

## ADMINISTRATIVE PANEL DECISION

### Notesco Financial Services Limited v. Hans Ulrich Baertschi Case No. D2024-0146

#### 1. The Parties

The Complainant is Notesco Financial Services Limited, Cyprus, represented internally.

The Respondent is Hans Ulrich Baertschi, Germany.

#### 2. The Domain Name and Registrar

The disputed domain name <ironfx.com><sup>1</sup> [xn--ronfx-m4a.com] is registered with NameCheap, Inc. (the “Registrar”).

#### 3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 15, 2024. On January 15, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 15, 2024, 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 (Redacted for Privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 16, 2024, 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 January 18, 2024.

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”).

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<sup>1</sup> Initially, the Complainant filed the Complaint against the Respondent for an additional domain name, <ironfx.net>. The Complainant requested the Center to withdraw the <ironfx.net> domain name from the Complaint and continue the proceeding only with the disputed domain name <ironfx.com >. The Center accepted the Complainant’s request without prejudice to file another Complaint with respect to the <ironfx.com> domain name, and the proceeding commenced with <ironfx.com > as the sole disputed domain name in this proceeding.

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on January 24, 2024. In accordance with the Rules, paragraph 5, the due date for Response was February 13, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on February 15, 2024.

The Center appointed Mladen Vukmir as the sole panelist in this matter on February 21, 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**

The Complainant is a limited liability company, registered and existing under the laws of the Republic of Cyprus. The Complainant is an online foreign exchange derivatives service provider, it offers investment services, and is regulated by the Cyprus Securities and Exchange Commission. As a regulated investment firm, the Complainant serves retails and institutional customers in Europe, and is a part of a larger group of companies, Notesco Group, which has offices worldwide.

The Complainant is the owner of international trademark registration for a stylized form of name IronFX, designating various jurisdictions, among others, European Union and United States of America, registered on June 28, 2012, under the registration number 1129032 for services in class 36-financial affairs ("IronFX trademark").

The Complainant is the registrant of a domain name incorporating the Complainant's IronFX trademark, <ironfx.eu>, and under said domain name it operates its website "www.ironfx.eu". Notesco Group is a registrant of a domain name <ironfx.com> under which operates its website "www.ironfx.com".

The disputed domain name was registered on November 30, 2023, and is being used for sending defrauding emails to the Complainant's clients.

#### **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 disputed domain name.

Notably, the Complainant contends that the disputed domain name is confusingly similar to the Complainant's domain name and IronFX trademark, because incorporates IronFX trademark precisely. The only difference between IronFX trademark and the disputed domain name is one letter, dotless "i" instead of "I" which is not very visible. The Complainant states that the change of one letter shows that the Respondent was trying to impersonate IronFX trademark and the services offered by the Complainant. The disputed domain name can inevitably cause confusion to the public as they are closely related to the Complainant IronFX trademark.

Further, the Complainant states that the Complainant and Notesco Group hold offices worldwide and are widely regulated by competent authorities i.e., United Kingdom, Cyprus, South Africa. The Complainant is using its domain name <ironfx.eu> since 2013, and is well known in the financial market - differentiated and distinguished from other companies that provide the same services with the Complainant. The Respondent possesses and/or uses almost identical domain to the Complainant IronFX trademark without the authorization of the Complainant on purpose in order to confuse potential and /or existing clients. There are no business relations between the Complainant and the Respondent that could give the Respondent any rights to use the disputed domain name. In absence of any authorization or otherwise consent by the

Complainant to the Respondent, it is evident to the Complainant that the Respondent's sole purpose was to take advantage of the Complainant's good will, reputation and recognition operating the disputed domain name which resembles to the Complainant's business.

Furthermore, the Complainant contends that the Respondent is using the disputed domain name in bad faith in order to steal funds from clients of the Complainant by convincing them that the Respondent is associated and/or an employee of the Complainant. The Respondent is using the domain name to misguide and/or mislead clients by using the Complainant's IronFX trademark as a signature on emails sent to several clients. The Respondent is giving the false impression that the Respondent is an employee of the Complainant and gives instructions to clients to not deposit funds with the Complainant instead to transfer funds to an e-wallet which belongs to the Respondent. Also, the Respondent produces fake guarantee of profit documents of Notesco Limited, a company which belongs to Notesco Group of the Complainant and sends them to clients. Following the illegal actions of the Respondent, the Complainant and in general Notesco Group are receiving complaints from clients that suffered monetary damages. The Complainant believes that the Respondent registered the disputed domain name in spite of the fact that IronFX trademark is well known in the financial market industry. The Complainant believes that the Respondent has not selected the disputed domain name randomly and without having prior knowledge of the Complainant's business worldwide.

## **B. Respondent**

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

## **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 disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

The Panel finds that 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 mark is recognizable within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

In this Panel's view, the disputed domain name is registered in an ACE Encoding form which results to an apparent misspelling of the Complainant's IronFX trademark in a manner that "i" from IronFX trademark is substituted with dotless "i" in the disputed domain name. A domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element. [WIPO Overview 3.0](#), section 1.9.

The generic Top-Level Domain ".com" is a standard registration requirement and as such may be disregarded under the first element confusing similarity test. [WIPO Overview 3.0](#), section 1.11.1.

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.

Although 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 difficult 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 (although the burden of proof always remains on the complainant). 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 available record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed 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 disputed domain name such as those enumerated in the Policy or otherwise.

The Respondent is not authorized by the Complainant to use IronFX trademark, and there is no indication that the Respondent is commonly known under the disputed domain name. There is no apparent relation from the record between the Respondent and the Complainant, nor does it arise that the Complainant has ever licensed or otherwise permitted the Respondent to use its IronFX trademark, or to apply for or use any domain name incorporating the same trademark.

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. The Respondent has failed to provide any reply to the Complaint, and accordingly failed to rebut the Complainant’s showing that the Respondent has no rights or legitimate interests in the disputed domain name.

The nature of the disputed domain name, comprising the Complainant’s misspelled IronFX trademark indicates an awareness of the Complainant and its IronFX trademark and creates a risk of implied affiliation or association with the Complainant, which does not support a finding of any rights or legitimate interests in this case. [WIPO Overview 3.0](#), section 2.5.1.

Panels have held that the use of a domain name for illegal activity (here sending emails to the Complainant’s clients falsely pretending to be sent by the Complainant) can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

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.

In the present case, the Panel notes that the Respondent used the disputed domain name as a part of an email address to impersonate the Complainant and defraud the Complainant’s clients. In this Panel’s view, the Respondent was aware of the Complainant and its IronFX trademark when registering the disputed domain name.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent’s registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

Based on evidence provided by the Complainant this Panel concludes that the Complainant's IronFX trademark are distinctive, well-known and that it is highly unlikely that the Respondent was unaware of the Complainant and its trademark when he registered the disputed domain name.

Incorporation of a well-known trademark in a domain name having no plausible explanation for doing so is in itself an indication of bad faith (see *Intel Corporation v. The Pentium Group*, WIPO Case No. [D2009-0273](#)). Moreover, in earlier UDPR decisions panels have found that the respondents who fail to search and/or screen registrations against available databases would be responsible for any resulting abusive registrations under the concept of wilful blindness. [WIPO Overview 3.0](#), section 3.2.3.

In this Panel's view, by registering the disputed domain name that contains the Complainant's IronFX trademark, the Respondent is attempting to take advantage of the Complainant's reputation, and well-known trademark, and concludes that the disputed domain name has been registered and is being used in bad faith.

In earlier UDRP decisions Panels have held that the use of a domain name for purposes other than to host a website may constitute bad faith. [WIPO Overview 3.0](#), section 3.4. The Panel concludes that in the present case use of the disputed domain name to send deceptive emails constitutes bad faith under the Policy.

The Panel finds that the Complainant has established the third element 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 <ironfx.com> [xn--ronfx-m4a.com] be transferred to the Complainant.

*/Mladen Vukmir/*

**Mladen Vukmir**

Sole Panelist

Date: March 6, 2024