

## **ADMINISTRATIVE PANEL DECISION**

### **FXCM Global Services, LLC v. Jas Louis**

### **Case No. D2023-1850**

#### **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 Jas Louis, Belarus.

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

The disputed domain name <fxcmcmarkets.com> is registered with NameSilo, LLC (the “Registrar”).

#### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 25, 2023. On April 26, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 26, 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 (Redacted for privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 27, 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 April 27, 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 May 3, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 23, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 24, 2023.

The Center appointed Zoltán Takács as the sole panelist in this matter on June 1, 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, founded in 1999 is one of the leading providers of online foreign exchange (“Forex”) trading, contract for differences (“CFD”) trading and related services.

The Complainant is among others owner of the United States Trademark Registration No. 2620953 for the word mark FXCM, registered since September 17, 2002 for variety of financial services.

The Complainant predominantly operates from its main website “www.fxcm.com” and offers its services in a number of languages. The corresponding domain name <fxcm.com> was registered on July 1, 1999.

The Complainant is also the owner of the domain name <fxcmmarkets.com>, registered since May 18, 2012 and used to directing users to information regarding its offerings at the website “www.fxcm.com/markets”.

In the course of verifying the status of the European Union Trade Mark (“EUTM”) No. 003955523 the Panel has noted that the Complainant submitted a certificate on November 10, 2022 to the European Union Intellectual Property Office (“EUIPO”) regarding its change of name from FXCM Global Services, LLC to Stratos Global Services, LLC.

The disputed domain name was registered on January 1, 2023 and has resolved to a website that used the Complainant’s trademark and imagery and purported to sell the Complainant’s products.

The disputed domain name has active Mail Exchange (“MX”) records and at the date of this decision is “parked free of charge with NameSilo.com”.

#### **5. Parties’ Contentions**

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

The Complainant contends that the disputed domain name, which incorporates the entirety of its FXCM trademark is confusingly similar to it because the addition of the letter “c” and the term “markets” to the trademark does not sufficiently distinguish the disputed domain name from the trademark.

The Complainant alleges that the Respondent has no rights or legitimate interests in respect of the disputed domain name and is unable to rely on any of the circumstances set out in paragraphs 4(c)(i), (ii), or (iii) of the Policy.

The Complainant contends that the Respondent has registered and is using the disputed domain name in bad faith. The Respondent’s use of its trademarks and imagery on the website at the disputed domain name shows the Respondent’s awareness of its trademark at registration of the disputed domain name and its intent to deceive Internet users into thinking that it is a website associated with the Complainant.

The Complainant requests that the disputed domain name be transferred from the Respondent to the Complainant.

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

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

## 6. Discussion and Findings

Paragraph 15(a) of the Rules requires that the Panel's decision be made "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 complainant must evidence each of the three elements required by paragraph 4(a) of the Policy in order to succeed on the complaint, namely that;

- (i) the domain name is identical or confusingly similar to a 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

Under paragraph 4(a)(i) of the Policy, there are two requirements which the Complainant must establish, first that it has rights in a trademark or service mark, and second that the disputed domain name is identical or confusingly similar to the trademark or service mark.

It has been a consensus view among UDRP panels that if the complainant owns a nationally or regionally registered trademark, then it generally satisfies the threshold requirement of having trademark rights.

The Complainant produced evidence of having registered rights in the FXCM trademark and for the purpose of this proceeding the Panel establishes that the United States Trademark Registration No. 2620953 satisfies the requirement of having trademark rights for the purpose of the Policy.

Having determined the presence of the Complainant's trademark rights, the Panel next assesses whether the disputed domain name is identical or confusingly similar to the Complainant's trademark.

According to section 1.7 of the [WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition \("WIPO Overview 3.0"\)](#), the standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the complainant's trademark and the domain name. This test typically involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the domain name.

According to section 1.8 of the [WIPO Overview 3.0](#), where the relevant trademark is recognizable within the 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.

According to section 1.11.1 of the [WIPO Overview 3.0](#), the applicable Top-Level Domain ("TLD") in a domain name (in this case ".com") is viewed as a standard registration requirement and as such is generally disregarded under the first element confusingly similar test.

The disputed domain name fully incorporates the Complainant's FXCM trademark and it is evidently recognizable in the disputed domain name. The Respondent's addition of the letter "c" and the term "markets" to the Complainant's trademark in the disputed domain name does not prevent a finding of confusing similarity.

The Panel finds that the disputed domain name is therefore confusingly similar to the Complainant's trademark and that the first ground of the Policy is established.

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

Under paragraph 4(c) of the Policy, a respondent may demonstrate its rights or legitimate interests in a domain name by showing any of the following circumstances, in particular but without limitation:

- (i) before any notice of the dispute, its use of, or demonstrable preparation to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods and services;
- (ii) it has been commonly known by the domain name;
- (iii) it is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert customers or to tarnish the trademark or service mark at issue.

According to section 2.1 of the [WIPO Overview 3.0](#), while the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of “proving a negative”, requiring information that is often primarily within the knowledge or control of the respondent.

As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with the relevant evidence demonstrating its rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.

In the present case, the Complainant has submitted sufficient and uncontested evidence that it holds well-established prior rights in the FXCM trademark.

The Complainant has never authorized the Respondent to use its trademark, in a domain name, or otherwise.

There is no evidence that the Respondent is commonly known by the disputed domain name.

The website at the disputed domain name effectively impersonated the Complainant, as the Respondent was visibly using on its website the trademark and imagery found in the Complainant’s official website.

UDRP panels have categorically held that the use of a domain name for illegal activity, such as impersonation/passing of, or other types of fraud can never confer rights or legitimate interests on a respondent (see section 2.13.1 of the [WIPO Overview 3.0](#)).

Moreover, the composition of the disputed domain name, incorporating the Complainant’s trademark in its entirety carries a risk of Internet user confusion.

The Respondent failed to respond, and by doing so failed to offer the Panel any type of evidence set forth in paragraph 4(c) of the Policy, or otherwise counter to the Complainant’s *prima facie* case and the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name in accordance with paragraph 4(a)(ii) of the Policy.

## **C. Registered and Used in Bad Faith**

Paragraph 4(b) of the Policy lists a number of factors which, if found by the panel to be present, shall be evidence of registration and use of a domain name in bad faith. This non-exclusive list includes:

- (i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant,

for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or

- (ii) you have 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 you have engaged in a pattern of such conduct; or
- (iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, you 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 complainant's mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product or service on your website or location.

The Complainant's FXCM trademark is inherently distinctive for the corresponding financial services and predates the registration of the disputed domain name by years.

Given the Complainant's continued and extensive use of its FXCM trademark and the Respondent's construction of the disputed domain name, which is almost identical to the Complainant's domain name <fxcmmarkets.com>, the Panel finds it inconceivable that the Respondent was unaware of the Complainant and its trademark when it registered the disputed domain name.

The compelling evidence submitted by the Complainant convinces the Panel that the Respondent's prime, if not the sole intent behind registering and using the disputed domain name was to target the Complainant's trademark by deceiving Internet users expecting the disputed domain name to resolve to a website owned, operated or authorized by the Complainant.

The Respondent's use of the disputed domain name to direct Internet traffic intended for the Complainant to its website in order to gain illegitimate profit through impersonation or false association amount to bad faith registration and use within the meaning of paragraph 4(b)(iv) of the Policy.

Furthermore, in these circumstances, the Respondent's activation of MX records associated with the disputed domain name, enabling sending potentially fraudulent emails creates a real and ongoing threat to the Complainant and is in view of the Panel further indicative of the Respondent's bad faith.

The fact that at the time of rendering of this decision the disputed domain name was not resolving to an active website does not alter the Panel's findings (see section 3.3 of the [WIPO Overview 3.0](#)).

The Respondent chose not to respond to the Complaint and rebut the Complainant's credible assertions and evidence, which the Panel accepts and finds that the disputed domain name was registered and is being used in bad faith within the meaning 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 name <fxcmcmarkets.com> be transferred to the Complainant.

*/Zoltán Takács/*

**Zoltán Takács**

Sole Panelist

Date: June 14, 2023