

ADMINISTRATIVE PANEL DECISION

XTX Markets Limited v. chen andy
Case No. D2023-3810

1. The Parties

The Complainant is XTX Markets Limited, United Kingdom, represented by ZeroFox, United States of America (“United States” or “US”).

The Respondent is chen andy, United States.

2. The Domain Name and Registrar

The disputed domain name <xtx-markets.com> (the “Domain Name”) is registered with Dynadot, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 13, 2023. On September 13, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On September 13, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent (Super Privacy Service LTD c/o Dynadot) and contact information in the Complaint. The Center sent an email communication to the Complainant on September 15, 2023, 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 15, 2023.

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 19, 2023. In accordance with the Rules, paragraph 5, the due date for Response was October 9, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 16, 2023.

The Center appointed Karen Fong as the sole panelist in this matter on October 25, 2023. 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 an algorithmic trading company with branches in London, New York, Mumbai, and Paris. It was founded in January 2015 and currently employs 190 people. It uses algorithms to trade the difference in market prices across a variety of venues.

The Complainant's website at the domain name <xtxmarkets.com> was registered on January 26, 2015. The Complainant has rights in the trade mark registration for XTX MARKETS under US Trademark Registration No. 5598352 registered on November 6, 2018 (the "Trade Mark").

The Respondent's address appears to be in Chengdu, Sichuan which is in China. However, the country is listed on the Registrar's records as the United States. The Domain Name was registered on July 8, 2023. The Domain Name was connected to a website which impersonates the website of the Complainant using the same images, text and layout except that instead of using the Trade Mark, XTX MARKETS, the Respondent has replaced all references to it with the term "SCHK" or "SCHK Markets" (the "Website"). At the time of writing the decision, the Website still uses the same images, layout and similar text as the Complainant's website except that "SCHK Markets" has been replaced by "Bohongrui Finance".

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 Domain Name.

Notably, the Complainant contends that the Domain Name is identical or confusingly similar to the Trade Mark, that the Respondent has no rights or legitimate interests with respect to the Domain Name, and that the Domain Name was registered and is being used in bad faith. The Complainant requests transfer of the 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 Complainant's trade mark 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 trade mark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the entirety of the Trade Mark is reproduced within the Domain Name. The addition of the hyphen symbol between "xtx" and "markets" does nothing to dispel confusion and does not prevent a finding of confusing similarity between the Domain Name and the Trade Mark for the purposes of the Policy.

Accordingly, the Domain Name is identical or confusingly similar to the Trade Mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Based on the available record, 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.

While 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 often impossible 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. 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 record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the 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 Domain Name such as those enumerated in the Policy or otherwise.

Further, panels have held that the use of a domain name for illegal activity (here, claimed impersonation of the Complainant’s website) can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

Moreover, the nature of the Domain Name is inherently misleading as it effectively impersonates or suggests sponsorship or endorsement by the Complainant. [WIPO Overview 3.0](#), section 2.5.1.

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.

In the present case, the Panel notes that the Respondent must have been aware of the Trade Mark when he registered the Domain Name given the Trade Mark was registered prior to registration of the Domain Name and the fact that the Domain Name is almost identical to the Complainant’s domain name <txmarkets.com>, and the Website impersonates the Complainant’s website. It is therefore implausible that the Respondent was unaware of the Complainant when he registered the Domain Name.

In the [WIPO Overview 3.0](#), section 3.2.2 states as follows:

“Noting the near instantaneous and global reach of the Internet and search engines, and particularly in circumstances where the complainant’s mark is widely known (including in its sector) or highly specific and a respondent cannot credibly claim to have been unaware of the mark (particularly in the case of domainers), panels have been prepared to infer that the respondent knew, or have found that the respondent should have known, that its registration would be identical or confusingly similar to a complainant’s mark. Further factors including the nature of the domain name, the chosen top-level domain, any use of the domain name, or any respondent pattern, may obviate a respondent’s claim not to have been aware of the complainant’s mark.”

The fact that there is a clear absence of rights or legitimate interests coupled with the Respondent's choice of the Domain Name without any explanation is also a significant factor to consider (as stated in [WIPO Overview 3.0](#), section 3.2.1). The Domain Name falls into the category stated above and the Panel finds that registration is in bad faith.

The Domain Name is also being used in bad faith. The content of the Website is calculated to give the impression it has been authorized by or connected to the Complainant when this is not the case. The Website was set up to deliberately mislead Internet users that it is connected to, authorised by or affiliated with the Complainant by using the same images, text and layout of the Complainant's website except that instead of using the Trade Mark, the Website uses the term "SCHK" or "SCHK Markets". It appears that there is no trading entity called "SCHK Markets" according to the Complainant. It is likely that the Respondent simply replaced the Trade Mark with another term since the Securities and Exchange Commission ("SEC") and Firm Reference Numbers listed on the Website continues to point to the Complainant. It is highly likely that the Website has been set up for fraudulent purposes including obtaining and using personal and financial data of customers and users of the Website who have been lured in by the confusingly similar Domain Name. The fact the address of the Respondent is false and he changed the reference of "SCHK Markets" to "Bohongrui Finance" after the filing of the Complaint is further evidence of bad faith.

The Panel therefore finds that the Domain Name has been registered and is being used in bad faith under paragraph 4(b)(iv) of the Policy.

Based on the available record, the Panel finds the third element of the Policy has been established.

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 Domain Name <xtx-markets.com> be transferred to the Complainant.

/Karen Fong/

Karen Fong

Sole Panelist

Date: November 23, 2023