

ADMINISTRATIVE PANEL DECISION

FXDirectDealer, LLC v. Marta Hryshkova

Case No. D2022-0398

1. The Parties

The Complainant is FXDirectDealer, LLC, United States of America (the “United States”), represented by Kolitch Romano LLP, United States.

The Respondent is Marta Hryshkova, Poland.

2. The Domain Name and Registrar

The disputed domain name <fxddtrading.online> is registered with EuroDNS S.A. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 4, 2022. On February 7, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 8, 2022, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on February 9, 2022 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 February 9, 2022.

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 February 15, 2022. In accordance with the Rules, paragraph 5, the due date for Response was March 7, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 10, 2022.

The Center appointed Fabrice Bircker as the sole panelist in this matter on March 18, 2022. 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, FXDirectDealer, LLC, is a financial services company offering its goods and services to customers spread across in at least 180 countries around the world and including to individual and institutional traders, hedge funds, commercial entities, brokerage firms, and money managers.

Since 2002, it notably provides downloadable software and computer programs for use by professionals in the financial market, online foreign exchange trading and education services.

These goods and services are identified by the FXDD brand, which is notably protected by the following trademark registrations:

- United States trademark registration No. 4418706 for FXDD in classes 9, 36 and 41, with first use in September 2002, filed on April 22, 2013, registered on October 15, 2013;

- International trademark registration No. 1175697 for FXDD, registered on August 7, 2013 in classes 9, 36 and 41, protected among others in Australia, European Union, India, Israel, Mexico, Singapore.

The Complainant is also the owner of the <fxdd.com> and <fxddtrading.com> domain names, respectively registered on May 22, 2002, and February 15, 2011, and notably used to provide its services online.

The disputed domain name <fxddtrading.online> was registered on December 28, 2021.

Initially, it resolved to a website presenting software development education services seemingly provided by a Czech company named FXDD Trading Limited s.r.o.

At the time of the drafting of the decision, the disputed domain name is inactive.

5. Parties' Contentions

A. Complainant

The main arguments of the Complainant can be summarized as follows:

Identical or Confusingly Similar

The Complainant contends that the disputed domain name is confusingly similar, among others, to its FXDD trademark, as it fully reproduces it by merely adding the words "trading" and the generic Top-Level Domain (gTLD) ".com", which are not sufficient to distinguish said disputed domain name from the invoked trademark.

Additionally, the Complainant puts forward that the disputed domain name only differs from its <fxddtrading.com> domain name by its Top-Level Domain (TLD).

Rights or Legitimate Interests

First, the Complainant states that the Respondent is not sponsored by or affiliated with it and has not received any license, authorization, or permission to use its FXDD trademark in any manner, including in domain names.

Then, the Complainant argues that the Respondent is not commonly known by the disputed domain name or by any name that incorporates the letters FXDD.

Besides, the Complainant contends that the Respondent's use of the disputed domain name appears primarily to be for the purpose of disrupting and diverting its business, and not for any legitimate interest or *bona fide* offering of goods and/or services because i) the disputed domain name falsely suggests affiliation with the Complainant, ii) the Respondent's use of the website available through the disputed domain name appears to be commercial, indicating that Respondent's intent in suggesting affiliation with Complainant is to misleadingly divert consumers from Complainant for commercial gain, and iii) the Respondent's use of the Complainant's FXDD trademark in the disputed domain name indicates the Respondent's intent to have deliberately chosen said trademark to create the false impression of an association with Complainant, and to capitalize on the reputation and goodwill associated with the Complainant's FXDD trademark.

Registered and Used in Bad Faith

The Complainant argues that the disputed domain name was registered in bad faith notably because its FXDD trademark is used extensively and with a globally recognized success.

Moreover, the Complainant contends that even a simple search on the Internet using the keywords "fxdd", "fxdd trading", and "fxddtrading" would have revealed its presence.

Besides, according to the Complainant the Respondent is using the disputed domain name to create a likelihood of confusion with its FXDD trademark, most likely to intentionally divert consumers for commercial gain.

The Complainant adds that the likelihood of confusion is further increased by the similarity between the disputed domain name and its domain names and websites at "www.fxdd.com" and "www.fxddtrading.com".

Further, the Complainant contends that the website to which the disputed domain name redirects purports to offer some business services, but not any trading services, despite "trading" being part of said disputed domain name. The use of "trading" in the disputed domain name, while not offering any services related to trading, is indicative that Respondent is trying to profit from the well-known of the FXDD trademark and not to accurately describe a legitimate business purpose.

In addition, the Complainant states that it was contacted by a financial institution located in Europe, to inform that a company using the name "FXDD trading" and the disputed domain name is impersonating the Complainant and trying to apply for an account, what shows that the Respondent was aware of the Complainant and intended to create an association with the latter for commercial gain or fraudulent activity.

Lastly, the Complainant puts forward that the mere registration of a domain name that is identical or confusingly similar to a famous or widely known trademark by an unaffiliated entity can by itself create a presumption of bad faith.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy provides that for obtaining the transfer or the cancellation of the disputed domain name, the Complainant must establish each of the following three elements:

(i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and

(ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and

(iii) the disputed domain name has been registered and is being used in bad faith.

Besides, paragraph 15(a) of the Rules provides that “[a] Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable”.

Paragraphs 10(b) and 10(d) of the Rules also provide that “[i]n all cases, the Panel shall ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case” and that “[t]he Panel shall determine the admissibility, relevance, materiality and weight of the evidence”.

Besides, the Respondent’s failure to reply to the Complainant’s contentions does not automatically result in a decision in favor of the Complainant, although the Panel is entitled to draw appropriate inferences therefrom, in accordance with paragraph 14(b) of the Rules (see section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”)).

Taking the foregoing provisions into consideration the Panel finds as follows.

A. Identical or Confusingly Similar

Pursuant to paragraph 4(a)(i) of the Policy, the Complainant must first establish rights in a trademark or service mark and secondly establish that the disputed domain name is identical or confusingly similar to its trademark.

It results from the documents supporting the Complaint, and in particular from Annexes 14 and 16, that the Complainant is the owner of trademark registrations for FXDD, notably those detailed in section 4 above.

Turning to whether the disputed domain name is identical or confusingly similar to the Complainant’s trademark, as indicated in [WIPO Overview 3.0](#), section 1.7, “[w]hile each case is judged on its own merits, in cases where a domain name incorporates the entirety of a trade mark (...), the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing”.

This test is satisfied here, as the disputed domain name, <fxddtrading.online>, identically reproduces the FXDD trademark in its entirety, and because the added element, namely “trading”, does not prevent the Complainant’s trademark to remain recognizable. Indeed, there is a consensus view among UDRP panels that where the relevant trademark is recognizable within the disputed domain name, the addition of other terms would not prevent a finding of confusing similarity under the first element of the Policy (see [WIPO Overview 3.0](#), section 1.8; or *Kabbage, Inc. v. Name Redacted*, WIPO Case No. [D2020-0140](#)). Besides, the gTLD “.online” may be ignored for the purpose of assessing the confusing similarity, because it only plays a technical function.

Consequently, the first element under the Policy set for by paragraph 4(a)(i) is fulfilled.

B. Rights or Legitimate Interests

Under the Policy, a complainant is required to make out a *prima facie* case that the respondent lacks rights or legitimate interests in the domain name at issue. Once such a *prima facie* case is made, the respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the respondent fails to do so, the complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy ([WIPO Overview 3.0](#), section 2.1; or for instance *Applied Materials, Inc. v. John Warren*, WIPO Case No. [D2020-0950](#)).

In this case, the Respondent has not been authorized by the Complainant to register and to use the disputed domain name.

This being said, before being deactivated, the disputed domain redirected toward a website purportedly run by a Czech company named FXDD Trading Limited s.r.o. and promoting educational services in software development.

The question is to know whether such a situation can confer to the Respondent a legitimate interest in the disputed domain name.

Given the following particulars of the present case, the Panel finds that the answer has to be negative:

- the Complainant's rights are prior to the disputed domain name and the Complainant has demonstrated the globally well-known feature of its FXDD trademark. In this respect, other WIPO UDRP Panels have already recognized that this trademark has acquired significant reputation and goodwill through its widespread and extensive use around the world (for instance *FXDirectDealer, LLC v. 赵志明 (zhao zhi ming)*, WIPO Case No. [D2021-1899](#); *FXDirectDealer, LLC v. Registration Private, Domains By Proxy, LLC / Amass Line (pvt) Ltd*, WIPO Case No. [D2020-3385](#); or *FXDirectDealer, LLC v. WhoisGuard Protected, WhoisGuard, Inc. / Saint Biology, FxddTrade*, WIPO Case No. D2020-3159);
- the disputed domain name carries a high risk of implied affiliation to the Complainant not only because it reproduces its FXDD trademark accompanied with the term "trading", which refers to the Complainant's field of activity, but also because of its closeness with the Complainant's <fxddtrading.com> domain name;
- given the Respondent's purported activity, which does not belong to the field of trading, there is no reason for her to use the FXDD trademark along with the descriptive term "trading" except to refer to the Complainant. In this respect, it is constant case-law that a commercial use that unduly capitalizes on the value of a third party's trademark cannot create rights or legitimate interests in the disputed domain name for the purposes of the Policy (see [WIPO Overview 3.0](#), section 2.9; and *Payoneer, Inc. v. Jurgen Neeme*, WIPO Case No. [D2020-0137](#));
- according to the evidence communicated by the Complainant, the Respondent's website was quite simple and had a very limited content, which suggests, in the light of the whole context of the present case, that it seems to have been purely opportunistic;
- the Respondent's name is different from the disputed domain name;
- the Respondent, who has well received a copy of the Complaint by courier service, had an opportunity to defend her case, but instead of coming forward with explanation liable to demonstrate rights or legitimate interests in the disputed domain name, she deactivated the disputed domain name and remained silent in this procedure.

Taking all the above into consideration, the Panel concludes that the Respondent has no rights or legitimate interests in the disputed domain name, and therefore that the second element in paragraph 4(a) of the Policy is established.

C. Registered and Used in Bad Faith

Paragraph 4(a)(iii) of the Policy provides that the Complainant must establish that the Respondent registered and is using the disputed domain name in bad faith.

In the present case, the Panel notes that:

- the use of the FXDD trademark predates the registration of the disputed domain name by 20 years;
- the FXDD trademark is intrinsically distinctive, and the Complainant has accrued substantial goodwill

and international recognition in its trademark;

- the presence of the term “trading” in the disputed domain name directly refers to the activities of the Complainant (whereas the Respondent purported activity does not relate with this field) and makes the disputed domain name very close to the Complainant’s <fxddtrading.com> domain name;
- the Complainant has demonstrated that a mere Google search on “fxdd”, “fxdd trading” or “fxddtrading” evidently reveals its rights.

In these circumstances, it is not reasonably conceivable that the Respondent may not have been aware of the Complainant’s rights when she registered the disputed domain name.

The Complainant notably contends that the Respondent would have used the disputed domain name to illegitimately impersonate it.

However, even if not contested by the Respondent, this argument is not supported by any evidence, and it is constant that “even in cases of respondent default, panels have held that wholly unsupported conclusory allegations may not be sufficient to support a complainant’s case” (section 3.1 of the [WIPO Overview 3.0](#)).

Consequently, this argument cannot be taken into consideration by the Panel.

It nevertheless remains that the mere registration of a domain name that is identical or confusingly similar to a famous or widely-known trademark (particularly domain names incorporating the mark plus a descriptive term, as in the present case) by an unaffiliated entity can itself create a presumption of bad faith (section 3.1.4 of the [WIPO Overview 3.0](#)).

Besides, before being deactivated, the disputed domain name redirected toward a website proposing software development education services. It is constant case-law that the exploitation of the reputation of a trademark to obtain revenue from the diversion of Internet users is a common example of use in bad faith as referred to in paragraph 4(b)(iv) of the Policy (for instance, *Veuve Clicquot Ponsardin, Maison Fondée en 1772 v. The Polygenix Group Co.*, WIPO Case No. [D2000-0163](#); or *CCA Global Partners, Inc. v. Private by Design, LLC / Lobanova Gertrude*, WIPO Case No. [D2020-1673](#)).

Therefore, in the absence of any evidence to the contrary, this Panel finds that the Respondent has taken the Complainant’s trademark FXDD and incorporated it in the disputed domain name, for the very purpose of capitalizing on the reputation of the trademark by diverting Internet users to its website for commercial gain.

At last, the fact that the disputed domain name is currently inactive does not prevent a finding of bad faith use, not only because this deactivation seems purely opportunistic, but also because the present situation clearly falls within the doctrine of passive holding.

Indeed, i) the Complainant’s trademark is intrinsically distinctive and enjoys a reputation, ii) the Respondent has failed to submit a response or to provide any evidence of actual or contemplated good-faith use, iii) the disputed domain name exactly reproduces the Complainant’s prior trademark along with the term “trading” which refers to the Complainant’s activities whereas the Respondent is not active in this field, iv) the disputed domain name is extremely close to the Complainant’s <fxddtrading.com> domain name. In such a context, any good faith use of said disputed domain name by the Respondent seems implausible (See [WIPO Overview 3.0](#), section 3.3).

In conclusion, for all the reasons set out above, the Panel concludes that the disputed domain name was registered and is being used in bad faith, within the meaning of 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, <fxddtrading.online> be transferred to the Complainant.

/Fabrice Bircker/

Fabrice Bircker

Sole Panelist

Date: April 1, 2022