainant, and using the Complainant's stylized FXDD Mark indicate that such registration and use had been done for the specific purpose of trading on the name and reputation of the Complainant and its FXDD Mark. See *Madonna Ciccone, p/k/a Madonna v. Dan Parisi and "Madonna.com"*, WIPO Case No. [D2000-0847](#) ("[t]he only plausible explanation for Respondent's actions appears to be an intentional effort to trade upon the fame of Complainant's name and mark for commercial gain").

Second, the Complainant's registration of the FXDD Mark predated the Respondent's registration of the Disputed Domain Name. Therefore, the Panel finds that the Respondent had the Complainant's FXDD Mark in mind when registering the Disputed Domain Name.

Finally, Panel finds that the Respondent knew that the Complainant had rights in the FXDD Mark when registering the Disputed Domain Name. The Respondent used the Disputed Domain Name to resolve to a

website similar in substance to that of the Complainant's website, making clear that the Respondent was well aware of the Complainant and its FXDD Mark, thus demonstrating bad faith. Thus, it strains credulity to believe that the Respondent had not known of the Complainant or its FXDD Mark when registering the Disputed Domain Name. See *Myer Stores Limited v. Mr. David John Singh*, WIPO Case No. [D2001-0763](#) (respondent's knowledge of the registration and use of a trademark prior to registering the domain name constitutes bad faith). The Panel concludes that the Respondent's use of the Disputed Domain to impersonate the Complainant and initially create a website that was similar in substance to the Complainant's website was emblematic of bad faith registration and use. In sum, the Panel finds that the Respondent had actual knowledge of the Complainant's FXDD Mark when registering the Disputed Domain Name, and that the Respondent registered and used the Disputed Domain Name to take unfair advantage of the Complainant's FXDD Mark.

Accordingly, the Panel finds that the third element of paragraph 4(a) of the Policy has been met by the Complainant.

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 <fxdd6.com> be transferred to the Complainant.

/Lynda M. Braun/

Lynda M. Braun

Sole Panelist

Date: September 27, 2022