

## **ADMINISTRATIVE PANEL DECISION**

**FXCM Global Services, LLC v. sfsdf sdf, sfsfsss**  
**Case No. D2022-4504**

### **1. The Parties**

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

The Respondent is sfsdf sdf, sfsfsss, China.

### **2. The Domain Names and Registrar**

The disputed domain names <www-fxcm.cc>, <www-fxcm.com>, and <www-fxcm.xyz> (jointly referred to as the “Disputed Domain Names”) are registered with GoDaddy.com, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 25, 2022. On November 25, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Names. On November 28, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Disputed Domain Names which differed from the named Respondent and contact information in the Complaint (Registration Private, DomainsByProxy.com). The Center sent an email communication to the Complainant on November 30, 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 December 2, 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 December 5, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 25, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 27, 2022.

The Center appointed Flip Jan Claude Petillion as the sole panelist in this matter on January 6, 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, FXCM Global Services, LLC, operates as a retail broker in the foreign exchange ('Forex') market. Founded in 1999, the Complainant provides online Forex trading, Contract for Differences ('CFD') trading and related services.

The Complainant holds various registered trademarks consisting of or including the sign FXCM, including the following:

- FXCM, word mark registered in the United States under No. 2620953 on September 17, 2002 in class 36;
- FXCM, word mark registered in the European Union under No. 003955523 on November 3, 2005 in classes 35, 36 and 41;
- FXCM, word mark registered in China under No. 12457692 on March 28, 2016 in class 36.

The Complainant's FXCM mark is also part of its logo as depicted below:



Amongst others, the Complainant holds the domain name <fxcm.com> which it uses to resolve to its official website.

All three Disputed Domain Names were registered on July 2, 2022 and resolve to (nearly) identical websites purporting to offer trading services similar to the Complainant's services.

The Complainant sent a cease and desist letter using the contact information available in the Whois records on August 4, 2022. The Complainant claims it received no response.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant considers the Disputed Domain Names to be confusingly similar to trademarks in which it claims to have rights.

The Complainant further claims that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Names. In summary, according to the Complainant:

- to the best of the Complainant's knowledge, the Respondent is not commonly known by the distinctive term FXCM and does not have any trademark rights to this term or any other terms used in the Disputed Domain Names. There is also no evidence that the Respondent retains unregistered trademark rights to the term "FXCM" or "www-fxcm";
- the Complainant has never granted any license to the Respondent to use domain names featuring the Complainant's FXCM mark;
- using the Disputed Domain Names in a manner competitive to the Complainant is not *bona fide* use, nor is using the Disputed Domain Names for deceptive purposes;

- the Respondent has not made a legitimate noncommercial or fair use of the Disputed Domain Names.

Finally, the Complainant claims that the Disputed Domain Names were registered and are being used in bad faith. The Complainant contends that the Respondent knew or should have known of the Complainant's rights when it registered the Disputed Domain Names. According to the Complainant, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its websites by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of its websites or of a product or service on its websites. Moreover, the Complainant claims that the Respondent has registered the Disputed Domain Names primarily for the purpose of disrupting the business of a competitor.

## **B. Respondent**

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

## **6. Discussion and Findings**

Paragraph 15 of the Rules provides that the Panel is to decide the Complaint on the basis of the statements and documents submitted and in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

The onus is on the Complainant to make out its case and it is apparent, both from the terms of the Policy and the decisions of past UDRP panels, that the Complainant must show that all three elements set out in paragraph 4(a) of the Policy have been established before any order can be made to transfer the Disputed Domain Names. As the proceedings are administrative, the standard of proof is the balance of probabilities.

Thus, for the Complainant to succeed, it must prove, within the meaning of paragraph 4(a) of the Policy and on the balance of probabilities that:

- i. the Disputed Domain Names are 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 Names; and
- iii. the Disputed Domain Names have been registered and are being used in bad faith.

The Panel will deal with each of these requirements in turn.

### **A. Identical or Confusingly Similar**

To prove this element, the Complainant must first establish that there is a trademark or service mark in which it has rights. The Complainant has clearly established that there are trademarks in which it has rights. The Complainant's FXCM trademarks have been registered and used in various countries in connection with the Complainant's trading business.

The Panel observes that all Disputed Domain Names incorporate the Complainant's FXCM trademark in its entirety, simply preceding it with the term "www" and a hyphen.

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 (see section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#))).

Additionally, it is well established that Top-Level Domains ("TLDs"), here ".com", ".cc" and ".xyz", may be disregarded when considering whether a disputed domain name is confusingly similar to a trademark in which a complainant has rights.

In light of the above, the Panel considers the Disputed Domain Names to be confusingly similar to the Complainant's FXCM trademark.

## **B. Rights or Legitimate Interests**

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Names.

As established by previous UDRP panels, it is sufficient for the Complainant to make a *prima facie* showing that the Respondent has no rights or legitimate interests in the Disputed Domain Names in order to place the burden of production on the Respondent (see section 2.1 of the [WIPO Overview 3.0](#)).

The Panel observes that the Respondent does not appear to be commonly known by the Disputed Domain Names and that the Respondent does not seem to have acquired trademark or service mark rights (there being no Response or evidence of any such rights). According to the information provided by the Registrar, the Respondent is named "sfsdf sdf" from the organization "sfsfss". In the Panel's view, this indicates that the Respondent provided false contact details. There are no indications that a connection between the Complainant and the Respondent exists.

Where a domain name consists of a trademark plus an additional term, UDRP panels have largely held that such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner (see section 2.5.1 of the [WIPO Overview 3.0](#)). The second-level portion of all three Disputed Domain Names is identical: it combines the letters "www" with the Complainant's FXCM mark, separated by a hyphen. In the Panel's view, the addition of the letters "www" does nothing to avoid confusion with the Complainant's mark. On the contrary, these letters correspond to the popular subdomain "www" which is widely used as the first part of a URL. The Panel finds that Internet users could easily confuse the Disputed Domain Names with the URL of the Complainant's official website, namely "www.fxcm.com". Therefore, the Panel finds that the Disputed Domain Names carry a risk of implied affiliation with the Complainant and cannot constitute fair use in these circumstances.

Beyond looking at the domain name(s) and the nature of any additional terms appended to it, UDRP panels assess whether the overall facts and circumstances of the case, such as the content of the website linked to the disputed domain name and the absence of a response, support a fair use or not (see sections 2.5.2 and 2.5.3 of the [WIPO Overview 3.0](#)).

The Disputed Domain Names all refer to (nearly) identical websites purporting to offer trading services similar to the Complainant's services. Moreover, one of the pages of these websites is a login page reproducing a part of the Complainant's logo as depicted above under section 4. The Panel observes that the websites do not mention any information about the entity operating these websites, despite the fact that this type of currency trading is heavily regulated.

In the Panel's view, the above elements are indications of illegal activity using the Disputed Domain Names. UDRP panels have categorically held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods, phishing, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent (see section 2.13 of the [WIPO Overview 3.0](#)).

The Respondent had the opportunity to demonstrate rights or legitimate interests but did not do so. In the absence of a Response from the Respondent, the *prima facie* case established by the Complainant has not been rebutted.

Therefore, the Panel finds that the Complainant has established that the Respondent has no rights or legitimate interests in the Disputed Domain Names. In light of the above, the Complainant succeeds on the second element of the Policy.

### C. Registered and Used in Bad Faith

The Complainant must prove on the balance of probabilities both that the Disputed Domain Names were registered in bad faith and that these are used in bad faith (see section 4.2 of the [WIPO Overview 3.0](#) and, for example, *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#) and *Control Techniques Limited v. Lektronix Ltd*, WIPO Case No. [D2006-1052](#)).

Paragraph 4(b) of the Policy provides a non-exhaustive list of factors, any one of which may demonstrate bad faith. Among these factors demonstrating bad faith registration and use is the use of a domain name to intentionally attempt to attract, for commercial gain, Internet users to a 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 the website or location or of a product or service on the website or location.

In the present case, the Panel finds it inconceivable that the Respondent was unaware of the Complainant and its rights in the FXCM mark when it registered the Disputed Domain Names. At least one of the Complainant's FXCM marks predate the registration of the Disputed Domain Names by 20 years. The Complainant also has at least one trademark registered in China, where the Respondent is located, predating the Disputed Domain Names by more than four years. Moreover, the websites linked to the Disputed Domain Names include a part of the Complainant's logo and purport to offer services similar to those offered by the Complainant. As a result, the Respondent must have had knowledge of the Complainant's rights at the time of registering the Disputed Domain Names. The Panel finds that the Respondent's awareness of the Complainant's trademark rights at the time of registration suggests bad faith.

Given the clearly confusing nature of the Disputed Domain Names, redirecting Internet users to websites mentioning a part of the Complainant's logo and purporting to offer trading services similar to the Complainant's services, the Panel finds that the Respondent intentionally aimed to attract Internet users to visit these websites for commercial gain, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the website or location and of the products advertised on the website (see *Simyo GmbH v. Domain Privacy Service FBO Registrant / Ramazan Kayan*, WIPO Case No. [D2014-2227](#)).

Moreover, the Panel finds that in the circumstances of this case, the fraudulent nature of the trading services offered through the websites linked to the Disputed Domain Names cannot be excluded. Such illegal activity is manifestly considered evidence of bad faith (see section 3.1.4 of the [WIPO Overview 3.0](#)).

Finally, by failing to respond to the Complaint, the Respondent did not take any initiative to contest the foregoing. Pursuant to paragraph 14 of the Rules, the Panel may draw the conclusions it considers appropriate.

Therefore, the Panel finds that, on the balance of probabilities, it is sufficiently shown that the Disputed Domain Names were registered and are being used in bad faith. In light of the above, the Complainant also succeeds on the third and last element 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 Names, <www-fxcm.cc>, <www-fxcm.com> and <www-fxcm.xyz> be transferred to the Complainant.

*/Flip Jan Claude Petillion/*

**Flip Jan Claude Petillion**

Sole Panelist

Date: January 20, 2023