

## **ADMINISTRATIVE PANEL DECISION**

BYD Company Ltd. v. Alex Hofmann  
Case No. D2024-3581

### **1. The Parties**

The Complainant is BYD Company Ltd., China, represented by Thümmel, Schütze & Partner, Germany.

The Respondent is Alex Hofmann, Germany.

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

The disputed domain name <bydinvest.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 September 4, 2024. On September 4, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 4, 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 September 10, 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 amendment to the Complaint on September 12, 2024.

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 September 13, 2024. In accordance with the Rules, paragraph 5, the due date for Response was October 3, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 11, 2024.

The Center appointed Jacques de Werra as the sole panelist in this matter on October 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 which was established in February 1995 is a high-tech company devoted to leveraging technological innovations for a better life. The Complainant has established over 30 industrial parks across 6 continents and operates in various sectors including electronics, auto, renewable energy, and rail transit with a focus on sustainable energy acquisition, storage, and application.

The Complainant owns many trademarks registered in multiple countries and regions for BYD (“the Trademark”) which reflects its corporate name, and which include the following trademark registrations:

- European Union Trademark 008949241 (word and design trademark for the word BYD) registered on July 12, 2011, for various goods and services in classes 1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12,13, 14, 15, 16, 17, 18, 19, 20,21, 22, 23, 24, 25, 26, 27, 28,29, 30, 31, 32, 33, 34, 35, 36,37, 38, 39, 40, 41, 42, 43, 44, and 45;
- European Union Trademark 008949455 (word and design trademark containing the word BYD in an oval) registered on July 30, 2011, for various goods and services in classes 5, 7, 9, 10, 11, 12, and 37;
- International trademark 1553956 (word and design trademark containing the word BYD) registered on August 10, 2020, for various goods and services in classes 5 and 10.

The disputed domain name was registered on November 30, 2023. The disputed domain name has been used in connection with a website that replicates the content and look and feel of the website of one of Complainant’s group companies at the domain name <bydeurope.com> in order to promote what appears as a fraudulent investment scheme based on the appropriation of the Complainant’s identity and Trademark. The German Federal Financial Supervisory Authority (BaFin) has initiated an investigation and has informed the Complainant (by email of July 12, 2024) that it was aware that internet users - consumers and investors - in the Federal Republic of Germany had been offered fixed-interest investments (so-called BYD-Tokens) during phone calls (cold - calls) with reference to the website associated with the disputed domain name and that consumers/investors had contacted BaFin earlier and had informed BaFin that they had been referred to the website associated with the disputed domain name which contained a log-in part that the potential investors are requested to use in order to start the investment.

#### **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 Trademark because the word “invest” has to be qualified as a descriptive term and because the characteristic part of the disputed domain name is the word “byd” which is the dominant element of the domain name. This means that the Trademark and the disputed domain name are confusingly similar to a very high degree. The Complainant claims in this respect that consumer confusion has already taken place as evidenced by the investigation of the German Federal Financial Supervisory Authority further to clients/investors’ communications about the fraudulent investment scheme based on the appropriation of the Complainant’s identity and Trademark.

The Complainant further contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent is neither licensed nor authorized in any other way to use the Trademark of the Complainant. The Respondent registered the disputed domain name on November 30, 2023, which is ten years after the Complainant had started to use the Trademark. The Respondent has used the disputed domain name to deceive consumers and investors about Respondent's identity because the website associated with the disputed domain name is a clone of the website of a Complainant's affiliated company available at the domain name <bydeurope.com>.

The Complainant also contends that the Respondent created a likelihood of confusion by using the disputed domain name which gave rise to a likelihood of confusion by which the public was misled to believe that the website offered under the Respondent's disputed domain name was a website provided by the Complainant and that the Respondent had intentionally attempted to attract Internet users for commercial gain to its website provided under the disputed domain name. Another indication for the use in bad faith is the fact that the Respondent is acting under cover and uses tools to protect privacy in order to hide its real identity.

## **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 Complainant has shown rights in respect of a trademark or service mark (i.e., the Trademark) for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds that the Trademark is recognizable within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the Trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7. Although the addition of another term, here the suffix "invest", 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 disputed domain name and the Trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

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 because of the use that the Respondent made of the domain name in order to replicate the website of one of the Complainant's group companies at the domain name <bydeurope.com> in what appears as a fraudulent investment scheme based on the appropriation of the Complainant's identity and Trademark. 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.

Panels have held that the use of a domain name for illegal activity, here a fraudulent investment scheme based on the appropriation of the Complainant's identity and Trademark, 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 has used the domain name in a fraudulent investment scheme based on the appropriation of the Complainant's identity and Trademark.

Panels have held that the use of a domain name for an illegal activity constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name 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 <bydinvest.com> be transferred to the Complainant.

*/Jacques de Werra/*

**Jacques de Werra**

Sole Panelist

Date: October 30, 2024