

ADMINISTRATIVE PANEL DECISION

MXC Foundation GmbH, MXC Foundation LLC v. Tomas Ambrazas Case No. D2023-2309

1. The Parties

The Complainant is MXC Foundation GmbH, MXC Foundation LLC, Germany, represented by Mapa Global Investments SL, Spain.

The Respondent is Tomas Ambrazas, Lithuania.

2. The Domain Names and Registrar

The disputed domain names, <mxccscam.com> and <mxccwithdraw.com> are registered with NameCheap, Inc. (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on May 26, 2023. On May 30, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 30, 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 (Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 31, 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 June 5, 2023.

The Center verified that the Complaint together with 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 June 13, 2023. In accordance with the Rules, paragraph 5, the due date for Response was July 3, 2023. The Response was filed with the Center on July 3, 2023.

The Center appointed Steven A. Maier as the sole panelist in this matter on July 12, 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. Procedural Order No. 1 – Status of Complainant

The Respondent submitted in his Response that the Complainant MXC Foundation LLC, being the registered proprietor of certain trademarks in which the Complainant claims rights, had in fact been liquidated on October 4, 2022. The Panel conducted an independent review of the German company register (the *Unternehmensregister*) which confirmed a liquidation date of October 4, 2022 and stated (in translation) “The company is dissolved. The company’s creditors are asked to get in touch with [the liquidator].”

The Panel therefore issued Procedural Order No. 1, directing the Complainant to explain (a) why a Complaint had been filed in the name of an entity which appeared to have been dissolved; and (b) why the Complainant should not be dismissed on the basis that no named Complainant had demonstrated any relevant Rights for the purposes of the Policy.

The Complainant responded to Procedural Order No. 1 to the effect that, despite the liquidation of the company, MXC Foundation LLC was still in existence and operational. It referred to the *Unternehmensregister* which continues to list the company as “Currently registered” and submitted that liquidation in Germany is a process that takes several years to complete. The Complainant also exhibited a signed statement from the liquidator of the company, certifying that it was still able to do business at the liquidator’s request.

In response to these contentions, the Respondent submitted that the business of a company in liquidation in Germany was strictly limited and that the company could not engage in normal business activities or use its trademarks in any manner. The Respondent did not, however, dispute the Complainant’s submission that the company remained in existence, albeit subject to the liquidator’s control.

In the view of the Panel, the Complainant has sufficiently demonstrated that MCX Foundation LLC remains in existence for the purpose of this proceeding. The relevant issue is the ownership of rights in the trademarks or trademarks in question and not the question of the extent to which the Complainant may or may not currently make use of those trademarks.

5. Procedural Order No. 2 – Addition of Domain Name

On July 24, 2023 (and therefore after the date of the Panel Appointment), the Complainant sent a supplemental filing to the Center requesting that a second disputed domain name, <mxwithdraw.com>, be added to the Complaint. According to the relevant Whois search, that disputed domain name was registered on July 19, 2023.

The Complainant submitted in its supplemental filing that the Respondent registered the second disputed domain name in order to continue his alleged bad-faith activities in the event that the Complaint concerning the disputed domain name <mxscam.com> was upheld. The Complainant requested that the second disputed domain name be included in the proceeding accordingly, and that the findings of the Panel should include that disputed domain name.

On July 31, 2023, the Registrar confirmed to the Center that the registrant details for the disputed domain name <mxwithdraw.com> were the same as for the disputed domain name <mxscam.com>.

In the circumstances, the Panel issued Procedural Order No. 2 inviting the Respondent to comment on the Complainant’s request to add the disputed domain name <mxwithdraw.com> to the proceeding.

The Respondent replied to the Procedural Order on August 14, 2023. His reply included a further submission about the disputed domain name <mxscam.com> to which further reference is made below. With regard to the disputed domain name <mxwithdraw.com>, the Respondent stated that “... this is another website with different information and purposes. So it’s really hard to put both websites on one shelf.”

After consideration of the Complainant's supplemental filing and the Respondent's reply, the Panel determines that the second disputed domain name, <mxcwithdraw.com>, be added to the proceeding.

The Panel infers from the wording of the Complainant's supplemental filing that it does not intend to make any submissions concerning the disputed domain name <mxcwithdraw.com> beyond those included in that supplemental filing. In the light of this, and also in the interests of the efficiency of the administrative proceeding, the Panel has not directed that any further submissions be filed in respect of that disputed domain name.

6. Factual Background

According to the Complaint, the Complainant is a non-profit organization promoting the global adoption of LPWAN (low-power wide area network) technology. It is engaged in particular in the automation of M2M (machine-to-machine) technology, allowing devices to connect and communicate. The Complainant believes that its services, paired with LPWAN, is the "next step in the fourth industrial revolution," enabling smart cities and providing public access to "big data".

The Complainant operates a website at "www.mcx.org". In addition to referring to similar matters as mentioned above, the website promotes cryptocurrency mining using the "MXProtocol" and an "ERC-20 utility token" labelled MXC. The website includes a logo comprising a stylized letter "M" against a gradated red and blue background (the "Complainant's Logo").

The Complainant MXC Foundation GmbH is the owner of various trademark registrations for the mark MXC. Those registrations include:

- United States trademark number 6182556 for the word mark MXC, registered on October 27, 2020 for goods and services including "Computer software, namely, electronic financial platform that accommodates multiple types of payment and debt transactions in an integrated mobile phone, PDA, and web based environment" in International Class 9; and
- European Union Trade Mark number 018170886 for the word mark MXC, registered on December 17, 2020 for goods and services including "Downloadable cryptographic keys for receiving and spending cryptocurrency" in International Classes 9 and "Currency trading; Trading of financial derivatives; Electronic financial trading services; Financial transactions via blockchain" in International Class 36.

The disputed domain name <mxcscam.com> was registered on April 28, 2023. As stated above, the disputed domain name <mxcwithdraw.com> was registered on July 19, 2023.

The Complainant exhibits evidence that the disputed domain name <mxcscam.com> has resolved to a website headed "MXC Foundation Scam – World Class NFT Scammers". The website includes the Complainant's Logo and continues "MXC scam disclosure – How MXC Foundation steals your money – Discover now." The website goes on to provide what purports to be a step-by-step breakdown of dealings with the Complainant, which concludes that the Complainant makes it impossible to withdraw mined MXC tokens. The website then features two photographs: the first of these is of a person standing behind a fast-food meal with the caption "YOU after purchasing MatchX m2 pro or NOE miner from MXC Foundation"; the second photograph shows a person wearing sunglasses and drinking what appears to be a cocktail on a tropical beach, captioned "MXC CEO after selling you miners (drinking some cocktails on Hawaii Islands)." The website then includes details of "victims" who are said to have been scammed by the Complainant, followed by what purport to be photographs of the Complainant's executive team, each with the word "SCAMMER" behind their picture.

There is no evidence before the Panel of any use that has been made of the disputed domain name <mxcwithdraw.com>.

7. Parties' Contentions

A. Complainant

The Complainant states that it has operated since about the year 2000. It relies on its trademark registrations and also exhibits evidence of a social media presence of platforms including YouTube, Twitter, Instagram, and LinkedIn.

The Complainant submits that the disputed domain name <mxscam.com> is confusingly similar to its trademark MXC, since it reproduces that trademark with the addition of the term "scam". The Complainant contends that the addition of this term does not distract the public from the dominant part of the disputed domain name, being the Complainant's trademark.

The Complainant submits that the Respondent has no rights or legitimate interests in respect of the disputed domain name <mxscam.com>. It states that it has no relationship with the Respondent and has never authorized him to use its MXC trademark, that the Respondent has not commonly been known by the disputed domain name and that the Respondent is making neither *bona fide* commercial use nor legitimate noncommercial or fair use of the disputed domain name.

The Complainant contends that "the Respondent has been using the disputed domain to defame and slander the Complainant, even accusing him [sic] of acting illegally. Therefore, the Respondent's use of the disputed domain name cannot be considered an expression of lawful criticism." The Claimant cites a number of decisions under the UDRP in support of its position. It argues in particular that any free speech "defence" is subject to exceptions and qualifications in the case of trenchant and extreme criticism¹; that a respondent cannot rely on criticism which attempts in fact to switch consumers to the respondent's product²; and that noncommercial use will not be fair if its intention is in fact to tarnish the complainant's trademark by extreme criticism³.

The Complainant cites a number of other decisions in support of its submissions that criticism which drives customers away from the complainant's products, and/or which tarnishes the trademark in issue, may go beyond permissible freedom of expression.

The Complainant further submits that it is evident from the Respondent's LinkedIn profile that he is the chief executive officer of a business named 123swao.finance, which the Complainant claims to be a direct competitor. The Complainant refers to a statement on that business's website, which suggests it is "in partnership discussion" with a company named Huobi, which is also a partner of the Complainant. The Complainant submits that the Respondent's website therefore not only defames the Complainant, but also "chases the Complainant's partners" by denigrating the Complainant.

The Complainant submits that the disputed domain name <mxscam.com> has been registered and is being used in bad faith. It contends that the Respondent is motivated by a personal grievance and seeks to slander the Complainant, tarnish its reputation, and disrupt its business.

The Complainant submits that, while the Respondent has every right to promote his lawful views about the Complainant, he may not do so via a website which carries the name of the Complainant. The Complainant contends in this regard that at least some Internet users will be attracted to the Respondent's website by reason of the inclusion of the Complainant's trademark in the relevant disputed domain name.

The Complainant takes particular objection to the photograph on the Respondent's website of the Complainant's CEO supposedly drinking a cocktail on the Hawaiian Islands. The Complainant draws a parallel with *GSB Gold Standard Banking Corporation AG v. Withheld for Privacy Purposes, Privacy service provided by Withheld for Privacy ehf / John Doe / Domain Administrator d/b/a privacy.cloudns.net, Cloud*

¹ *Cryptologic, Inc v. Internet Billions Domains Inc*, NAF Case No. FA040800218925

² *BRIO Corporation v. Supreme Caboose a/k/a Brio is Overpriced and Arrogant Fascists*, NAF Case No. FA0205000114419

³ *Kendall Hunt Publishing Company v. headhunterbob*, NAF Case No. FA0111000102247

DNS Ltd, WIPO Case No. [D2021-1967](#), in which an image of the complainant's CEO was digitally manipulated to portray him wearing a swastika armband.

The Complainant contends in summary that the Respondent registered the disputed domain name <mxscam.com> in full knowledge of the Complainant's trademark rights and has used it primarily for the purpose of disrupting the business of the Complainant, who is a competitor.

As mentioned above, the Complainant contends that the Respondent registered the disputed domain name <mxscwithdraw.com> in order to continue his bad-faith activities should the Complaint concerning the disputed domain name <mxscam.com> be withheld, and that that registration should also therefore be deemed to be in bad faith.

The Complainant requests the transfer of both of the disputed domain names.

B. Respondent

Reference is made above to the Respondent's submissions in respect of the status of MXC Foundation GmbH, the Panel having found that that entity's trademark rights are not prejudiced for the purpose of this proceeding by the ongoing liquidation of the company.

The Respondent submits that his own website is not related to the businesses for which the Complainant's trademarks are registered, including electronic trading in financial derivatives.

The Respondent submits that the trademark MXC is common and that there are thousands of registered trademarks which incorporate that combination of letters. The Respondent produces a search result which he claims to evidence 81 United Kingdom trademarks which include the term MXC (the Panel notes, however, that a significant number of these trademarks includes those letters as part of a longer string of characters).

The Respondent submits that the disputed domain name <mxscam.com> is different from the Complainant's trademark.

The Respondent states that it could defend its website content if called upon to do so.

In his submission dated August 14, 2023, the Respondent included an Order of a German Court dated August 10, 2023, which he claims to support his position that his use of the disputed domain name <mxscam.com> is unobjectionable. The Respondent did not provide a translation of that Order, but the Panel would in any event have limited regard to its contents. Proceedings brought under the UDRP are determined on their own merits under the terms of the Policy and panels under the UDRP are not bound by the findings of any national Court in any parallel proceedings (or *vice versa*), though in some limited circumstances they may be instructive.

8. Discussion and Findings

In order to succeed in the Complaint, the Complainant is required to show that all three of the elements set out under paragraph 4(a) of the Policy are present. Those elements are that:

- (i) the disputed 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 disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant has established that it has registered trademark rights in the mark MXC. Both of the disputed domain names incorporate that trademark, with the addition respectively of the terms “scam” and “withdraw”. Neither of those additional terms prevents the Complainant’s trademark from being recognizable within the relevant disputed domain name and the Panel therefore finds that the disputed domain names are confusingly similar to a trademark in which the Complainant has rights.

B. Rights or Legitimate Interests

The Respondent uses the disputed domain name <mxscam.com> for the purpose of a criticism website which accuses the Complainant of operating a “scam”, whereby customers of the Complainant are allegedly unable to withdraw tokens which they have obtained by doing business with the Complainant. The website uses strident language and eye-catching images, including a photograph of the Complainant’s CEO supposedly drinking a cocktail on the Hawaiian Islands.

Under paragraph 4(c)(iii) of the Policy, a respondent may demonstrate rights or legitimate interests in respect of a disputed domain name where “you 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.”

Further guidance on this topic is found in section 2.6 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), *i.e.*, “Does a criticism site support respondent rights or legitimate interests?”

In the view of the Panel, the first question for determination in this regard is whether the disputed domain name <mxscam.com> is inherently misleading, as being likely of itself to represent to Internet users that it links to a website owned, operated, or otherwise affiliated with or authorized by, the Complainant. As observed in section 2.6.3 of [WIPO Overview 3.0](#), where a domain name comprises a trademark together with a derogatory term (*e.g.*, “sucks”), panels tend to find that a respondent has a legitimate interest in that domain name in connection with a criticism site as long as other conditions (as discussed below) are met. The Panel considers the disputed domain name <mxscam.com> to fall within this category and does not find that disputed domain name, of itself, to be inherently misleading.

A respondent may, however, fail to establish rights or legitimate interests under paragraph 4(c)(iii) of the Policy if it can be shown that the criticism site in question is primarily a pretext for commercial activity drawing on the complainant’s trademark. This includes situations where the purpose of the supposed criticism site is in reality to divert customers of the complainant to the respondent for commercial gain. In this case, the Complainant submits that the Respondent is the CEO of a business named 123swao.finance, that that business competes with the Complainant, and that the Respondent is therefore using the disputed domain name <mxscam.com> to divert Internet users, including the Complainant’s commercial partners, to the Respondent. The Panel does not agree. There is no evidence before the Panel that there is any reference or link on the Respondent’s website to this (allegedly) competing business, and the Panel finds the fact that the Respondent may be the CEO of that business to be too indirect and remote to establish that the Respondent is using the relevant disputed domain name to divert Internet users to that enterprise.

The next question for the Panel concerns the content of the Respondent’s website itself. The Complainant argues that this comprises criticism of such an extreme nature that it cannot be legitimate and that the purpose of the website is to tarnish the Complainant’s trademark and damage its business.

So far as tarnishment is concerned, this is different from criticism of a complainant. In this regard, the Panel adopts the findings of the panel in *Britannia Building Society v. Britannia Fraud Prevention*, WIPO Case No. [D2001-0505](#) as follows:

“As for Complainant’s assertion of “tarnishment,” that phrase, too, has a specific meaning that does not apply here. Tarnishment in this context refers to such unseemly conduct as linking unrelated pornographic, violent

or drug-related images or information to an otherwise wholesome mark... In contrast, fair-use criticism, even if libelous, does not constitute tarnishment and is not prohibited by the Policy, the primary concern of which is cybersquatting.”

While the criticisms and allegations contained in the Respondent’s website are certainly serious and potentially damaging to the Complainant, it is not within the remit of panels under the UDRP to enter into a factual enquiry about such allegations, to seek to determine their truth or falsity or to make any findings concerning alleged libel. The allegations are not of such a nature that they are demonstrably untrue on their face (and in this regard the Panel does not consider the Complainant’s comparison of the Complainant’s CEO supposedly drinking a cocktail to an individual supposedly wearing a swastika armband to be well-grounded or appropriate) and nor does the Respondent expressly or tacitly accept that they are untrue; on the contrary, he states that can defend his website content if necessary. In the circumstances, should the Complainant wish to bring proceedings against the Respondent for alleged libel or otherwise relating to his website content, that is a matter for a Court of competent jurisdiction and not a matter suitable for determination by a panel constituted under the UDRP.

The Complainant has failed in the circumstances to establish that the Respondent has no rights or legitimate interests in respect of the disputed domain name <mxscam.com>.

The Complaint in respect of the disputed domain name <mxscam.com> must therefore necessarily fail.

So far as the disputed domain name <mxwithdraw.com> is concerned, the Panel finds the position to be more nuanced than in respect of the disputed domain name <mxscam.com>, with regard in particular to the question of inherent deceptiveness.

Bearing in mind once again the guidance found in section 2.6 [WIPO Overview 3.0](#), the disputed domain name <mxwithdraw.com> is neither an unadorned use of the Complainant’s trademark, nor does it include a derogatory term (as in the case of <mxscam.com>) which clearly signals a criticism site.

Given that the Complainant is a financial institution involved in cryptocurrency trading, the Panel considers there to be a substantial risk that the use of the term “withdraw” in conjunction with the Complainant’s trademark MXC would lead Internet users to believe that the disputed domain name was officially connected with the Complainant; and moreover, could be liable to be returned as a search result to Internet users who were specifically looking for information about withdrawing MXC tokens.

In these circumstances, the Panel considers the disputed domain name <mxwithdraw.com> to be inherently deceptive, as being likely of itself to represent to Internet users that it links to a website owned, operated, or otherwise affiliated with or authorized by, the Complainant, with the consequence that the Respondent does not have rights or legitimate interests in respect of that disputed domain name, even in respect of its use for a criticism site.

The Panel therefore finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name <mxwithdraw.com>.

C. Registered and Used in Bad Faith

In the light of the Panel’s findings in respect of paragraph 4(a)(ii) of the Policy, above, it is unnecessary for the Panel to determine the issues of registration and use of the disputed domain name <mxscam.com> in bad faith.

Concerning the domain name <mxwithdraw.com>, it appears from the Respondent’s existing website content that his grievance with the Complainant relates to an alleged inability to withdraw tokens from a user account with the Complainant. The Panel infers in the circumstances that the Respondent registered the disputed domain name <mxwithdraw.com> with the deliberate intention of targeting Internet users looking for information about how to withdraw the Complainant’s tokens.

The fact that the Respondent has not yet used the disputed domain name <mxwithdraw.com> does not prevent a finding of use of the disputed domain name in bad faith when the other circumstances of the case point to that conclusion, which the Panel finds to be the case here (see *e.g. Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#)).

The Panel finds in the circumstances that the disputed domain name <mxwithdraw.com> has been registered and is being used in bad faith.

9. Decision

For the foregoing reasons, the Complaint in respect of the disputed domain name <mxscam.com> is denied.

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, <mxwithdraw.com>, be transferred to the Complainant.

/Steven A. Maier/

Steven A. Maier

Sole Panelist

Date: September 6, 2023