

ADMINISTRATIVE PANEL DECISION

FXCM Global Services, LLC v. Mill

Case No. D2023-2356

1. The Parties

Complainant is FXCM Global Services, LLC, United States of America (“U.S.”), represented by SafeNames Ltd., United Kingdom.

Respondent is Mill, U.S.

2. The Domain Names and Registrar

The disputed domain names <fxcmvn.cyou>, <fxcmvn.top>, and <fxcmvnx.top> are registered with Alibaba.com Singapore E-Commerce Private Limited (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 31, 2023. On May 31, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On June 2, 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 June 7, 2023. In accordance with the Rules, paragraph 5, the due date for Response was June 27, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on June 29, 2023.

The Center appointed Jeffrey D. Steinhardt as sole panelist in this matter on July 24, 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 a leading retail broker in the foreign exchange market founded in 1999, offering a variety of services. Complainant owns several registrations for its FXCM trademarks and service marks including, for example, U.S. Trademark Registration No. 2,620,953, registered September 17, 2002 in International Class 36 (typed drawing, service mark), and U.S. Trademark Registration No. 5,503,483 registered June 26, 2018 in International Classes 9, 35, 36, and 41 (design plus words, trademark and service mark).

The disputed domain names were registered on the following dates: <fxcmvn.cyou> and <fxcmvn.top>, on November 28, 2022, and <fxcmvnx.top>, on February 4, 2023. None of the disputed domain names currently resolve to active webpages. However, as discussed below, Complainant provides annexes to the Complaint that show prior use in February 2023 of the disputed domain names to route to active webpages that purported to offer for download an application that used Complainant's logo and instructed Internet users to click "install".

5. Parties' Contentions

A. Complainant

Complainant avers that in addition to operating from its main website at "www.fxcm.com", Complainant also provides a mobile app which is available from marketplaces including Google Play and the Apple Store. Complainant avers that its Google Play app has been downloaded more than 500,000 times from the Google Play Store alone.

Complainant annexes to the Complaint screen captures from the websites to which the disputed domain names resolved in February 2023. In each case, the screen captures present what appear to be application download links and user instructions, below prominent displays of Complainant's registered logo. Complainant speculates that Internet users who click on the links to download the software offered on the websites are at risk of downloading malicious code or malware.

Summarizing its legal contentions, Complainant alleges that (1) the disputed domain names are confusingly similar to Complainant's FXCM trademarks, (2) Respondent has no rights or legitimate interests in the disputed domain names, and (3) the disputed domain names were registered and are being used in bad faith, all in violation of the Policy. On the foregoing basis, Complainant requests transfer.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

To prevail under the Policy, Complainant must establish that (1) the disputed domain names are identical or confusingly similar to Complainant's FXCM trademarks, (2) Respondent has no rights or legitimate interests in the disputed domain names, and (3) the disputed domain names were registered and are being used in bad faith. Policy, paragraph 4(a).

The fact that Respondent has not provided any Response does not, by itself, mean that Complainant prevails. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.3. In the absence of a Response, however, the Panel may also accept as true reasonable factual allegations in the Complaint. See, e.g., *ThyssenKrupp USA, Inc. v. Richard Giardini*, WIPO Case No. [D2001-1425](#) (citing *Talk City, Inc. v. Michael Robertson*, WIPO Case No. [D2000-0009](#)).

A. Identical or Confusingly Similar

The Panel agrees with Complainant's allegation that the disputed domain names are confusingly similar to Complainant's FXCM marks.

UDRP panels commonly disregard Top-Level Domains ("TLDs") in determining whether a disputed domain name is identical or similar to a complainant's marks. [WIPO Overview 3.0](#), section 1.11.1.

Omitting the ".cyou" TLD from the <.cyou> disputed domain name, the Panel notes that Complainant's entire FXCM mark is included in the disputed domain name, adding only the letters "vn." Omitting the ".top" TLD from the two <.top> disputed domain names, the Panel notes that the entire FXCM mark is included, adding only the letters "vn" and "vnx," respectively.

The Panel finds that these additions to Complainant's mark do not prevent findings in each instance of confusing similarity. See, e.g., [WIPO Overview 3.0](#), section 1.7 (where a domain name incorporates the entirety of a trademark, the domain name will normally be considered by UDRP panels to be confusingly similar); [WIPO Overview 3.0](#), section 1.8 ("Where the relevant trademark is recognizable within the disputed 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.").

The Panel therefore concludes that the first element of paragraph 4(a) of the Policy is satisfied with respect to each of the disputed domain names.

B. Rights or Legitimate Interests

The Panel also concludes that Respondent has no rights or legitimate interests in the disputed domain names.

The Policy contains a non-exhaustive list of circumstances that may demonstrate when a respondent has rights or legitimate interests in a domain name. The list includes: (1) using the domain name in connection with a *bona fide* offering of goods and services; (2) being commonly known by the domain name; or (3) making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers. Policy, paragraphs 4(c)(i) – (iii).

A complainant must show a *prima facie* case that a respondent lacks rights or legitimate interests in a disputed domain name, after which the burden of production of evidence passes to the respondent. See, e.g., [WIPO Overview 3.0](#), section 2.1. The absence of rights or legitimate interests is established if a complainant makes out a *prima facie* case and the respondent enters no response. See *id.*

Complainant has provided credible evidence demonstrating that the websites to which the disputed domain names routed in February 2023 displayed Complainant's registered logo. The Panel accepts Complainant's undisputed allegations that Respondent has no relevant trademark rights and has no authorization or license to use Complainant's trademarks in the disputed domain names, or to display Complainant's registered logo. Complainant also alleges that Respondent is not commonly known by the disputed domain names, and the Panel so finds.

Since Respondent's websites do not (and did not last February) route Internet users to authorized products associated with the FXCM marks, the Panel further concludes that there is no possibility of *bona fide* use.¹

Respondent has refrained from opposing the evidence of misrepresentation and copying of Complainant's

¹ Even if the products offered via the website to which the disputed domain name routed had been *genuine* products of Complainant, the websites at the disputed domain names would not qualify for fair use since the websites mislead Internet users by failing to disclose the lack of a relationship with Complainant, the trademark owner. E.g., *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#); [WIPO Overview 3.0](#), sections 2.5 & 2.8.

registered logo provided by Complainant, and the Panel finds that the disputed domain names have been used for such illegal activities. UDRP Panels have categorically held that the use of a domain name for illegal activity can never confer rights or legitimate interests in a respondent. *E.g.*, [WIPO Overview 3.0](#), sections 2.13.1 and 2.13.2.

In light of the evidence and allegations submitted by Complainant, the Panel holds that Respondent is not making a legitimate or fair use of the disputed domain names and that Complainant establishes a *prima facie* case. Respondent has not opposed or rebutted that *prima facie* case.

The Panel also holds that Respondent lacks rights or legitimate interests in the disputed domain names on the grounds that Respondent's use of the disputed domain names has falsely suggested that Respondent is affiliated with Complainant, the trademark owner. [WIPO Overview 3.0](#), section 2.5.

Therefore, the second element of Policy paragraph 4(a) is established.

C. Registered and Used in Bad Faith

The Panel also finds that the third element of paragraph 4(a) of the Policy, bad faith registration and bad faith use, is established.

The record shows that Respondent registered the disputed domain names well after Complainant perfected and registered its trademark rights. The composition of the disputed domain names and their use to direct Internet users to application download websites designed to falsely suggest that they were a part of Complainant's online operations make obvious that Respondent knew the nature of Complainant's business associated with its trademarks and targeted Complainant. The Panel finds therefore that Respondent registered the disputed domain names in bad faith in the sense of the Policy.

Complainant's evidence also shows that Respondent misrepresented its websites as being related to Complainant, by wholly incorporating the FXCM trademarks in the disputed domain names and by copying Complainant's registered logo on each of the three websites to which the disputed domain names resolved. From this, the Panel infers that Respondent intended to register and use the disputed domain names to compete with Complainant and to disrupt Complainant's business. This supports a finding of bad faith under Policy paragraph 4(b)(iii).

Respondent's failure to submit a Response to the Complaint and to provide accurate and complete contact details as required by its agreement with the Registrar are further evidence of use in bad faith.² [WIPO Overview 3.0](#), section 3.3; *Telstra Corp. Ltd. v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#).

The current non-use of the disputed domain names by Respondent does not prevent a finding of bad faith under the passive holding doctrine. [WIPO Overview 3.0](#), section 3.3.

The Panel holds therefore that Respondent registered and is using the disputed domain names in bad faith, thus, establishing the third element under paragraph 4(a) of the Policy.³

²Notification of the Complaint to Respondent by courier was not possible using the registrant address details provided by Respondent to the Registrar, which is in violation of the Registration Agreement, Article 1.3.

³Among other allegations, Complainant advances arguments respecting bad faith based on the risk that Internet users might download malware or malicious software via the app download links on the websites to which the disputed domain names resolved. While the risk to users may have been real, the Panel refrains from basing its bad-faith rulings on that speculation in the absence of evidence respecting the actual nature of alleged downloads.

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 <fxcmvn.cyou>, <fxcmvn.top>, and <fxcmvnx.top> be transferred to Complainant.

/Jeffrey D. Steinhardt/

Jeffrey D. Steinhardt

Sole Panelist

Date: August 7, 2023