

## **ADMINISTRATIVE PANEL DECISION**

**FXDirectDealer, LLC v. Fxdd Trade**

**Case No. D2023-4461**

### **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 Fxdd Trade, India.

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

The disputed domain name <fxddtrade.com> (the “Domain Name”) is registered with GoDaddy.com, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 26, 2023. On October 27, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On October 30, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent (Unknown Respondent c/o Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 1, 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 amendment to the Complaint on November 1, 2023.

The Center verified that the Complaint together with the amendment to 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 November 2, 2023. In accordance with the Rules, paragraph 5, the due date for Response was November 22, 2023. The Respondent sent an email to the Center on November 16, 2023. On November 16, 2023, the Center sent an email to the Parties regarding possible settlement. On November 16, 2023, the Complainant sent an email to the Center indicating that it wished to proceed with the Panel appointment. On November 27, 2023, the Center notified the Parties of the commencement of panel appointment process.

The Center appointed Nicholas Smith as the sole panelist in this matter on December 18, 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 United States based financial services company which since at least 2002 has offered foreign exchange trading and educational services (as well as related goods and services) under the trademark "FXDD" (the "FXDD Mark"). The Complainant promotes its products through various means including from its website at "www.fxdd.com" ("Complainant's Website") and "www.fxddtrading.com" and has received industry awards for its services.

The Complainant has held a trademark registration for the FXDD Mark in various jurisdictions since 2013, notably having held a United States trademark registration for the FXDD Mark since October 15, 2013 for services in classes 9, 36 and 41 (registration No. 4,418,706) relating to foreign exchange trading.

The Domain Name was registered on August 24, 2023. The Domain Name resolves to a website (the "Respondent's Website") that prominently reproduces the FXDD Mark and logo and purports to offer foreign exchange trading services in direct competition with the Complainant.

#### **5. Parties' Contentions**

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

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the Domain Name.

Notably, the Complainant contends that:

- a) It is the owner of the FXDD Mark, having registered the FXDD Mark in various jurisdictions. The Domain Name is confusingly similar to the FXDD Mark as it reproduces the FXDD Mark in its entirety and adds the term "trade".
- b) There are no rights or legitimate interests held by the Respondent in respect of the Domain Name. The Complainant has not granted any license or authorization for the Respondent to use the FXDD Mark. The Respondent is not commonly known by the FXDD Mark, nor does it use the Domain Name for a *bona fide* purpose or legitimate noncommercial purpose. Rather the Respondent is using the Domain Name to pass off as the Complainant for commercial gain by purporting to offer foreign exchange trading services in direct competition with the Complainant. Such use is not a legitimate use of the Domain Name.
- c) The Domain Name was registered and is being used in bad faith. The Respondent is using the Domain Name to divert Internet users searching for the Complainant to the Respondent's Website to disrupt the Complainant's business and divert Internet users searching for the Complainant to a competing website for commercial gain. Such conduct amounts to registration and use of the Domain Name in bad faith.

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

The Respondent did not reply to the Complainant's contentions. The Respondent's short e-mail to the Center does not address any of the contentions in the Complaint. The Respondent expressed their willingness to settle the dispute amicably in the email communication.

## 6. Discussion and Findings

### A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the complainant's trademark and the domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the entirety of the mark is reproduced within the Domain Name. Accordingly, the Domain Name is identical or confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

While the addition of other terms, here ("trade"), may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the Domain Name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Based on the available record, the Panel finds the first element of the Policy has been established.

### B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the respondent may demonstrate rights or legitimate interests in a disputed domain name.

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. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the Domain Name. The Respondent has not rebutted the Complainant's *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the Domain Name.

The Panel considers that the record of this case reflects that:

- before any notice to the Respondent of the dispute, the Respondent did not use, nor has it made demonstrable preparations to use, the Domain Name or a name corresponding to the Domain Name in connection with a *bona fide* offering of goods or services. Paragraph 4(c)(i) of the Policy, and [WIPO Overview 3.0](#), section 2.2.

- the Respondent (as an individual, business, or other organization) has not been commonly known by the Domain Name. Paragraph 4(c)(ii) of the Policy, and [WIPO Overview 3.0](#), section 2.3.

- the Respondent is not 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. Paragraph 4(c)(iii) of the Policy, and [WIPO Overview 3.0](#), section 2.4.

- the record contains no other factors demonstrating rights or legitimate interests of the Respondent in the Domain Name.

The Whois lists "Fxdd Trade" as registrant of record. However, the Panel is not satisfied that the Respondent is actually commonly known under this name as opposed to simply registering the Domain Name under a pseudonym for the purpose of asserting rights or legitimate interests. The Respondent has provided no evidence that an entity known as "Fxdd Trade" exists and is legitimately trading. Even if a respondent's name appears from the Whois record to correspond to the domain name, without additional affirmative evidence, it can be concluded that such a respondent is not commonly known by the disputed domain name under Policy 4(c)(ii). Given the conduct set out in the next paragraph, indicating that the Respondent is actively passing off as the Complainant, the Panel finds on the balance of probabilities that the Respondent is not commonly known by the Domain Name and the Fxdd Trade name is merely a pseudonym that is part of a broader effort by the Respondent to pass off as the Complainant.

The Respondent's use of the Domain Name to resolve to a webpage reproducing the Complainant's FXDD Mark and related logo and purported to offer foreign exchange trading services in direct competition with the Complainant does not amount to use for a *bona fide* offering of goods and services. This is supported by the fact that the Respondent's Website actively passes off as an official website of the Complainant including by making reference to the Complainant's financial services trading license and awards won by the Complainant. Rather, it appears that the purpose behind the Respondent's Website is to encourage visitors, under the impression that they are dealing with the Complainant, to utilize the foreign exchange trading services purportedly offered by the Respondent, such conduct not being *bona fide*.

Based on the available record, the Panel finds the second element of the Policy has been established.

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

The Panel notes that for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular but without limitation, that if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

The Panel considers that the record of this case reflects that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other on-line location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's Website or location or of a product or service on the Respondent's Website or location. Paragraph 4(b)(iv) of the Policy, and [WIPO Overview 3.0](#), section 3.1.4.

The Panel finds that the Respondent must have been aware of the Complainant and its reputation in the FXDD Mark at the time the Respondent registered the Domain Name. The Respondent has provided no explanation, and neither it is immediately obvious, why an entity would register a domain name incorporating the FXDD Mark (with the addition of the term "trade") and redirect it to a website purportedly offering foreign exchange trading services unless there was an awareness of and an intention to create a likelihood of confusion with the Complainant and its FXDD Mark.

The Respondent's Website purports to offer foreign exchange trading services in direct competition with the Complainant. Noting the coined nature of the FXDD Mark, the fact that the Respondent passes off as the Complainant on the Respondent's Website and the absence of any explanation for the registration, the Panel considers that the most likely explanation is that the Respondent is using the Domain Name to intentionally attempt to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the FXDD Mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's Website.

Based on the available record, the Panel finds the third element of the Policy has been established.

## 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 <fxddtrade.com> be transferred to the Complainant.

*/Nicholas Smith/*

**Nicholas Smith**

Sole Panelist

Date: January 1, 2024