

ADMINISTRATIVE PANEL DECISION

SIX Group AG v. Zhen Cai

Case No. D2022-3192

1. The Parties

The Complainant is SIX Group AG, Switzerland, represented by Meisser & Partners, Switzerland.

The Respondent is Zhen Cai, China.

2. The Domain Name and Registrar

The disputed domain name <sixbourse8.com> is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 29, 2022. On August 29, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 30, 2022, the Registrar transmitted by email to the Center its verification response:

- (a) confirming the disputed domain name is registered with it;
- (b) confirming the language of the registration agreement is English; and
- (c) disclosing registrant and contact information for the disputed domain name which differed from the named Respondent and contact information in the Complaint.¹

The Center sent an email communication to the Complainant on September 2, 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 amended Complaint on September 5, 2022.

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”).

¹ The original Complaint identified a privacy or proxy service, Domains By Proxy, LLC, as the Respondent. After the Registrar verified the underlying customer data, the Complaint was amended to list Zhen Cai (the underlying registrant behind the privacy or proxy service), whom the Panel understands to be the proper Respondent.

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on September 13, 2022. In accordance with the Rules, paragraph 5, the due date for Response was October 3, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on October 4, 2022.

The Center appointed Warwick A. Rothnie as the sole panelist in this matter on October 11, 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 September 22, 2022, the Complainant emailed the Center to notify the website to which the disputed domain name resolves was also available at the domain name <ei4ub3.com> (the Second Domain Name).

4. Factual Background

According to the Complaint, the Complainant operates the infrastructure underpinning the Swiss stock exchange and financial markets. Its four business areas provide a comprehensive range of services relating to securities trading, financial information processes and cashless payment transactions. Its business includes the operation, regulation and monitoring of electronic exchange trading, the calculation of indexes, the downstream settlement and custody processes of securities trading, the distribution of reference and market data, the operational processes surrounding issuance and acceptance of credit, debit and prepaid cards, the settlement of electronic bills as well as interbank payment transactions in Swiss francs and Euros. It was the first stock exchange in the world to offer a fully automated trading, clearing and settlement system in 1995.

Approximately one quarter of the Complainant's business is now generated outside Switzerland. It has a presence in more than 24 countries where one third of its employees are located. The main locations where it is based are Zurich (Switzerland), Paris (France), Vienna (Austria), Stockholm (Sweden), Stamford, Connecticut in the United States and London in the United Kingdom.

Since 2020, the Complainant has also owned and operated the infrastructure for the financial markets in Spain including the stock exchanges in Madrid, Barcelona, Bilbao and Valencia.

The Complainant has an Internet presence via a website to which the domain name <six-group.com> resolves.

The Complainant carries on its business under the trademark "Six" which it has registered in a fancy form:



This form of the trademark was registered as an International Registration, No. 1010650, from March 3, 2009 in respect of a range of goods and services in International Classes 9, 16, 35, 36, 38, 39, 41, 42 and 45. The International Registration is based on a prior registration in Switzerland, Registered Trademark No. 583712, which was registered on August 19, 2008. The International Registration designated a wide number of countries including the European Union, China, Japan and Singapore as well as many others.

The Complaint also includes evidence that the Complainant has registered trademarks for SIX in Switzerland and Sweden, respectively, Numbers 990796 and 865896. The Swedish trademark was registered on September 14, 2005; the Swiss registration on October 2, 2008.

The evidence in the Complaint indicates that the disputed domain name was registered on May 8, 2022.

It resolves to a website which is headed "SIX Bourse". There is a banner proclaiming "Start the journey of digital currency" beneath which is a listing of prices for various digital or crypto currencies.

Most prominently on the landing page is an embedded video featuring only the Complainant's "fancy" trademark with the "play" button superimposed. Following this is some narrative text which states in part:

"Your Swiss Gateway to the World of Financial Markets

When it comes to raising capital there are few exchanges that can match SIX Bourse. Whether it's [sic] through an IPO, spin-off or new fund listing, the Swiss stock exchange has you covered - End-to-End."

At the foot of the landing page the website gives as its address the address of the Complainant's headquarters in Switzerland.

The website also includes a notice that human customer services is available between 9:00am and 21:00 pm, Malaysian time.

At the time this decision is being prepared, it appears that the websites to which both the disputed domain name and the Second Domain Name resolves have been taken down.

5. Discussion and Findings

No response has been filed. The Complaint and Written Notice have been sent, however, to the Respondent at the electronic and physical coordinates confirmed as correct by the Registrar in accordance with paragraph 2(a) of the Rules. The courier attempting delivery of the Written Notice was unable to complete delivery. Bearing in mind the duty of the holder of a domain name to provide and keep up to date correct Whois details, therefore, the Panel finds that the Respondent has been given a fair opportunity to present his or its case.

When a respondent has defaulted, paragraph 14(a) of the Rules requires the Panel to proceed to a decision on the Complaint in the absence of exceptional circumstances. Accordingly, paragraph 15(a) of the Rules requires the Panel to decide the dispute on the basis of the statements and documents that have been submitted and any rules and principles of law deemed applicable.

Paragraph 4(a) of the Policy provides that in order to divest the Respondent of the disputed domain name, the Complainant must demonstrate each of the following:

- (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. The Second Domain Name

The Complainant requested the Center pass on to the Panel the information about the Second Domain Name.

Paragraph 3(c) of the Rules expressly permits a complaint to relate to more than one domain name where all the domain names are registered by the same domain name holder. Notwithstanding this express provision, panels have frequently held that the Panel's powers under paragraph 10(e) of the Rules may permit consolidation of multiple domain name disputes, subject to satisfaction of the other requirements of Policy and Rules. In particular, paragraph 10(b) of the Rules requires the Panel to ensure that all parties are treated equally and each is given a fair opportunity to present his, her or its case.

In accordance with those requirements, panels have typically allowed consolidation of multiple respondents who have registered different domain names where, amongst other things, the domain names in question,

and/or the websites to which they resolve, appear to be under common control and consolidation would be fair and equitable to all parties. The onus of establishing that these requirements have been met falls on the party seeking consolidation. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.11.

According to a Whois search the Second Domain Name is not registered to the Respondent. While the resemblance of the two websites provides a strong indication that the registrants are associated in some way, before the Panel could allow joinder, it would be necessary:

- (a) for the Complainant to apply formally for joinder and address in full the criteria identified in [WIPO Overview 3.0](#), sections 4.11 and 4.12 including in particular what trademark rights it asserts against the Second Domain Name;
- (b) to seek Registrar verification; and
- (c) assuming there was no need for further amendment of the Complaint, afford the registrant of the Second Domain Name with an opportunity to submit a Response and allow that registrant and the current Respondent an opportunity to address the prejudice (if any) that might arise from joinder.

As pointed out in section 4.12 of the [WIPO Overview 3.0](#), the Complainant is not precluded from bringing a further complaint in respect of the Second Domain Name.

In these circumstances, it is neither necessary nor appropriate for the Panel to rule on the Second Domain Name.

B. Identical or Confusingly Similar

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

There are two parts to this inquiry: the Complainant must demonstrate that it has rights in a trademark at the date the Complaint was filed and, if so, the disputed domain name must be shown to be identical or confusingly similar to the trademark.

For present purposes, it is sufficient to record that the Complainant has proven ownership of the International Registration for the "fancy" trademark above.

The second stage of this inquiry simply requires a visual and aural comparison of the disputed domain name to the proven trademarks. This test is narrower than and thus different to the question of "likelihood of confusion" under trademark law. Therefore, questions such as the scope of the trademark rights, the geographical location of the respective parties and other considerations that may be relevant to an assessment of infringement under trademark law are not relevant at this stage. Such matters, if relevant, may fall for consideration under the other elements of the Policy. See e.g. [WIPO Overview 3.0](#), section 1.7.

In undertaking that comparison, it is permissible in the present circumstances to disregard the generic Top-Level Domain (gTLD) component as a functional aspect of the domain name system. [WIPO Overview 3.0](#), section 1.11.

In addition, it is also usual to disregard the design elements of a trademark under the first element as such elements are generally incapable of representation in a domain name. Where the textual elements have been disclaimed in the registration or cannot fairly be described as an essential or important element of the trademark, however, different considerations may arise. See for example, [WIPO Overview 3.0](#), section 1.10. That is plainly appropriate in the present case.

Disregarding the “.com” gTLD, the disputed domain name consists of the Complainant’s registered trademark and the term “bourse 8”. As this requirement under the Policy is essentially a standing requirement, the addition of this term does not preclude a finding of confusing similarity. See e.g. [WIPO Overview 3.0](#), section 1.8. Apart from anything else, the Complainant’s trademark remains visually and aurally recognisable within the disputed domain name.

Accordingly, the Panel finds that the Complainant has established that the disputed domain name is confusingly similar to the Complainant’s trademark and the requirement under the first limb of the Policy is satisfied.

C. Rights or Legitimate Interests

The second requirement the Complainant must prove is that the Respondent has no rights or legitimate interests in the disputed domain name.

Paragraph 4(c) of the Policy provides that the following circumstances can be situations in which the Respondent has rights or legitimate interests in a disputed domain name:

- (i) before any notice to [the Respondent] of the dispute, [the Respondent’s] use of, or demonstrable preparations to use, the [disputed] domain name or a name corresponding to the [disputed] domain name in connection with a *bona fide* offering of goods or services; or
- (ii) [the Respondent] (as an individual, business, or other organization) has been commonly known by the [disputed] domain name, even if [the Respondent] has acquired no trademark or service mark rights; or
- (iii) [the Respondent] is making a legitimate noncommercial or fair use of the [disputed] domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

These are illustrative only and are not an exhaustive listing of the situations in which a respondent can show rights or legitimate interests in a domain name.

The onus of proving this requirement, like each element, falls on the Complainant. Panels have recognized the difficulties inherent in proving a negative, however, especially in circumstances where much of the relevant information is in, or likely to be in, the possession of the respondent. Accordingly, it is usually sufficient for a complainant to raise a *prima facie* case against the respondent under this head and an evidential burden will shift to the respondent to rebut that *prima facie* case. The ultimate burden of proof, however, remains with the Complainant. See e.g., [WIPO Overview 3.0](#), section 2.1.

The Respondent registered the disputed domain name after the Complainant began using its trademark and also after the Complainant had registered its trademark.

The disputed domain name is not derived from the Respondent’s name. Nor is there any suggestion of some other name by which the Respondent is commonly known from which the disputed domain name could be derived. From the available record, the Respondent does not appear to hold any trademarks for the disputed domain name.

The Complainant states that it has not authorised the Respondent to use the disputed domain name. Nor is the Respondent affiliated with it.

In such circumstances, the use of the disputed domain name to resolve to a website masquerading as the, or a, website of the operator of the Swiss stock exchange does not qualify as a good faith offering of goods or services (assuming that services are genuinely being offered through the website). It falsely represents an association with Complainant and constitutes a misleading attempt to garner customers on the basis of the Complainant’s trademark and reputation.

These matters, taken together, are sufficient to establish a *prima facie* case under the Policy that the Respondent has no rights or legitimate interests in the disputed domain name. The basis on which the Respondent has adopted the disputed domain name, therefore, calls for explanation or justification. The Respondent, however, has not sought to rebut that *prima facie* case or advance any claimed entitlement. Accordingly, the Panel finds the Complainant has established the second requirement under the Policy also.

D. Registered and Used in Bad Faith

Under the third requirement of the Policy, the Complainant must establish that the disputed domain name has been both registered and used in bad faith by the Respondent. These are conjunctive requirements; both must be satisfied for a successful complaint: see e.g. *Burn World-Wide, Ltd. d/b/a BGT Partners v. Banta Global Turnkey Ltd*, WIPO Case No. [D2010-0470](#).

Generally speaking, a finding that a domain name has been registered and is being used in bad faith requires an inference to be drawn that the respondent in question has registered and is using the disputed domain name to take advantage of its significance as a trademark owned by (usually) the complainant.

Given the content of the website to which the disputed domain name resolves there can be no doubt that the Respondent was aware of the Complainant and its trademark when registering the disputed domain name.

As only a short time elapsed between the registration of the disputed domain name and the website commencing operation, the Panel infers the disputed domain name was registered for the purpose to which it has been put.

The registration of the disputed domain name for a website which misleadingly diverts customers and potential customers in the manner described above clearly constitutes registration in bad faith. Correspondingly, the use of the disputed domain name in that way clearly constitutes use in bad faith under the Policy.

Accordingly, the Complainant has established all three requirements under the Policy.

6. 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 <sixbourse8.com>, be transferred to the Complainant.

/Warwick A. Rothnie/

Warwick A. Rothnie

Sole Panelist

Date: October 25, 2022