

## **ADMINISTRATIVE PANEL DECISION**

FXDirectDealer, LLC v. Bertha Christensen

Case No. D2023-0081

### **1. The Parties**

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

Respondent is Bertha Christensen, United States.

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

The disputed domain name <fxexdd.com> (the “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 January 6, 2023. On January 9, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On January 10, 2023, 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 (See PrivacyGuardian.org) and contact information in the Complaint. The Center sent an email to Complainant on January 10, 2023 providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amendment to the Complaint on January 11, 2023.

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 Respondent of the Complaint, and the proceedings commenced on January 12, 2023. In accordance with the Rules, paragraph 5, the due date for Response was February 1, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on February 6, 2023.

The Center appointed Robert A. Badgley as the sole panelist in this matter on February 13, 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**

Complainant asserts that it is a “well-known financial services company” that has been using FXDD as a trademark since 2002. More specifically, Complainant alleges that it is “the international leader in its online foreign exchange trading and education services offered under its FXDD Marks.”

Annexed to the Complaint are some media reports about Complainant, including a May 18, 2016 *Business Wire* article which includes the following paragraph:

“FXDD Global and Tradency have a track record of pioneering innovative solutions for the wealth management, investment and trading industries for more than 10 years. FXDD Global’s trading innovations began with bringing the Forex [foreign exchange] market its first in-house Meta Trader 4 bridge, and now further bolsters its industry-leading trading environment by being the first broker to provide its investors access to RoboX.”

Also annexed to the Complaint are various articles reporting that Complainant (almost always referred to as FDX) has won numerous awards in recent years within the foreign exchange trading field.

Complainant holds various trademark registrations in several jurisdictions for FXDD (or FXDD-formative marks), such as: United States Patent and Trademark Office (“USPTO”) Reg. No. 3,991,011 for FXDD (and design), registered on July 5, 2011 in connection with computer programs, financial services, and educational services; USPTO Reg. No. 4,418,706 for word mark FXDD, registered on October 15, 2013 in connection with downloadable software, financial services, and educational services.

Complainant operates its main commercial website at the domain name <fxdd.com>.

The Domain Name was registered on June 18, 2022. The Domain Name resolves to a website featuring a logo very similar to Complainant’s stylized FXDD mark (and using the same colors). The site purports to offer financial trading services, and includes a “login” page for consumers. Complainant alleges that Respondent’s site is designed to impersonate Complainant’s site and/or suggest a false affiliation between the website and Complainant, for fraudulent purposes.

Complainant states that Respondent has no affiliation with Complainant, and that Complainant has not licensed or otherwise authorized Respondent to use the FXDD mark in a domain name or otherwise.

Respondent has not disputed any of the foregoing allegations.

#### **5. Parties’ Contentions**

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

Complainant contends that it has established all three elements required under the Policy for a transfer of the Domain Name.

##### **B. Respondent**

Respondent did not reply to Complainant’s contentions.

## 6. Discussion and Findings

Paragraph 4(a) of the Policy lists the three elements which Complainant must satisfy with respect to the Domain Name:

- (i) the Domain Name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (ii) 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 Panel concludes that Complainant has rights in the trademark FXDD through registration and use demonstrated in the record. The Panel also concludes that the Domain Name is confusingly similar to that mark. The addition of the letters “ex” does not significantly distinguish the mark from the Domain Name, since the mark FXDD remains recognizable within the Domain Name.

Complainant has established Policy, paragraph 4(a)(i).

### B. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, Respondent may establish its rights or legitimate interests in the Domain Name, among other circumstances, by showing any of the following elements:

- (i) before any notice to you [Respondent] 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 [Respondent] (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 [Respondent] 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 Panel concludes that Respondent lacks rights or legitimate interests in respect of the Domain Name. Respondent has not come forward in this proceeding to articulate any legitimate interest she might have vis-à-vis the Domain Name.

None of the “safe harbors” listed above has been invoked by Respondent, and none appears likely based on the record here. It is undisputed that Complainant has not authorized Respondent to use its FXDD mark in a domain name or otherwise.

It is also undisputed, and otherwise evident from the comparison of the Parties’ respective websites, that Respondent registered the Domain Name with knowledge of Complainant’s FXDD trademark, and with the intent to set up a website to impersonate Complainant and mislead consumers looking for Complainant’s services. Such conduct is plainly illegitimate.

Complainant has established Policy, paragraph 4(a)(ii).

### C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy provides that the following circumstances, “in particular but without limitation,” are evidence of the registration and use of the Domain Name in “bad faith”:

- (i) circumstances indicating that Respondent has registered or has acquired the Domain Name primarily for the purpose of selling, renting, or otherwise transferring the Domain Name

- registration to Complainant who is the owner of the trademark or service mark or to a competitor of that Complainant, for valuable consideration in excess of its documented out of pocket costs directly related to the Domain Name; or
- (ii) that Respondent has 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 Respondent has engaged in a pattern of such conduct; or
  - (iii) that Respondent has registered the Domain Name primarily for the purpose of disrupting the business of a competitor; or
  - (iv) that by using the Domain Name, Respondent has intentionally attempted to attract, for commercial gain, Internet users to Respondent's website or other online location, by creating a likelihood of confusion with Complainant's mark as to the source, sponsorship, affiliation, or endorsement of Respondent's website or location or of a product or service on Respondent's website or location.

The Panel concludes that Respondent has registered and used the Domain Name in bad faith within the meaning of the above-quoted Policy, paragraph 4(b)(iv). As discussed above, it is obvious from the content of the Parties' respective websites that Respondent had Complainant's FXDD trademark in mind when registering the Domain Name. It is plausibly alleged and supported with screenshot evidence, and undisputed by Respondent, that Respondent has sought to impersonate Complainant to deceive consumers into believing that Respondent's website is somehow affiliated with or sponsored by Complainant.

The Panel further notes that a third party sent an email on January 20, 2023 stating that she received the Written Notice by courier related to this proceeding by mistake, believing that her personal address has been misappropriated. The Panel finds that this may also be an indicator of bad faith on the part of the Respondent.

Complainant has established Policy, paragraph 4(a)(iii).

## 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 <fxexdd.com> be transferred to Complainant.

*/Robert A. Badgley/*

**Robert A. Badgley**

Sole Panelist

Date: February 18, 2023