

ADMINISTRATIVE PANEL DECISION

Rynat Trading Ltd v. Fahad al Mafuz Tamim Fahad al Mafuz Tamim, Alpha Tech IT

Case No. D2022-0076

1. The Parties

The Complainant is Rynat Trading Ltd, Cyprus, internally represented.

The Respondent is Fahad al Mafuz Tamim Fahad al Mafuz Tamim, Alpha Tech IT, Bangladesh.

2. The Domain Name and Registrar

The disputed domain name <rynatrading.org> is registered with Porkbun LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 17, 2021. The Complainant filed a first amendment to the Complaint on January 10, 2022. On January 12, 2022 and on January 17, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 24, 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 January 25, 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 a second amendment to the Complaint on January 26, 2022.

The Center verified that the Complaint together with the amendments 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 28, 2022. In accordance with the Rules, paragraph 5, the due date for Response was February 17, 2022. On February 3, 2022 and February 11, 2022, the Respondent sent informal emails. The Respondent did not submit any formal response. Accordingly, on February 18, 2022, the Center notified the Parties that it will proceed to Panel Appointment.

The Center appointed Andrew D. S. Lothian as the sole panelist in this matter on February 23, 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.

On March 15, 2022, the Complainant requested the transfer of the disputed domain name instead of the cancellation of the disputed domain name.

4. Factual Background

The Complainant is a Cyprus-registered company incorporated in 2015, authorized to provide financial services since 2016. Its website, officially-recognized by the corresponding financial services regulator, is “www.rynattrading.com” and the associated domain name has been registered since November 18, 2015.

The disputed domain name was registered on September 17, 2021. The associated website appears to be a partial reproduction of the Complainant’s officially-recognized website using the Complainant’s name, address and logo. The Complainant has produced many screenshots of said website, marking the similarities of the logo and copy, and showing that said site reproduces the details of the Complainant’s financial services license. Said associated website also makes reference to the “Xtrend App” which the Complainant states is its application. The Complainant demonstrates that it is the owner of the corresponding trademark, namely European Union Registered Trademark no. 018351008 for the mark X XTREND, registered on May 28, 2021 in Classes 35, 36, and 42.

On February 14, 2022, the Complainant’s official regulator issued a public warning notice stating that the disputed domain name did not belong to an entity which has been granted an authorization for the provision of investment services and/or the performance of investment activities.

The Respondent claims to be a web developer which was requested to register the disputed domain name and build the associated website by person or persons unknown, with whom the Respondent has since lost contact.

5. Parties’ Contentions

A. Complainant

The Complaint (and amendments to the Complaint) are brief and the principal text is reproduced below:

Identical or confusingly similar

“[disputed domain name] - Online CFDs Trading - Regulated by CySEC to provide Financial and Ancillary Services. They are using our regulation license number (CySEC License), our name and address. Their logo is almost the same is ours, with different colors and they are offering similar services with us. The above information provided to their website are false and used in bad faith to their prospective Clients. Our Company and website has no relationship with the [disputed] domain [name].

Rights or legitimate interests

They are using our regulation license number (CySEC License), our name and address. Their logo is almost the same as ours, with different colors and they are offering similar services with us. The above information provided to their website is false and used in bad faith to their prospective Clients. Our Company and website has no relationship with the [disputed] domain [name].

Registered and used in bad faith

They are using our regulation license number (CySEC License), our name and address. Their logo is almost the same as ours, with different colors and they are offering similar services with us. The above information provided to their website is false and used in bad faith to their prospective Clients. Our Company and website has no relationship with the [disputed] domain [name].

In addition to the above contentions, in the amendment to the Complaint, the Complainant made the following contentions (accompanied by screenshots where stated):

The website uses the same font as our website, but in different color (screenshot 1). The website shows that it provides the same business as our company (screenshot 2). The website shows that they have segregated accounts, however this is not possible as they are using our company's address and information (screenshots 3 and 4). The website in the complaint handling section shows our Company's address (screenshot 5). The website shows that it is authorized and regulated by CySEC using our Company's License number. Additionally includes the Xtrend App which belongs to our Company. (screenshot 6 & 7 and the link from our Company's regulator (link provided). In addition, please see the trademark certificates of XTREND. The website shows that the Company's traders can use up to x200 leverage, however under MiFiD II regulation they can trade 1:30 (screenshot 8). At the bottom of the website and in their T&Cs, shows our company's details claiming that they are licensed under the CySEC using our license number. (screenshot 9 and 10). They show that they are regulated in Cyprus (previous screenshots), but under the KYC section, show that they are regulated in Estonia (screenshot 11). In section "Payment service providers", the website uses the same wording as in our website (screenshot 12 and 13).

B. Respondent

The Respondent did not reply to the Complainant's contentions. However, in two informal emails dated February 3, 2022 and February 11, 2022 to the Center, the Respondent stated that it was a programmer and web developer, working remotely, that its client ordered it to develop a website as it had done and that such client then "ordered me to buy [the disputed domain name]", explaining "I just buy the domain for my client with their order nothing else". The Respondent added that it had tried and failed to contact its client.

6. Discussion and Findings

To succeed, the Complainant must demonstrate that all of the elements listed in paragraph 4(a) of the Policy have been satisfied:

- (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

The first element analysis under the Policy is conducted in two parts. First, the Panel ascertains whether there is evidence that the Complainant has UDRP-relevant rights in a trademark, whether registered or unregistered. Secondly, the disputed domain name is compared with such trademark, typically on a straightforward side-by-side basis, in which the generic Top-Level Domain (“gTLD”) of the disputed domain name concerned (in this case “.org”) is usually disregarded as being required for technical reasons only. Confusing similarity may be found if the trademark is recognizable within the disputed domain name concerned, whether or not accompanied by other terms. Identity may be found if the trademark is identical to the disputed domain name concerned (ignoring the gTLD), and having disregarded any special characters or spaces, which may not be reproduced in a domain name.

In the present case, the Complainant has not put forward a registered trademark related to its brand and business name, “Rynat Trading”. Instead, it has provided details of its registered trademark, XTREND, which is unrelated and entirely dissimilar to the disputed domain name itself but is reproduced on the Respondent’s website. The presence of the Complainant’s said mark on the Respondent’s website may be relevant to the second and third element assessments under the Policy but is not relevant to the first element assessment. The XTREND mark is evidently neither identical nor confusingly similar to the disputed domain name. In a brief search of publicly available resources, the Panel has examined whether the Complainant possesses suitable rights in a registered trademark which it has omitted to provide in the Complaint, or whether it may possess unregistered trademark rights in a mark corresponding to its business name.

The Panel has identified the fact that on January 12, 2022, the Complainant applied to register some six Cyprus national trademarks in respect of the device and word mark RYNAT TRADING LTD.¹ The applications are numbered 92343, 92344, 92345, 92346, 92347, and 92348. Since the marks are still under application, they do not as such constitute UDRP-relevant rights in a trademark under the Policy. This leaves the question of whether the Complainant has UDRP-relevant unregistered trademark rights corresponding to its business name. There is nothing specifically in the Complaint which would assist the Panel here, other than details of the Complainant’s official domain name and website, together with a link to an entry relating to the Complainant in the database of the national financial services regulator for the Complainant’s location, the Cyprus Securities and Exchange Commission (“CYSEC”).

Said entry shows that the Complainant is a regulated provider of investment and ancillary services with cross-border services to multiple member states under a license dating from June 30, 2016. Its official domain name <rynatrading.com> is among the list of “Approved Domains” provided by CYSEC for the Complainant. Notably, the disputed domain name is not on that list. Said entry also contains the Complainant’s company registration number, allowing the Panel to identify its official entry in the register of the Cyprus Department of Registrar of Companies and Intellectual Property, publicly available online. This entry shows that the Complainant was incorporated on June 9, 2015, that it is active and that its name is “Rynat Trading Limited”. The signatory of the Complaint is identified from said official entry as a director of the Complainant. All of this tells the Panel that the Complainant has been a regulated provider of financial services in Cyprus for a period of some five and a half years and has been incorporated for a period of some six and a half years. Furthermore, a Whois lookup identifies the fact that the Complainant’s officially-recognized domain name <rynatrading.com> was registered on November 18, 2015, suggesting that the Complainant has maintained an online presence for some six years.

¹ The Panel checked the relevant online public records in the Cyprus national trademark register, the European Union Intellectual Property Office register and the WIPO Global Brand Database by way of conducting limited factual research into matters of public record (on this topic, and on the Panel’s subsequent searches in the Cyprus Securities and Exchange Commission, the Cyprus Department of Registrar of Companies and Intellectual Property, and Whois lookup of the Complainant’s officially-recognized domain name <rynatrading.com>, see section 4.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“WIPO Overview 3.0”).

While this publicly identifiable information may not on its own reach the standard of the type of evidence typically necessary to establish unregistered trademark rights under the Policy,² it does come sufficiently close, as it suggests that the Complainant has not only been trading for a reasonably lengthy period as “Rynat Trading” but also that it has passed the necessary certification process in Cyprus to be permitted to conduct financial services and to deal on behalf of investors. Based on the date of the license, the Complainant has been trading as a regulated entity since 2016. When such information is coupled with the fact that the Respondent’s website has evidently been created as a version of the Complainant’s site,³ reproducing the Complainant’s logo, name, address and license number, the Panel is satisfied that, taken together, these demonstrate that the Complainant has passed the threshold for establishing unregistered trademark rights in the mark RYNAT TRADING for the purposes of the Policy; indeed the purpose of the Respondent’s registration of the disputed domain name seems to be clearly designed to take unfair advantage of the name by which the Complainant trades.

Comparing said mark to the Second-Level Domain of the disputed domain name, it may be seen that, other than a missing space between the elements “rynat” and “trading”, which is of no consequence as spaces are not permitted in domain names, such Second-Level Domain of the disputed domain name is alphanumerically identical to the Complainant’s (unregistered) trademark.

In all of these circumstances, the Panel finds that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights and therefore that the Complainant has carried its burden in respect of paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy lists several ways in which the Respondent may demonstrate rights or legitimate interests in the disputed domain name:

“Any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate your rights or legitimate interests to the domain name for purposes of paragraph 4(a)(ii):

- (i) before any notice to you 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.”

The consensus of previous decisions under the Policy is that a complainant may establish this element by making out a *prima facie* case, not rebutted by the respondent, that the respondent has no rights or legitimate interests in a domain name. In the present case, the Panel finds that the Complainant has established the requisite *prima facie* case based on its submission and related evidence that the disputed domain name and its associated website is substantially reproducing material from the Complainant’s officially-recognized domain name and is thereby impersonating the Complainant and providing false information to the public. Indeed, as is typical in such cases, the Complainant’s regulator, CYSEC, has published an official warning notice dated February 14, 2022 stating that the disputed domain name does not

² See section 1.3 of the WIPO Overview 3.0, which provides examples of what a complainant needs to show to successfully assert unregistered trademark rights.

³ *Ibid.* “The fact that a respondent is shown to have been targeting the complainant’s mark (e.g., based on the manner in which the related website is used) may support the complainant’s assertion that its mark has achieved significance as a source identifier”.

belong to an entity which has been granted an authorization for the provision of investment services.⁴ Use of the disputed domain name in the manner adopted by the Respondent would not confer any rights or legitimate interests upon it.

In the above circumstances, the burden of production shifts to the Respondent to bring forward evidence of any rights or legitimate interests which it might have in the disputed domain name. The Respondent has not engaged with the present proceeding beyond indicating that it registered the disputed domain name and built the website for person or persons unknown. There are no submissions or evidence available which might have supported any claim of rights or legitimate interests in respect of the disputed domain name. Additionally, the Panel has been unable to determine any likely rights or legitimate interests which the Respondent or its alleged client might have claimed had it or they participated in the administrative proceeding.

In all of these circumstances, the Panel finds that the Respondent has failed to rebut the Complainant's *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name, and therefore that the Complainant has carried its burden in terms of paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy provides four, non-exclusive, circumstances that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

“(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.”

The screenshot evidence before the Panel, supported by the warning notice issued by the Complainant's regulator, CYSEC, indicates that disputed domain name appears to have been registered and used in connection with the creation of a version of the Complainant's website in order to cause the Complainant's customers to believe that they were dealing with the Complainant when they were not. Registration and use of a domain name for the purpose of impersonating an authorized financial services firm for fraudulent purposes is manifestly considered evidence of bad faith under the Policy (see, for example, *N. M. Rothschild & Sons Limited v. Kevin Sweeney, Kevin Sweeney Design*, WIPO Case No. [D2020-1248](#) and *Comerica Bank v. Abdul Bhuiyan, ABD*, WIPO Case No. [D2021-1208](#)).

Despite the fact that serious allegations of illegal conduct have been levelled at the Respondent in this particular case, it has only engaged with the administrative proceeding to the extent of claiming that it registered the disputed domain name and created the associated website on the instructions of person or persons unknown, with whom it has lost contact since the Complaint was filed. The Panel finds it hard to

⁴ The Complainant did not place the said notice into evidence but it was readily identifiable to the Panel from CYSEC's website, which the Panel visited as the Complainant had provided a link thereto in the Complaint relating to the Complainant's official authorization to conduct financial services.

believe that a web developer instructed to create a version of the website of an existing authorized financial services firm would not suspect that its services were being used for fraudulent purposes, particularly when asked to register the matching domain name after having designed the website concerned. In any event, it is a general principle that the registrant of a domain name may be held responsible for the content found on the associated website. The Respondent has provided no evidence which would alter the Panel's conclusion that there is no apparent good faith motivation to be found in connection with the registration and use of the disputed domain name nor any reasonable explanation for the conduct of the Respondent and/or those allegedly instructing it to register the disputed domain name and create the associated website.

In all of these circumstances, the Panel finds that the disputed domain name was registered and is being used in bad faith, and therefore 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 <rynattrading.org> be transferred to the Complainant.

/Andrew D. S. Lothian/

Andrew D. S. Lothian

Sole Panelist

Date: March 9, 2022