

ADMINISTRATIVE PANEL DECISION

FXCM Global Services, LLC v. PROYECT MCI, FXCM
Case No. D2022-4339

1. The Parties

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

The Respondent is PROYECT MCI, FXCM, Ecuador.

2. The Domain Name and Registrar

The disputed domain name <fxcm-holdings.com> (“Domain Name”) is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 15, 2022. On November 15, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On November 15, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on November 16, 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 November 16, 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”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on November 18, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 8, 2022. The Respondent submitted informal replies via email but did not submit any response. Accordingly, the Center notified the commencement of the Panel’s appointment process on December 9, 2022.

The Center appointed Willem J. H. Leppink as the sole panelist in this matter on December 16, 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 following facts are undisputed.

The Complainant is a company incorporated in the U.S. It operates as a retail broker in the foreign exchange (“Forex”) market. Founded in 1999, the Complainant is a leading provider of online Forex trading, contract for difference (CFD) trading and related services. It has numerous international offices, such as those located in the United Kingdom, Australia, France, Hong Kong, China, and South Africa, amongst others.

The Complainant has exclusive rights in FXCM, and FXCM related marks (hereinafter “FXCM marks”). The Complainant is the owner of numerous FXCM marks worldwide, including a United States trademark registration for FXCM registered on September 17, 2002 (registration number 2620953); an Australian trademark registration for FXCM registered on December 3, 2004 (registration number 1093998); and a European Union trademark registration for FXCM registered on November 3, 2005 (registration number 003955523). These registrations are hereinafter jointly be referred to as the “Trademark”.

The Domain Name was registered on April 15, 2022, and at the time of the Complainant sending a cease and desist letter on July 7, 2022 until October 2022, resolves to a website which allegedly offered financial services similar to those of the Complainant (“Website”). Currently, Domain Name does not resolve to an active website.

5. Parties’ Contentions

A. Complainant

The Complainant contends the following:

The Domain Name is confusingly similar to the Trademark when disregarding the generic Top-Level Domain (“gTLD”) “com” whereas, the Domain Name consists of the Trademark in its entirety, plus the term “holdings” separated by a hyphen.

The Respondent has no rights or legitimate interests in regard to the Domain Name. The Complainant has not given any license to the Respondent to use the Trademark. In addition to this, the Respondent is not commonly known by the Domain Name and has not secured any prior rights in relation to the Domain Name. The Domain Name does no longer resolves to an active website, but the Website that existed before, allegedly offered services similar to those of the Complainant, by allegedly offering forex and online trading and thus falsely insinuates affiliation with the Complainant throughout, using the “FXCM” brand on the site and “fxcm-holdings” in the Domain Name. There is also the option for users to create an account, which involves users inputting personal details. Such use cannot be considered to be *bona fide* use.

Furthermore, it follows from the above-mentioned circumstances that the Domain Name has been registered and is being used in bad faith. The Complainant’s earliest trademark registrations predate the registration of the Domain Name by 20 years. Substantial goodwill has accrued since the Complainant’s establishment in 2002 and thus the “FXCM” name has become synonymous with online Forex and CFD trading. The circumstances of this case indicate that the Respondent intentionally used the commercial value and goodwill of the Complainant’s brand to confuse online users for the Respondent’s own gain through the perpetration of illegitimate financial offerings. Moreover, the Respondent has set up mail exchange records

(MX records) for the Domain Name. This means that the Respondent has taken additional steps to enable the ability to send and receive emails using an email address ending in “@fxcm-holdings.com”. As such, the Domain Name can be used for emails which impersonate the Complainant’s “FXCM” brand.

As such the Respondent has intentionally attempted to attract, for commercial gain, Internet users to their 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 their website or location or of a product or service on their website or location. Furthermore the Respondent has registered the Domain Name primarily for the purpose of disrupting the business of a competitor.

B. Respondent

The Respondent did not reply to the Complainant’s contentions. The Respondent only sent several emails to the Center suggesting a possible settlement. However, such settlement was not reached.

6. Discussion and Findings

Pursuant to paragraph 4(a) of the Policy, the Complainant must prove each of the following three elements:

- (i) the Domain Name is identical or confusingly similar to the trademark or service mark in which the Complainant has rights;
- (ii) the Respondent has no rights or legitimate interests in respect of the Domain Name; and
- (iii) the Domain Name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant must demonstrate that it has rights in a trademark or service mark and, if so, the Domain Name must be shown to be identical or confusingly similar to that mark.

The Complainant has sufficiently proven to have rights in the Trademark.

As set out in the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.7, the first element functions primarily as a standing requirement. The threshold test for confusing similarity between the Domain Name and the Trademark involves a relatively straightforward comparison.

In light of the foregoing, the Panel finds that the Domain Name is confusingly similar to the Trademark. The Domain Name consists of the Trademark, plus the term “holding”, separated by a hyphen. The Panel finds that the Trademark is included in its entirety in the Domain Name and that the aforementioned elements do not prevent a finding of confusing similarity.

In addition, with regard to the gTLD “.com”, as it was established in many previous UDRP decisions (see *A.P. Møller v. Web Society*, WIPO Case No. [D2000-0135](#); *Rollerblade, Inc. v. Chris McCrady*, WIPO Case No. [D2000-0429](#); *Arab Bank for Investment And Foreign Trade (ARBIFT) v. Mr. Kenn Wagenheim / 07@usa.net*, WIPO Case No. [D2000-1400](#); *Delikommat Betriebsverpflegung Gesellschaft m.b.H. v. Alexander Lehner*, WIPO Case No. [D2001-1447](#); and *Crédit Industriel et Commercial S.A v. Name Privacy*, WIPO Case No. [D2005-0457](#)), it does not generally affect the analysis under the first element of the Policy for the purpose of determining whether a domain name is identical or confusingly similar; indeed, the gTLD “.com” is a necessary component of the Domain Name.

Thus, the Panel finds that the Domain Name is confusingly similar to the Trademark.

For all the foregoing reasons, the Panel is satisfied that the first element of the Policy is met.

B. Rights or Legitimate Interests

The Panel has carefully considered the factual allegations that have been made by the Complainant and are supported by the submitted evidence.

In particular, the Respondent has failed to offer the Panel any of the types of evidence set forth in paragraph 4(c) of the Policy from which the Panel might conclude that the Respondent has rights or legitimate interests in the Domain Name, such as:

- (i) use or preparation to use the Domain Name or a name corresponding to the Domain Name in connection with a *bona fide* offering of goods or services prior to notice of the dispute; or
- (ii) being commonly known by the Domain Name (as an individual, business or other organization) even if the Respondent has not acquired any trademark or service mark rights; or
- (iii) making 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.

There is no evidence in the case file that the Respondent has any rights or legitimate interests in the Domain Name.

The Respondent does not seem to be affiliated with the Complainant in any way. There is no evidence that “fxcm” or “fxcm-holdings” is the Respondent’s name or that the Respondent is commonly known as such. The registration of the Domain Name in the name of FXCM is as such irrelevant, as the Respondent did not provide any evidence to show that “FXCM” corresponds to its name, and as even the Respondent in its informal replies, did not refer to having such name.

There is also no evidence that the Respondent is, or has ever been, a licensee of the Complainant or that the Respondent has ever asked, or has ever been permitted in any way by the Complainant to register or use the Complainant’s Trademark, or to apply for or use any domain name incorporating the Trademark.

Certainly lacking a substantive response, the purported offering of services on the Website cannot be considered as use of the Domain Name in connection with a *bona fide* offering of goods and services, in particular given the use appears, at the best, intended to compete with or capitalize on the reputation and goodwill of the Trademark, but more likely to mislead and defraud Internet users.

The Respondent has also not put forward any evidence that would support the claim that the use of the Domain Name would relate to a legitimate noncommercial or fair use.

The Panel therefore finds that the second element has been satisfied.

C. Registered and Used in Bad Faith

The Panel finds that the Respondent has registered and used the Domain Name in bad faith and refers to its considerations under section 6.B. above.

In light of the evidence filed by the Complainant, the Panel finds that the Trademark and the Complainant’s activities are well known throughout the world. The Complainant is the owner of numerous trademarks which were used and registered decades before the Domain Name was registered. In the Panel’s view and certainly lacking any substantive response, the Respondent must have been aware of the existence of the Complainant’s activities and rights at the time the Respondent registered the Domain Name. Lastly, the Respondent opted to register the Domain Name through a privacy service, which in this case serves as another indication of registration in bad faith (see section 3.6 [WIPO Overview 3.0](#)). Use of a privacy service would not be logical in case the Respondent would actually use the Domain Name for offering financial services.

Therefore, the Panel finds that there is no plausible explanation as to why the Respondent registered the Domain Name other than that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to the Website, by creating a likelihood of confusion with the Trademark, as to the source, sponsorship, affiliation, or endorsement of the Respondent. In doing so, the Respondent makes it unclear for Internet users whether the Website is operated by the Complainant or not. Thus, by creating the likelihood of confusion, the Respondent intended to trade off the goodwill and reputation of the Complainant.

Finally, although the lack of a formal response by the Respondent as such cannot by itself lead to the conclusion that there is registration and use in bad faith, the cumulative circumstances as outlined in the Decision are sufficient for the Panel to find that the use of the Domain Name by the Respondent is in bad faith.

Accordingly, the Panel finds that the Domain Name has been registered and is being used in bad faith and as such the third element is satisfied.

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 Domain Name <fxcm-holdings.com> be transferred to the Complainant.

/Willem J. H. Leppink/

Willem J. H. Leppink

Sole Panelist

Date: December 28, 2022