

ADMINISTRATIVE PANEL DECISION

Dukascopy Bank SA v. 刚王, 11
Case No. D2023-1726

1. The Parties

Complainant is Dukascopy Bank SA, Switzerland, internally represented.

Respondent is 刚王, 11, China.

2. The Domain Names and Registrar

The Disputed Domain Names <dukascopygroup.com>, <dukascopyone.com>, <dukascopy3.com>, <dukascopy4.com>, and <dukascopy5.com> are registered with Name.com, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 19, 2023. On April 20, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Names. On April 24, 2023, the Registrar transmitted by email to the Center its verification response confirming that Respondent is listed as the registrant and providing the contact details.

The Center verified that 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 April 25, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 15, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on June 1, 2023.

The Center appointed Richard W. Page as the sole panelist in this matter on June 7, 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 is the owner of the International Trademark Registration No. 1013119 for DUKASCOPY, for services in classes 35, 36 and 38, registered on April 27, 2009 and with a priority date of November 25, 2008.

Complainant is also the owner of the International Trademark Registration No. 752642 for DUKASCOPY, for services in classes 9, 36 and 42. The founder and co-CEO-CTO of Complainant, Mr. Duka, a Swiss citizen whose name is the source of the corporate name of Complainant, transferred the trademark for these classes, registered on January 30, 2001. Complainant's trademark registrations for DUKASCOPY are hereinafter referred to as "DUKASCOPY Marks".

Complainant is one of the leading Swiss forex banks and platforms in Switzerland. Complainant was founded in 2004 by Mr. Duka. In June 2010, Complainant was granted a banking license and transformed into Dukascopy Bank SA, namely Complainant in the present proceeding. In 2013, Complainant was additionally granted a securities dealer license by the Swiss Financial Market Supervisory Authority (FINMA). It employs more than 120 people.

Complainant has a web presence under "www.dukascopy.com" and "www.dukascopy.bank" and these are referenced under almost 1,000 different websites around the world. Complainant is also the owner of the corresponding domain names.

The websites are the main working and promotional tool of Complainant. They are used by interested parties and customers to perform their operations online, to access financial services, Dukascopy Swiss financial online television, online Dukascopy Community (contests, blogs and trading resources) and to allow the public to obtain information about Complainant's business in the banking sector. They are designed to attract possible customers to Complainant's banking products and provide online banking tools.

In the middle of March 2023, Complainant became aware that Respondent had registered the Disputed Domain Names. Complainant ascertained that the Disputed Domain Names were designed for "phishing" clients' and potential clients' data in order to obtain their funds fraudulently. Complainant sent a cease and desist email asking Respondent to disable the webpages and to cancel the Disputed Domain Names. Respondent did not reply.

The Disputed Domain Names were registered on the following dates:

- <dukascopy3.com> February 22, 2023;
- <dukascopy4.com> February 22, 2023;
- <dukascopy5.com> February 22, 2023;
- <dukascopyone.com> March 5, 2023;
- <dukascopygroup.com> March 5, 2023.

5. Parties' Contentions

A. Complainant

Complainant contends that the Disputed Domain Names are confusingly similar to the DUKASCOPY Marks, pursuant to paragraph 4(a)(i) of the Policy.

Complainant further contends that the DUKASCOPY Marks are recognized worldwide. In Switzerland, where Complainant has its head-office, Dukascopy Bank SA is one of the most successful Swiss Forex trading platforms and provides online financial services. It is known in Switzerland and worldwide as one of the leaders in this area.

Recent press releases have shown the DUKASCOPY Marks to be considered by the public to be one of the most reliable and trustworthy trademarks in the area of Forex trading platforms and online financial services. Complainant contends that the Disputed Domain Names are confusingly similar to the DUKASCOPY Marks and contain the entirety of the principal element of the DUKASCOPY Marks. The Disputed Domain Names only differ from Complainant's DUKASCOPY Marks by adding the digits "3", "4" and "5" or the words "one" and "group" with the generic Top-Level Domain ("gTLD") ".com". This does not eliminate the confusing similarity between the DUKASCOPY Marks and the Disputed Domain Names.

Complainant asserts that all of Respondent's websites under the Disputed Domain Names are the same in terms of their design. They use the logo of the Swiss flag and a form for entering login and password and/or "creating account" that are a fraudulent clone of the identical form used by Complainant for entering passwords.

Complainant further asserts that Respondent's websites intentionally mislead Internet users, who could enter their personal login information and passwords or could provide other personal and/or financial data through the fraudulent websites to Respondent. Respondent has knowingly registered Disputed Domain Names infringing the DUKASCOPY Marks.

Complainant further asserts that it has never given any consent to Respondent to use the DUKASCOPY Marks or corporate name for a domain name or for any other purpose. Respondent has nothing to do with Complainant or with Complainant's business, and there are absolutely no indications that Respondent has rights or legitimate interests in respect of the Disputed Domain Names.

Complainant further asserts that there is no evidence of Respondent's use of the Disputed Domain Names in connection with a *bona fide* offering of goods or services. On the contrary, Respondent purposefully exploits Complainant's corporate name and related worldwide reputation to fraudulently direct Internet users to its own websites, where Complainant's clients are lured into providing their personal data (login and password) for further illegal use by Respondent or be persuaded to deposit their funds with unknown persons behind Respondent's websites.

Complainant alleges that the DUKASCOPY Marks are recognized worldwide. Respondent is aware that Complainant's websites enjoy great popularity among many users of online financial services and others interested information about Forex trading, such as potential investors and clients, people looking for professional opportunities, journalists and many others.

Complainant further alleges that Respondent expressly used the designs of Complainant's login form in its webpages. Respondent intended to exploit the fame and goodwill of the DUKASCOPY Marks and of the Dukascopy Bank SA corporate name and to divert Internet traffic intended for Complainant to Respondent's websites. Respondent is engaging in a "phishing" scheme.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

Paragraph 15(a) of the Rules instructs the Panel as to the principles the Panel is to use in determining the dispute: "A Panel shall decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules, and any rules and principles of law that it deems applicable."

Even though Respondent has failed to file a Response or to contest Complainant's assertions, the Panel will review the evidence proffered by Complainant to verify that the essential elements of the claims are met.

See section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)).

Paragraph 4(a) of the Policy directs that Complainant must prove each of the following:

- i) that the Disputed Domain Names registered by Respondent are identical or confusingly similar to the DUKASCOPY Marks in which Complainant has rights; and,
- ii) that Respondent has no rights or legitimate interests in respect of the Disputed Domain Names; and,
- iii) that the Disputed Domain Names have been registered and are being used in bad faith.

A. Identical or Confusingly Similar

Section 1.2.1 of the [WIPO Overview 3.0](#) states that registration of the DUKASCOPY Marks is *prima facie* evidence of Complainant having enforceable trademark rights. Complainant has identified two such registrations.

Complainant contends that the Disputed Domain Names are confusingly similar to the DUKASCOPY Marks and contain the entirety of the DUKASCOPY Marks. The Disputed Domain Names only differ from Complainant's DUKASCOPY Marks by adding the digits "3", "4" and "5" or the words "one" and "group" to the gTLD ".com". This does not prevent a finding of confusing similarity between the DUKASCOPY Marks and the Disputed Domain Names.

Section 1.7 of the [WIPO Overview 3.0](#) says that inclusion of the entire trademark in a domain name will be considered confusingly similar. Section 1.8 of the [WIPO Overview 3.0](#) instructs that the addition of other terms (whether descriptive, geographical, pejorative, meaningless or otherwise) does not prevent a finding of confusing similarity. Section 1.11.1 of the [WIPO Overview 3.0](#) instructs that gTLDs such as (.com) may be disregarded for purposes of assessing confusing similarity.

The Panel finds that Complainant has met the requirements of paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Complainant asserts that Respondent has no rights or legitimate interests in the Disputed Domain Names, pursuant to paragraph 4(a)(ii) of the Policy.

Section 2.1 of the [WIPO Overview 3.0](#) states that once Complainant makes a *prima facie* case in respect of the lack of rights or legitimate interests of Respondent, Respondent carries the burden of production of evidence demonstrating it has rights or legitimate interests in the Disputed Domain Names. Where Respondent fails to do so, Complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy.

Paragraph 4(c) of the Policy allows three nonexclusive methods for the Panel to conclude that Respondent has rights or a legitimate interest in the Disputed Domain Names:

- (i) before any notice to you [Respondent] of the dispute, your use of, or demonstrable preparations to use, the Disputed Domain Names or a name corresponding to the Disputed Domain Names 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 Disputed Domain Names, 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 Disputed Domain Names, without intent for commercial gain to misleadingly divert consumers or to tarnish the DUKASCOPY Marks.

Complainant asserts that all of Respondent's websites under the Disputed Domain Names are the same in

terms of their design. They use the logo of the Swiss flag and a form for entering login and password and/or “creating account” that are a fraudulent clone of the identical form used by Complainant for entering passwords.

Complainant further asserts that, Respondent’s websites intentionally mislead Internet users, who could enter their personal login information and passwords or could provide other personal and/or financial data through the fraudulent websites to Respondent. Respondent has knowingly registered Disputed Domain Names infringing the DUKASCOPY Marks.

Complainant further asserts that it has never given any consent to Respondent to use the DUKASCOPY Marks or corporate name for a domain name or for any other purpose. Respondent has nothing to do with Complainant or with Complainant’s business, and there are absolutely no indications that Respondent has rights or legitimate interests in respect of the Disputed Domain Names.

Complainant further asserts that there is no evidence of Respondent’s use of the Disputed Domain Names in connection with a *bona fide* or legitimate offering of goods or services. On the contrary, Respondent purposefully exploits Complainant’s DUKASCOPY Marks, corporate name and related worldwide reputation to fraudulently direct Internet users to its own websites, where Complainant’s clients are lured into providing their personal data (login and password) for further illegal use by Respondent or be persuaded to deposit their funds with unknown persons behind Respondent’s websites, constituting a classic “phishing” scheme.

The Panel finds that Complainant is asserting that the actions of Respondent are the illegitimate intent to divert Internet traffic for Respondent’s own commercial gain and do not constitute a *bona fide* offering of good or services or legitimate noncommercial activities.

The Panel notes that that there is no evidence in the file that Respondent has been commonly known by the Disputed Domain Names.

The Panel finds that Complaint has stated a *prima facie* case that Respondent lacks rights or legitimate interests in the Disputed Domain Names and that Respondent has failed to contest these assertions.

Therefore, Complainant has satisfied the requirements of paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Complainant contends that Respondent registered and is using the Disputed Domain Names in bad faith in violation of paragraph 4(a)(iii) of the Policy.

Paragraph 4(b) of the Policy sets forth four nonexclusive criteria for Complainant to show bad faith registration and use of the Disputed Domain Names:

- (i) circumstances indicating that you [Respondent] have registered or you have acquired the Disputed Domain Names primarily for the purpose of selling, renting, or otherwise transferring the Disputed Domain Names’ registration to Complainant who is the owner of the DUKASCOPY Marks or to a competitor of Complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the Disputed Domain Names; or
- (ii) you [Respondent] have registered the Disputed Domain Names in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or
- (iii) you [Respondent] have registered the Disputed Domain Names primarily for the purpose of disrupting the business of a competitor; or

- (iv) by using the Disputed Domain Names, you [Respondent] have intentionally attempted to attract, for commercial gain, Internet users to your website or other online location, by creating a likelihood of confusion with the DUKASCOPY Marks as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product on Respondent's website or location.

The four criteria set forth in paragraph 4(b) of the Policy are nonexclusive. See, *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#). In addition to these criteria, other factors alone or in combination can support a finding of bad faith.

The Panel finds that Complainant has proven paragraph 4(b)(iv) of the Policy and has shown "phishing" as an additional criterion of bad faith.

Therefore, Complainant has satisfied the requirements of paragraph 4(a)(iii) 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, <dukascopygroup.com>, <dukascopyone.com>, <dukascopy3.com>, <dukascopy4.com>, and <dukascopy5.com>, be transferred to Complainant.

/Richard W. Page/

Richard W. Page

Sole Panelist

Date: June 14, 2023