

ADMINISTRATIVE PANEL DECISION

FXDirectDealer, LLC v. Chang Wentao

Case No. D2023-3534

1. The Parties

The Complainant is FXDirectDealer, LLC, United States of America (“United States”), represented by Kolitch Romano Dascenzo Gates LLC, United States.

The Respondent is Chang Wentao, China.

2. The Domain Name and Registrar

The disputed domain name <fxddonline.com> (the “Domain Name”) is registered with PSI-USA, Inc. dba Domain Robot (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 22, 2023. On August 22, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On August 24, 2023, the Registrar transmitted by email to the Center its verification response confirming that the 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 the Respondent of the Complaint, and the proceedings commenced on August 30, 2023. In accordance with the Rules, paragraph 5, the due date for Response was September 19, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 27, 2023.

The Center appointed Gregor Vos as the sole panelist in this matter on October 10, 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 is a financial services company based in Jersey City, United States. The Complainant has been operating since 2002 and offers its goods and services to customers around the world, including to individual and institutional traders, hedge funds, commercial entities, brokerage firms, and money managers.

The Complainant is the owner of *inter alia* the following trademark registrations (hereinafter jointly referred to as: the “Trademarks”):

- United States Trademark registration No. 3991011 for **//FXDD** registered on July 5, 2011;
- International Trademark registration No. 1125315 for **//FXDD** , with designation of *inter alia* China, Australia and Singapore, registered on May 21, 2012;
- International Trademark registration No. 1175697 for FXDD, with designation of *inter alia* China, Australia and Singapore, registered on August 7, 2013; and
- United States Trademark registration No. 4418706 for FXDD registered on October 15, 2013.

Further, it is undisputed that the Complainant is the holder of the domain name <fxdd.com>.

The Domain Name was registered on August 9, 2023. At the time of filing the Complaint, the Domain Name resolved to a website mimicking the Complainant and offering competing services. Currently, the Domain Name is inactive.

5. Parties' Contentions

A. Complainant

With the Complaint, the Complainant seeks that the Domain Name is transferred to the Complainant. The Complaint is based on the following factual and legal grounds: the Domain Name is identical or confusingly similar to the Trademarks of the Complainant, the Respondent has no rights or legitimate interests in the Domain Name, and the Domain Name has been registered and is being used in bad faith.

Firstly, according to the Complainant, the Domain Name is confusingly similar to the Trademarks. The Trademarks are incorporated in the Domain Name in their entirety with the mere addition of the term “online”.

Secondly, according to the Complainant, the Respondent has no rights or legitimate interests in the Domain Name. The Respondent is not sponsored by or affiliated with the Complainant, and has not received any license, authorization or permission from the Complainant to use its Trademarks in any manner. Furthermore, the Respondent is not commonly known under the name “fxddonline.com” or otherwise associated with any name that incorporates the letters “FXDD”, and does not provide a *bona fide* offering of goods or services. According to the Complainant, the Respondent is therefore deliberately creating the false impression of an association with the Complainant, and thereby uses the Complainant's reputation and goodwill in its Trademarks to attract consumers to the Respondent's website.

Finally, according to the Complainant, the Respondent has registered and uses the Domain Name in bad faith. The Complainant submits that the Respondent knew or should have known of the Complainant and the Complainant's rights in the Trademarks at the time the Domain Name was registered. By creating a likelihood of confusion with the Complainant's Trademarks, the Respondent is intentionally attempting to attract Internet users to the Domain Name's website and divert them from the Complainant's website, for the Respondent's own commercial gain. Furthermore, according to the Complainant, the Respondent is mimicking the Complainant's website by copying graphics and text used on the Complainant's website. This would lead to the conclusion that the Respondent either actively intended to exploit, or at best willfully ignored, the reputation and goodwill of the Complainant's Trademarks, which amounts to bad faith.

B. Respondent

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

6. Discussion and Findings

In view of the lack of a response filed by the Respondent as required under paragraph 5 of the Rules, this proceeding has proceeded by way of default. Hence, under paragraphs 5(f), 14(a) and 15(a) of the Rules, the Panel is directed to decide this administrative proceeding on the basis of the Complainant's undisputed factual presentations.

For the Complainant to succeed, it must prove, within the meaning of paragraph 4(a) of the Policy and on the balance of probabilities that:

- i. the Domain Name is identical or confusingly similar to a trademark or a service mark in which the Complainant has rights; and
- 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.

Only if all three elements have been fulfilled, the Panel is able to grant the remedies requested by the Complainant. The Panel will deal with each of the requirements in turn.

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires the Complainant to show that the Domain Name is (i) identical or confusingly similar to a trademark or service mark, (ii) in which the Complainant has rights.

With respect to having rights pursuant to paragraph 4(a)(i) of the Policy, it is noted that the Complainant is registered as the owner of the Trademarks. Consequently, the Panel finds that the Complainant has proven that it has rights in the Trademarks.

With regard to the assessment of identity or confusing similarity of the Domain Name with the Trademarks, it is generally accepted that this test involves a reasoned but relatively straightforward comparison between the Complainant's Trademarks and the Domain Name (see section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"). In cases where a domain name incorporates the entirety of a trademark, the domain name will normally be considered confusingly similar to that mark (see section 1.7 of the [WIPO Overview 3.0](#)).

In the present case, the Trademarks are incorporated in their entirety in the Domain Name. The mere addition of the term "online" does not prevent a finding of confusing similarity with the Trademarks (see section 1.8 of the [WIPO Overview 3.0](#)). The generic Top-Level Domain ".com" is viewed as a standard registration requirement and as such is disregarded (see section 1.11.1 of the [WIPO Overview 3.0](#)).

Consequently, the Panel finds that the requirement under paragraph 4(a)(i) of the Policy has been satisfied.

B. Rights or Legitimate Interests

The second requirement the Complainant must prove is that the Respondent has no rights or legitimate interests in the Domain Name. The onus of proving this requirement, like each element, falls on the Complainant. Given the difficulty in proving a negative, however, it is usually sufficient for a complainant to make out a *prima facie* case that a respondent lacks rights or legitimate interests. If a complainant does establish a *prima facie* case, the burden of production shifts to the respondent (see, e.g. [WIPO Overview 3.0](#), section 2.1; *Sanofi v. Cimpress Schweiz GmbH*, WIPO Case No. [D2017-0522](#)).

Paragraph 4(c) of the Policy lists three non-limitative examples of instances in which a respondent may establish rights or legitimate interests in a disputed domain name.

The Complainant has substantiated that none of these circumstances apply in this case. By defaulting, the Respondent has failed to address the *prima facie* case thus established by the Complainant. Furthermore, based on the record before it, the Panel does not see an indication that any of the circumstances of paragraph 4(c) of the Policy is present.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in respect of the Domain Name. Paragraph 4(a)(ii) is thereby fulfilled.

C. Registered and Used in Bad Faith

Under paragraph 4(a)(iii) of the Policy, a complainant must show that the disputed domain name has been registered and is being used in bad faith. Paragraph 4(b) of the Policy lists four non-limitative circumstances which may be considered as evidence of registration and use in bad faith of a domain name.

In the Complaint, the Complainant asserts that Annex 15 shows screenshots of August 17, 2023, of the website linked to the Domain Name, which imply a connection of the Respondent with the Complainant. Also, the Complainant asserts that the Respondents intend to either pose as the Complainant or to set up a service in direct competition with the Complainant's, which would amount to bad faith.

Annex 15 to the Complaint consists of six pages. The pages contain undated screenshots of webpages with no URL or otherwise including the Domain Name. Also, there is nothing on the face of the screenshots to otherwise connect it in any way with the Domain Name or with the Respondent.

Noting the Panel's below findings, the Panel needs not come to a final determination regarding the Complainant's assertions that the Domain Name was registered or used by the Respondent to either pose as the Complainant or to set up a service in direct competition with the Complainant's.

In the present case, the Trademarks are registered by the Complainant and have been used for many years. The Complainant's rights to the Trademarks predate the registration date of the Domain Name. In light of the reputation that the Trademarks of the Complainant enjoy, the Panel agrees with the Complainant that it is not conceivable that the Respondent chose the Domain Name without knowledge of the Complainant's activities and its Trademarks under which the Complainant is doing business. The reputation of the Complainant's Trademarks has been confirmed by earlier UDRP panels (see *e.g.*, *FXDirectDealer, LLC v. Marta Hryshkova*, WIPO Case No. [D2022-0398](#); *FXDirectDealer, LLC v. 赵志明 (zhao zhi ming)*, WIPO Case No. [D2021-1899](#); and *FXDirectDealer, LLC v. WhoisGuard Protected, WhoisGuard, Inc. / Saint Biology, FxddTrade*, WIPO Case No. [D2020-3159](#)).

With regard to use of the Domain Name in bad faith, the Panel finds that the use of the Trademarks in the Domain Name signals an intention on the part of the Respondent to confuse Internet users into thinking that the Domain Name is connected to the Complainant (section 3.2.1, [WIPO Overview 3.0](#)).

Further, even when taking the current inactive webpage into account, it is generally accepted by UDRP panels that the non-use of a domain name does not prevent a finding of bad faith (section 3.3 of the [WIPO Overview 3.0](#)). In light of the reputation of the Trademarks, the lack of any rights or legitimate interests in the Domain Name by the Respondent, and in the absence of any conceivable good faith use of the Domain Name, the Panel finds from the present circumstances that the Respondent has intentionally sought to take unfair advantage of or otherwise abuse the Trademarks.

Accordingly, the Panel finds that the Domain Name has been registered and is being used in bad faith and that the third element of paragraph 4(a)(iii) of the Policy is fulfilled.

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 Domain Name, <fxddonline.com>, be transferred to the Complainant.

/Gregor Vos/

Gregor Vos

Sole Panelist

Date: October 24, 2023