

ADMINISTRATIVE PANEL DECISION

Chicago Mercantile Exchange Inc. and CME Group Inc. v. etgd qazx
Case No. D2023-0984

1. The Parties

The Complainants are Chicago Mercantile Exchange Inc. (the “First Complainant”), United States of America (“United States”), and CME Group Inc. (the “Second Complainant”), United States, represented by Norvell IP llc, United States.

The Respondent is etgd qazx, Cambodia.

2. The Domain Name and Registrar

The disputed domain name <cmefinance.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 March 3, 2023. On March 6, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 7, 2023, 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 (Registration Private, Domains by Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainants on March 8, 2023, 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 March 9, 2023.

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 March 16, 2023. In accordance with the Rules, paragraph 5, the due date for Response was April 5, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 6, 2023.

The Center appointed John Swinson as the sole panelist in this matter on April 26, 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 First Complainant was founded in 1898. The Second Complainant owns the First Complainant. The Second Complainant was formed in 2007 after the First Complainant and the Chicago Board of Trade merged.

The Second Complainant offers futures and options in major asset classes, such as metals, commodities, foreign exchange, energy, and other products through four exchanges: CME or Chicago Mercantile Exchange, CBOT or Chicago Board of Trade, COMEX or Commodity Exchange, and NYMEX or New York Mercantile Exchange. In 2021, more than 20 million contracts were traded daily through the Complainants' exchanges.

The First Complainant owns a portfolio of trademark registrations, including United States Registration No. 1,085,681 for CME that has a registration date of February 14, 1978.

The domain name <cme.com> was originally registered in 1994 and is still active. This domain name redirects users to the Second Complainant's primary homepage at <cmegroup.com> which has been owned by the Complainants since 2007.

The disputed domain name was registered on August 23, 2022.

The Respondent did not file a Response, so little information is known about the Respondent. According to the Registrar's records, the Respondent has an address and telephone number in Cambodia.

At one point in time, the website at the disputed domain name resolved to a website that used the Complainants' trademarks, including the Complainants' blue global logo. This website was deactivated about January 4, 2023 after the Complainants sent a legal demand letter to the Respondent.

At the present time, the disputed domain name does not resolve to an active website.

5. Parties' Contentions

A. Complainants

In summary, the Complainants make the following submissions:

The Complainants own registrations for the CME trademarks in multiple jurisdictions, including United States, Australia, Brazil, Canada, China, the European Union, India, Japan, Mexico, Singapore, the United Kingdom, and Hong Kong, China. Moreover, these trademarks have been filed or registered before the registration date of the disputed domain name.

The disputed domain name fully incorporates, and is thus confusingly similar to, the Complainants' strong, registered CME trademark.

The Respondent is not affiliated with the Complainants in any way. At no time have the Complainants licensed or otherwise endorsed, sponsored, or authorized the Respondent to use the Complainants' registered CME trademarks.

A respondent who knowingly adopts a third party's well-known mark as a domain name cannot claim the benefit of paragraph 4(c)(i) of the Policy to establish rights to the domain name based on the mere uses of the domain name to offer goods or services prior to the notice of a dispute.

The Respondent has not used, and is not using or preparing to use, the disputed domain name in connection with *bona fide* offering of goods or services. Instead, the disputed domain name is designed to deceive customers, creating the false impression that the Respondent's services and communications are associated with the Complainants. The Respondent is intentionally creating this false association and confusion by using the Complainants' CME trademarks in the disputed domain name and using the disputed domain name to lure the Complainants' customers to provide their identifying information to the Respondent under the pretenses that they are providing identifying contact information to the Complainants. Thus, the Respondent is not engaged in the *bona fide* offering of services within the meaning of paragraph 4(c)(iii) of the Policy.

The Respondent cannot show any facts, including facts based on paragraph 4(c) of the Policy that establish any rights to or legitimate interests in the disputed domain name.

The website at the disputed domain name contained multiple uses of the Complainants' CME trademarks, and attempted to fraudulently represent that it was a sanctioned website of the Complainants. Further, this website attempted to lure the Complainants' customers to download an application through a scheme facilitated through the disputed domain name.

The Respondent created a webpage displaying the Complainants' CME trademarks, names, and various financial information to appear to be a legitimate, CME-sanctioned website. Due to the Respondent's use of the Complainants' CME trademarks, the Complainants' customers were likely tricked into navigating the website at the disputed domain name, registering an account and downloading an application under the impression they were doing so in a legitimate manner with services connected to the Complainants, when in fact, they were not.

There is no legitimate reason for the Respondent to use the Complainants' registered CME trademarks in the disputed domain name. Rather, the only reason to do so would be to lure Internet users, the Complainants' customers, and potential customers of the Complainants to the Respondent's unlawful, fraudulent website and activities.

The record demonstrates that the Respondent registered and is using the disputed domain name in bad faith because: (1) the Respondent knew of the Complainants' rights in the CME trademarks prior to the registration of the disputed domain name; (2) the Respondent registered and is using the disputed domain name to perpetrate a fraud, illegitimate scheme, or scam; (3) the Respondent registered and is using the disputed domain name for commercial gain by intentionally creating a likelihood of confusion with the Complainants' CME trademarks as to the source, sponsorship, affiliation, or endorsement of the Respondent's webpages; and (4) the Respondent's continued ownership of the disputed domain name represents an abusive threat hanging over the Complainants.

B. Respondent

The Respondent did not reply to the Complainants' contentions.

6. Discussion and Findings

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

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainants have rights;

- (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.

The *onus* of proving these elements is on the Complainants.

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

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy provides that the Complainants must establish that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainants have rights.

As set out in Section 4 above, the Complainants have longstanding registered trademark rights for CME.

Previous UDRP panels have consistently held that domain names are identical or confusingly similar to a trademark for purposes of the Policy when the domain name includes the trademark, or a confusingly similar approximation, disregarding the Top-Level Domain part of the domain name (*e.g.*, disregarding the “.com” part of the domain name.)

Here, the disputed domain name includes the CME registered trademark in its entirety. The addition of the word “finance” does not prevent a finding that the disputed domain name is confusingly similar to the Complainants’ CME registered trademark. The Complainants’ CME trademark is clearly recognizable within the disputed domain name. *Chicago Mercantile Exchange Inc. / CME Group Inc. v. WhoisGuard, Inc. / loving kkon / Domain Administrator, See PrivacyGuardian.org / no1, changhe piao*, WIPO Case No. [D2021-0040](#); *The Nasdaq Stock Market, Inc. v. Green Angel*, WIPO Case No. [D2001-1010](#).

The Complainants succeed on the first element of the Policy.

B. Rights or Legitimate Interests

The Complainants’ allegations to support the Respondent’s lack of rights or legitimate interests in the disputed domain name are set out in Section 5A above.

There is no evidence that the Respondent is commonly known by the disputed domain name. The disputed domain name was registered well after the Complainants established trademark rights in CME.

Where the disputed domain name was selected for the purpose of creating a false association with the Complainants or to evoke the Complainants and their trademarks through the disputed domain name and website, no rights or legitimate interests will be found. *The Tolkien Estate Limited v. Domain Investments / Matthew Jensen*, WIPO Case No. [D2021-2571](#); *National Carriers, Inc. v. Kenkoh Darlene Mesei*, WIPO Case No. [D2021-1533](#).

Additionally, the Respondent took down the website at the disputed domain name after receiving a demand letter from the Complainants. This also suggests that the Respondent does not have rights or legitimate interests in the disputed domain name. *SAP SE v. Registration Private, Domains By Proxy, LLC / PH Info Solutions and Prabhu Rao*, WIPO Case No. [D2020-1675](#).

Having regard to all these matters, the Panel finds that the *prima facie* case established by the Complainants has not been rebutted by the Respondent and the Complainants succeed on the second element of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(a)(iii) of the Policy provides that the Complainants must establish that the Respondent registered and subsequently used the disputed domain name in bad faith.

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 the complainant. *Fifth Street Capital LLC v. Fluder (aka Pierre Olivier Fluder)*, WIPO Case No. [D2014-1747](#).

The Complainants are well known in respect of financial marketplaces. In the present circumstances, the fact that the disputed domain name resolved at one time to a website which used the Complainants' trademarks, including the Complainants' blue globe logo, leads the Panel to conclude that the Respondent was aware of the Complainant when the Respondent registered the disputed domain name.

The Complainants allege that the Respondent registered and is using the disputed domain name to perpetrate a fraud, illegitimate scheme, or scam. The Complainants refer to a form that could be downloaded from the website at the disputed domain name, but do not provide that form. The Complainants provide a one-page screenshot of what is said to be the website at the disputed domain name. The screenshot appears to promote an App, available on the Apple App store and Google Play store, that allows users to compare and price consumer products, such as telephones and cables. The website is Portuguese, and according to Google Translate, is headlined "CME's most convenient shopping software". From the evidence provided, it is unclear how this website perpetrates a fraud, illegitimate scheme, or scam.

An asserting party needs to establish that it is more likely than not that the claimed fact is true. An asserting party cannot meet its burden by simply making conclusory statements unsupported by evidence. To allow a party to merely make factual claims without any supporting evidence would essentially eviscerate the requirements of the Policy as both complainants or respondents could simply claim anything without any proof. For this reason, UDRP panels have generally dismissed factual allegations that are not supported by any *bona fide* documentary or other credible evidence. *Professor Nelson Rose v. Domain Manager, Star Enterprises LTD S.A.*, WIPO Case No. [D2021-2918](#).

As stated above, the Respondent's conduct demonstrates the Respondent's knowledge of the Complainants and the CME trademark. By registering and using the disputed domain name, it is clear that the Respondent specifically knew of and targeted the Complainants and, by using the Complainants' CME trademark in the disputed domain name and on the website at the disputed domain name, including use of the Complainants' logo on that website, the Respondent potentially misrepresented to users of the website that the Respondent was associated with the Complainants. By using the disputed domain name, the Respondent intentionally attempted to attract, for commercial gain, Internet users to the Respondent's website by creating a likelihood of confusion with the Complainants' CME trademark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website.

Accordingly, the Panel finds that paragraph 4(b)(iv) of the Policy applies in the present case. The fact that the disputed domain name is no longer being used to host a website does not prevent a finding of bad faith under the third element of the Policy.

Further, the contact information that the Respondent provided to the Registrar in respect of the disputed domain name appears to be false. This reinforces the Panel's conclusion.

It is also puzzling that a person from Cambodia operated a website in Portuguese, and that a domain name that included the word "finance" was used to promote an App to help consumers who spoke Portuguese to buy telephones and USB cables. The Respondent could have stepped forward to provide an explanation but chose not to do so.

The Complainants succeed on the third element of the Policy in relation to the disputed domain name.

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 <cmefinance.com> be transferred to the Complainants.

/John Swinson/

John Swinson

Sole Panelist

Date: May 3, 2023