

ADMINISTRATIVE PANEL DECISION

Brokertec Americas, LLC and CME Group Inc. v. Hector Fernandez Zepeda Case No. D2023-3127

1. The Parties

The Complainants are Brokertec Americas, LLC, United States of America ("USA") (the "First Complainant"), and CME Group Inc., USA (the "Second Complainant") represented by Norvell IP LLC, USA.

The Respondent is Hector Fernandez Zepeda, Mexico.

2. The Domain Name and Registrar

The disputed domain name <brokertecamericas.com> is registered with FastDomain, Inc. (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on July 20, 2023. On July 20, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On the same date, 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 (John Doe) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 21, 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 July 25, 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 August 8, 2023. In accordance with the Rules, paragraph 5, the due date for Response was August 28, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on August 30, 2023.

The Center appointed Mladen Vukmir as the sole panelist in this matter on September 8, 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

(i) the First Complainant is an American investment and brokerage platform that facilitates electronically traded USA and European fixed income contracts. The First Complainant, founded in 1999, is a fixed income electronic trading platform and service, and is, as of present, wholly-owned subsidiary of the Second Complainant;

(ii) the Second Complainant is one of the world's largest operator of financial derivatives exchanges headquartered in Chicago, USA, with operations extending globally;

(iii) the Complainants are the owners of a portfolio of registered BROKERTEC trademarks ("BROKERTEC trademarks") including:

| Trademark | Trademark Scope | Reg. No. / Status | Date of registration |
|------------------|-----------------|--------------------------|----------------------|
| BROKERTEC (word) | USA | 4497835/ registered | March 18, 2014 |
| BROKERTEC (word) | European Union | 001111483/ registered | March 17, 2000 |
| BROKERTEC (word) | International | 1569195/ registered | August 24, 2020 |

(iv) The Complainants operate their official website under the domain name <cmegroup.com>;

(v) The Respondent is the registrant of the disputed domain name, as disclosed by the Registrar;

(vi) The disputed domain name was registered on April 8, 2023, and is being used in email communications with the Respondent holding itself out to be affiliated with the First Complainant and advertising financial services.

5. Parties' Contentions

A. Complainants

The Complainants, essentially, assert the following:

(i) The First Complainant, owned by the Second Complainant, is a fixed income electronic trading platform and service, as well as one of the world's leading financial institutions, founded in 1999. In addition, the First Complainant is the price discovery leader for benchmark cash USA Treasuries that facilitates trading daily via CME Globex, one of the world's premier electronic matching engine;

(ii) The Complainants own earlier registrations of BROKERTEC trademarks in multiple jurisdictions, including, but not limited to, Australia, Canada, China, Hong Kong, and Japan. BROKERTEC trademarks have been exclusively and continuously used since at least 1999;

(iii) The Complainants maintain an active Internet presence and maintain Internet websites at domain names incorporating the BROKERTEC trademarks. As such, the official website of the Complainants' under the domain name <cmegroup.com>, has been owned by the Complainants since 2007;

(iv) The Complainants annually invest millions of dollars to promote and advertise their BROKERTEC trademarks, which has led BROKERTEC trademarks to be associated by members of the relevant consuming public worldwide with goods and services of high quality. Thus, BROKERTEC trademarks present themselves as immeasurable assets of the Complainants, and widely recognized trademarks used by the Complainants;

(v) The disputed domain name is confusingly similar to the Complainants' BROKERTEC trademarks as the disputed domain name fully incorporates BROKERTEC trademarks with the only difference between the disputed domain name and BROKERTEC trademarks being the mere addition of the word "Americas" that follows the word "Brokertec". The disputed domain name includes the word "Brokertec" as its dominant element, which is identical to the Complainants' registered BROKERTEC trademarks in appearance, sound, and connotation. Even when viewed in their entireties, it is appropriate to give greater weight to the important or dominant part of a composite trademark, for it is that part of the trademark that will make the greatest impression. The addition of the geographically descriptive word "Americas" does nothing to diminish the confusing similarity between the disputed domain name and the Complainants' BROKERTEC trademarks;

(vi) The Respondent has no rights or legitimate interests in respect of the disputed domain name as the Respondent is not affiliated with or connected to the Complainants in any way and at no time have the Complainants ever licensed or authorized the Respondent to use their BROKERTEC trademarks or names, or any of the Complainants' other intellectual property rights, or to register any domain name incorporating the BROKERTEC trademarks. The Complainants have been using their BROKERTEC trademarks well before the Respondent's registration of the disputed domain name, the Respondent has not been commonly associated by the disputed domain name, nor has the Respondent used or prepared to use the disputed domain name. By the time the Respondent has registered the disputed domain name and conducted its fraudulent scheme, the Complainants had already enjoyed success in connection with the use of the BROKERTEC trademarks and names. There is no evidence that the Respondent is making any legitimate noncommercial or fair use of the disputed domain name without intending to gain a commercial advantage, as there can be no fair use when the Respondent is creating a false impression in the minds of the public that it is associated with the Complainants' business when it is not;

(vii) The disputed domain name was registered and is being used in bad faith. The Respondent knew of the Complainants' rights in BROKERTEC trademarks prior to the registration of the disputed domain name, as BROKERTEC trademarks have been registered in different jurisdictions across the globe, well before the Respondent has registered the disputed domain name. The fact that the Respondent has been aware of the Complainants' rights in BROKERTEC trademarks prior to the registration of the disputed domain name is further substantiated by the fact that the Respondent has attempted to mimic its disputed domain name to resemble the legitimate business of the Complainants, using logos and the well-known BROKERTEC trademarks. The Respondent registered and is using the disputed domain name to perpetrate a fraud, illegitimate scheme, or a scam, as is evident by the Respondent's attempt to lure the Complainants' customers to interact and provide sensitive personal and financial information to the Respondent via the use of the fraudulent website. The Respondent has conducted a fraudulent scheme aimed to confuse and defraud the Complainants' customers who believed that the Respondent is associated with the Complainants. The Respondent registered and is using the disputed domain name for commercial gain by intentionally creating a likelihood of confusion with the Complainants' BROKERTEC trademarks, as to the source, sponsorship, affiliation, or endorsement of the Respondent's webpages. The Respondent's is clearly illegitimately representing itself as being associated with the Complainants, and giving the false impression that the disputed domain name is associated with the Complainants, when they are not.

B. Respondent

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

6. Discussion and Findings

6.1. Procedural Issue - Consolidation of Complainants

Affiliated companies have standing to file complaint under the Policy, as prescribed in section 1.4.1. of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"). According to section 4.11.1. of the [WIPO Overview 3.0](#), in assessing whether a complaint filed by multiple complainants may be brought against a single respondent, panels look at whether (i) the complainants have a specific common grievance against the respondent, or the respondent has engaged in common conduct that has affected the complainants in a similar fashion, and (ii) it would be equitable and procedurally efficient to permit the consolidation.

The Complaint was filed by two Complainants. The First Complainant is owned by the Second Complainant. This Panel finds that the First and the Second Complainant jointly comprising the Complainant have a specific common grievance, and it is equitable and procedurally efficient to allow consolidation in circumstances of this case.

6.2. Substantive Issue

The Panel now proceeds to consider this matter on the merits in light of the Complaint, the lack of the Response, the Policy, the Rules, the Supplemental Rules, and any rules and principles of law that it deems applicable pursuant to paragraph 15(a) of the Rules.

Paragraph 4(a) of the Policy provides that the Complainant must prove, with respect to the disputed domain name, each of the following:

- (i) the disputed domain name is confusingly similar to a trademark in which the Complainant has rights; and
- (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

Under general consensus view, the mere fact of ownership of a registered trademark by the complainant is generally sufficient to satisfy the threshold requirement of having trademark rights (see section 1.1 of the [WIPO Overview 3.0](#)).

The Complainants have submitted evidence to show their ownership of earlier BROKERTEC trademarks, registered, among others, before the United States of America Patent and Trademark Office under registration number 4497835.

It is well established that the threshold test for confusing similarity under the UDRP involves a comparison between the complainant's trademark and the disputed domain name to determine if it is identical or confusingly similar. In order to satisfy this test, the relevant trademark would generally need to be recognizable as such within the disputed domain name, with the addition of descriptive or geographical terms typically being disregarded as insufficient to prevent a finding of confusing similarity. Application of the confusing similarity test under the UDRP typically involves a side-by-side comparison of the disputed domain name and the textual components of the relevant trademark to assess whether the trademark is recognizable within the disputed domain name. In cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant trademark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing (see sections 1.7 and 1.8 of [WIPO Overview 3.0](#)).

After performing the side-by-side comparison of the disputed domain name and BROKERTEC trademark, it is evident to the Panel that the disputed domain name incorporates the Complainants' BROKERTEC trademarks in its entirety, with the addition of the geographical term "Americas".

As provided in sections 1.7. and 1.8. of [WIPO Overview 3.0](#), and determined by Panels in earlier UDRP cases, the mere addition of a geographical indication to a trademark is not sufficient to eliminate the confusing similarity with the mentioned trademark. Thus, the Complainants' BROKERTEC trademarks are clearly recognizable within the disputed domain name and the inclusion of the geographical term "Americas" is not sufficient to eliminate such confusing similarity.

Regarding the generic Top-Level-Domain ("gTLD") ".com" in the disputed domain name, as a standard registration requirement it should be disregarded under the confusing similarity test (see section 1.11 of [WIPO Overview 3.0](#))

For all the foregoing reasons, the Panel holds that the disputed domain name is confusingly similar to the Complainants' BROKERTEC trademarks within the meaning of paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy sets out a number of circumstances which, without limitation, may be effective for a respondent to demonstrate that it has rights to, or legitimate interests in, a disputed domain name, for the purposes of paragraph 4(a)(ii) of the Policy. Those circumstances are:

- "(i) Before any notice to [the respondent] of the dispute, [use by the respondent] of, or demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services; or
- (ii) [Where the respondent] (as an individual, business, or other organization) [has] been commonly known by the disputed domain name, even if [the respondent has] acquired no trademark or service mark rights; or
- (iii) [Where the respondent is] making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue."

As noted by previous UDRP Panels on the onus of proof under paragraph 4(a)(ii) of the Policy, and as summarized in 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 relevant evidence demonstrating 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 this case, the Complainants have made a *prima facie* case that the Respondent does not have rights or legitimate interests in the disputed domain name within the meaning of paragraph 4(a) of the Policy. The Respondent is not authorized by the Complainants to use the BROKERTEC trademarks, and there is no indication that the Respondent is known under the disputed domain name. There is no apparent relation from the records between the Respondent and the Complainants, nor does it arise that the Complainants have ever licensed or otherwise permitted the Respondent to use its BROKERTEC trademarks, or to apply for or use any domain name incorporating the same trademark.

Furthermore, there is no evidence in the case file or otherwise apparent to the Panel that the Respondent has been using the disputed domain name in connection with a *bona fide* offering of goods or services or making a legitimate noncommercial or fair use of the disputed domain name.

As there is no evidence that the Respondent is in any way permitted by the Complainants to use the BROKERTEC trademarks, nor is there any evidence that the Respondent has made any *bona fide*, fair or otherwise legitimate use of BROKERTEC trademarks, the Panel concludes that the Respondent has no rights or legitimate interest to use the disputed domain name which includes the Complainants' BROKERTEC trademarks.

The Respondent has failed to provide any reply to the Complaint, and accordingly failed to prove that it has rights or legitimate interest in the disputed domain name.

The Panel finds that the requirements set forth in paragraph 4(a)(ii) of the Policy have been fulfilled by the Complainant's making the *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name, and by the Respondent's failing to produce any arguments or evidence to the contrary.

C. Registered and Used in Bad Faith

For the purpose of paragraph 4(a)(iii) of the Policy, the following circumstances, in particular, but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of the disputed domain name in bad faith:

“(i) circumstances indicating that the holder has registered or has 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 the holder's documented out-of-pocket costs directly related to the domain name; or

(ii) the holder has 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 the holder has engaged in a pattern of such conduct; or

(iii) the holder has registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, the holder has intentionally attempted to attract, for commercial gain, Internet users to the holder's 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 the holder's website or location or of a product or service on the holder's website or location.”

The Panel accepts the Complainants' arguments, supported by evidence, that the Respondent has registered and used the disputed domain name in bad faith. The Complainants have filed evidence to prove that their BROKERTEC trademarks are well-known, and that it is highly unlikely that the Respondent was unaware of the Complainants and their trademarks when it registered the disputed domain name.

Further the Respondent used the disputed domain name for sending email communication illegitimately representing itself as being associated with the Complainants, and giving the false impression that the disputed domain name is associated with the Complainant. As panels in previous cases have affirmed, the use of an email address associated with the disputed domain name, to send a phishing email for the purposes of dishonest activity is in itself evidence that the disputed domain name was registered and is being used in bad faith.

Accordingly, this Panel has considered the relevant factors, including the degree of distinctiveness and the reputation of the Complainants' BROKERTEC trademarks, the Respondent's illegitimate representation as being associated with the Complainants, the failure of the Respondent to provide any evidence of actual or contemplated good-faith use, the Respondent's concealing its identity, and the implausibility of any good faith use to which the disputed domain name may be put.

The Panel finds that the Respondent, by registering and using the disputed domain, is attempting to take advantage of the Complainants' reputation by creating a likelihood of confusion with the Complainants' BROKERTEC trademarks due to their high similarity with the disputed domain name. Accordingly, the Panel finds that the Respondent has registered and is using the disputed domain name in bad faith, and that the Complainant has fulfilled the third element under 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, <brokertecamericas.com> be transferred to the Complainants.

/Mladen Vukmir/

Mladen Vukmir

Sole Panelist

Date: September 22, 2023