

ADMINISTRATIVE PANEL DECISION

FXDirectDealer, LLC v. Lida Conway
Case No. D2023-5099

1. The Parties

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

The Respondent is Lida Conway, United States.

2. The Domain Name and Registrar

The Disputed Domain Name <fxdddd.xyz> is registered with Gname.com Pte. Ltd. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 6, 2023. On December 7, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On December 8, 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 (Unknown Respondent) and contact information in the Complaint. The Center sent an email communication to Complainant on December 11, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amendment to the Complaint on the same day.

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 Respondent of the Complaint, and the proceedings commenced on January 5, 2024. In accordance with the Rules, paragraph 5, the due date for Response was January 25, 2024. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on January 27, 2024.

The Center appointed Colin T. O’Brien as the sole panelist in this matter on February 7, 2024. 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 well-known financial services company that has been using the mark FXDD in connection with its goods and services since at least as early as 2002, including at the websites located at “www.fxdd.com” and “www.fxddtrading.com”.

Complainant 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.

Complainant owns numerous trademark registrations including:

United States Trademark Registration No. 4,418,706 for the mark FXDD registered on October 15, 2013, in connection with “downloadable software for use by traders in the financial market in connection with trading various instruments, namely, commodities, options, and foreign exchange”, in International Class 9; “financial services via a global communications network, namely, foreign exchange trading and options brokering”, in International Class 36; and “educational services, namely, conducting financial trading tutoring courses on the Internet and through the use of supporting printed and audio/visual materials distributed as course materials in connection therewith”, in International Class 41;

and

International Trademark Registration No. 1175697 for the mark FXDD registered on August 7, 2013, in connection with “downloadable software for use by traders in the financial market in connection with trading various instruments, namely, commodities, options, and foreign exchange”, in International Class 9; “financial services via a global communications network, namely, foreign exchange trading and options brokering”, in International Class 36; and “educational services, namely, conducting financial trading tutoring courses on the Internet and through the use of supporting printed and audio/visual materials distributed as course materials in connection therewith”, in International Class 41, with grants of protection issued in numerous countries including Australia, Belarus, European Union, Israel, Iceland, India, Monaco, Mexico, New Zealand, Ukraine, Philippines, Singapore, Switzerland, Türkiye, and Viet Nam.

The Disputed Domain Name was registered on June 18, 2023, and it resolves to a website displaying the Complainant’s stylized FXDD mark and purportedly offering financial services.

5. Parties’ Contentions

A. Complainant

Due to Complainant’s widespread and extensive use, both in the United States and internationally, Complainant has built up tremendous and valuable goodwill in its FXDD mark, which consumers associate with Complainant. The Disputed Domain Name fully incorporates Complainant’s mark FXDD in its entirety, which indicates confusing similarity.

The addition of the letters “dd” after Complainant’s FXDD mark in the Disputed Domain Name fails to prevent confusing similarity between the Disputed Domain Name and Complainant’s FXDD mark. As Complainant’s FXDD mark is clearly recognizable within the Disputed Domain Name.

Respondent has no rights or legitimate interests in the Disputed Domain Name. Respondent is not sponsored by or affiliated with Complainant. Respondent has not received any license, authorization, or permission from Complainant to use its FXDD marks in any manner, including in domain names.

Complainant's use and widespread recognition by consumers of its FXDD marks long predates the creation date of the Disputed Domain Name by Respondent. To the best of Complainant's knowledge, Respondent is not commonly known by the Disputed Domain Name or any name that incorporates the letters "fxdd".

The Disputed Domain Name was registered in bad faith and is being used in bad faith for the following reasons: (a) based on the extensive use and widespread recognition of Complainant and its FXDD mark, Respondent knew or should have known of Complainant and Complainant's rights in its FXDD mark when Respondent registered the Disputed Domain Name; (b) Respondent is intentionally attempting to attract Internet users to the Disputed Domain Name's website and divert them from Complainant's own online presence, by creating a likelihood of confusion with Complainant's FXDD mark as to the source, sponsorship, affiliation, or endorsement of the Disputed Domain Name's website, for commercial gain; (c) the mere act by Respondent of registering the Disputed Domain Name that is identical and/or confusingly similar to Complainant's widely known FXDD marks is willful blindness; and (d) Respondent is using the Registration Data Directory Service to hide its identity in order to prevent efficient enforcement of legitimate trademark rights by Complainant.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

A. Identical or Confusingly Similar

Complainant has demonstrated it owns long-standing registered and common law trademark rights in the FXDD mark. The Disputed Domain Name incorporates whole of the FXDD mark with the addition of two extra "d"s which does not prevent a finding of confusing similarity between the mark and the Disputed Domain Name. See sections 1.7 and 1.9 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions Third Edition ("[WIPO Overview 3.0](#)").

Accordingly, the Disputed Domain Name is confusingly similar to the mark in which Complainant has rights.

B. Rights or Legitimate Interests

Complainant has presented a prima facie case that Respondent has no rights or legitimate interests in respect of the Disputed Domain Name and has not been commonly known by the Disputed Domain Name. The fact that Respondent obtained the Disputed Domain Name years after Complainant had begun using its FXDD mark indicates that Respondent sought to piggyback on the mark for illegitimate reasons.

After a complainant has made a prima facie case, the burden of production shifts to a respondent to present evidence demonstrating rights or legitimate interests in the domain name. See, e.g., *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#).

Respondent has provided no evidence of any rights or legitimate interests in the Disputed Domain Name. Moreover, the Disputed Domain Name is virtually identical to Complainant's trademark other than the addition of "dd" implies an association with Complainant. Such a risk of affiliation or association with Complainant and its mark cannot constitute fair use.

In the absence of any evidence rebutting Complainant's prima facie case indicating Respondent's lack of rights or legitimate interests in respect of the Disputed Domain Name, the Panel finds that Complainant has satisfied paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Disputed Domain Name was registered many years after Complainant first registered and used its FXDD mark. Considering the evidence on the record provided by Complainant with respect to the extent of use of its FXDD mark, the typosquatting of Complainant's mark in the Disputed Domain Name, combined with the absence of any evidence provided by Respondent to the contrary, it is sufficient to satisfy the Panel that, at the time the Disputed Domain Name was registered, Respondent undoubtedly knew of Complainant's FXDD mark, and knew that it had no rights or legitimate interests in the Disputed Domain Name. Prior UDRP panels have held that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith. See section 3.1.4 of the [WIPO Overview 3.0](#).

There is no benign reason for Respondent to have registered the Disputed Domain Name.

Further, the use of the Disputed Domain Name by Respondent is clearly in bad faith. Paragraph 4(b)(iv) of the Policy states that evidence of bad faith may include a respondent's use of a domain name to intentionally attempt to attract, for commercial gain, Internet users to the respondent'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 respondent's website or location or of a product or service on the respondent's website or location. Complainant has submitted evidence that Respondent has used the Disputed Domain Name to host a website in which implies that it is a website operated by Complainant. Given the fame of Complainant's FXDD mark, the obvious inference is that Respondent hoped to mislead customers of Complainant to visit the website at the Disputed Domain Name to cull email addresses from unsuspecting user for possible phishing attempts or some other illegitimate use.

The Panel finds that the only plausible basis for registering and using the Disputed Domain Name has been for illegitimate and bad faith purposes. It is moreover noted that the related website is now inactive; while this may be due to a request by Complainant to the hosting provider, it may equally be an attempt by Respondent to hide its tracks; in either event, especially noting the reputation of Complainant and the lack of a contemplated good faith use, the present non-use of the Disputed Domain Name for an active website does not in any event prevent a finding of bad faith nor does it go against any of the Panel's above findings.

Accordingly, the Panel finds that Complainant has satisfied 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 <fxdddd.xyz> be transferred to Complainant.

/Colin T. O'Brien/

Colin T. O'Brien

Sole Panelist

Date: February 21, 2024