

## **ADMINISTRATIVE PANEL DECISION**

### **SIX Digital Exchange AG v. User ABC**

### **Case No. D2024-2590**

#### **1. The Parties**

The Complainant is SIX Digital Exchange AG, Switzerland, represented by Meisser & Partners, Switzerland.

The Respondent is User ABC, United States of America.

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

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

#### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 25, 2024. On June 26, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On June 26, 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 (PrivacyGuardian.org llc) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 5, 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 July 8, 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”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on July 12, 2024. In accordance with the Rules, paragraph 5, the due date for Response was August 1, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 14, 2024.

The Center appointed Flip Jan Claude Petillion as the sole panelist in this matter on August 16, 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, SIX Digital Exchange AG, is a Swiss company operating a regulated stock exchange and central securities depository. The Complainant provides a platform for traders, broker-dealers, bankers, and corporations to explore the world of digital assets.

The Complainant is the owner of several trademarks including the following:

- SIX DIGITAL EXCHANGE, international word mark registered under No. 1488263 on June 28, 2019, in classes 35, 36, and 42, covering various countries including the United States of America;
- international figurative trademark registered under No. 1584896 on December 8, 2020, in classes 35, 36, and 42:



The Disputed Domain Name was created on March 29, 2024. According to the Complainant's evidence, the Disputed Domain Name appeared to resolve to a website mentioning "Six Digital Exchange", offering trading services and displaying the following logo:



The Disputed Domain Name currently resolves to an inactive website.

#### 5. Parties' Contentions

##### A. Complainant

Notably, the Complainant contends that the Disputed Domain Name is confusingly similar to a trademark in which it claims to have rights.

The Complainant further claims that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name, as, according to the Complainant:

- the circumstances of the case show that the Respondent must have been aware of the Complainant's trademarks;
- the Respondent's main goal seems to be to collect user information;
- the website linked to the Disputed Domain Name offers financial services;
- the Respondent has not been commonly known by the Disputed Domain Name;
- the Respondent only registered the Disputed Domain Name for commercial gain in order to divert consumers to its own competing site;
- the Respondent was neither authorized nor licensed by the Complainant to use the Complainant's trademarks and there is no relationship between the Complainant and the Respondent.

Finally, the Complainant claims that the Disputed Domain Name was registered and is being used in bad faith. According to the Complainant:

- because the Disputed Domain Name is not descriptive for financial services and the Respondent is active in a similar field as the Complainant, it is obvious that the Respondent was aware of the Complainant's trademarks at the time of the Disputed Domain Name's registration;
- the Disputed Domain Name was registered in order to prevent the Complainant to use its trademarks as a domain name and to disrupt the business of competitors;
- the Disputed Domain Name is used in order to attract, for commercial gain, Internet users to the website linked to the Disputed Domain Name;

## **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 textual elements of) the Complainant's trademarks and the Disputed 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 observes that the entirety of the SIX DIGITAL EXCHANGE mark is reproduced within the Disputed Domain Name.

It is well established that generic Top-Level-Domains ("gTLDs"), here ".com", may be disregarded when considering whether the Disputed Domain Name is confusingly similar to a trademark in which the Complainant has rights.

Therefore, the Panel finds that the Disputed Domain Name is identical to the Complainant's SIX DIGITAL EXCHANGE mark. 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 Panel notes that the Respondent has not apparently been commonly known by the Disputed Domain Name, and that the Respondent does not seem to have acquired trademark or service mark rights. According to the information provided by the Registrar, the Respondent is “User ABC”. The Respondent’s use and registration of the Disputed Domain Name was not authorized by the Complainant.

Fundamentally, a respondent’s use of a domain name will not be considered “fair” if it falsely suggests affiliation with the trademark owner. Where a domain name is identical to a complainant’s trademark, UDRP panels have largely held that it carries a high risk of implied affiliation. [WIPO Overview 3.0](#), section 2.5.1.

The Disputed Domain Name being identical to the Complainant’s SIX DIGITAL EXCHANGE trademark, the Panel finds that the Disputed Domain Name carries a high risk of implied affiliation with the Complainant and cannot constitute fair use in the circumstances of this case.

Beyond looking at the domain name, UDRP panels assess whether the overall facts and circumstances of the case, including the content of the website linked to the disputed domain name and the absence of a response, support a fair use or not. [WIPO Overview 3.0](#), sections 2.5.2 and 2.5.3.

According to the Complainant’s evidence, the Disputed Domain Name appeared to resolve to a website mentioning the Complainant’s SIX DIGITAL EXCHANGE trademark and offering trading services similar to those offered by the Complainant. Moreover, in the Panel’s view, the “SDX” logo displayed on this website presents some similarities with the Complainant’s figurative “SDX” trademark depicted above under section 4, notably the letters “SD” followed by a stylized “X”. The Panel finds that this does not amount to a bona fide offering of goods or services, or a legitimate noncommercial or fair use of the Disputed Domain Name.

The Panel observes that the Disputed Domain Name currently resolves to an inaccessible website. In the Panel’s view, this does not amount to any legitimate noncommercial or fair use or use in connection with a bona fide offering of goods and services either.

The Respondent had the opportunity to demonstrate his rights or legitimate interests but did not do so. In the absence of a Response from the Respondent, the prima facie case established by the Complainant has not been rebutted.

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.

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.

As established above, the Disputed Domain Name appeared to resolve to a website offering services similar to those of the Complainant using the Complainant’s SIX DIGITAL EXCHANGE mark and a logo similar to the Complainant’s figurative “SDX” trademark. In the Panel’s view, the circumstances of this case indicate that the Respondent has intentionally attempted to attract Internet users to its website for commercial gain by creating a likelihood of confusion with the Complaint and the Complainant’s trademarks. [WIPO Overview 3.0](#), section 3.2.4.

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.

In the present case, the Panel finds that the Respondent must have been aware of the Complainant and its trademark rights when it registered the Disputed Domain Name as:

- the Disputed Domain Name appeared to resolve to a website offering services similar to those of the Complainant (e.g. financial services) and displaying a logo similar to another mark of the Complainant;
- the Complainant's SIX DIGITAL EXCHANGE trademark was registered at least 3 years before the Disputed Domain Name, including in the country where the Respondent appears to be residing.

Finally, the Respondent did not formally take part in the administrative proceedings. According to the Panel, this serves as an additional indication of the Respondent's bad faith.

Given the totality of the circumstances discussed above, the current state of the Disputed Domain Name redirecting to an inaccessible webpage does not prevent a finding of bad faith under the doctrine of passive holding. [WIPO Overview 3.0](#), section 3.3.

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 <sixdigitalexchange.com> be transferred to the Complainant.

*/Flip Jan Claude Petillion/*

**Flip Jan Claude Petillion**

Sole Panelist

Date: August 30, 2024