

ADMINISTRATIVE PANEL DECISION

FXDirectDealer, LLC v. Privacy Service Provided by Withheld for Privacy ehf /
Qin Yue

Case No. D2022-1302

1. The Parties

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

The Respondent is Privacy Service Provided by Withheld for Privacy ehf, Iceland / Qin Yue, China.

2. The Domain Name and Registrar

The disputed domain name <fxddex.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 April 11, 2022. On April 12, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 12, 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 April 13, 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 April 16, 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 April 22, 2022. In accordance with the Rules, paragraph 5, the due date for Response was May 12, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 16, 2022.

The Center appointed Fabrizio Bedarida as the sole panelist in this matter on May 17, 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 in this administrative proceeding is FXDirectDealer, LLC, a Delaware limited liability company. The Complainant offers its goods and services to customers around the world, including to individual and institutional traders, hedge funds, commercial entities, brokerage firms, and money managers. The Complainant has been and continues to be a leader in online foreign exchange trading and education services offered under its FXDD Marks. The Complainant has received numerous awards throughout the world, including in the United States, the Middle East, and Europe, including “Most Trusted Forex Broker Europe 2012”. The Complainant has been using its FXDD Marks in connection with downloadable software and computer programs for use by professionals in the financial market since at least as long ago as March 2002, and in connection with foreign exchange trading, among other financial services, and related educational services since at least March 2010.

The Complainant has registered, *inter alia*, the following trademarks:

FXDD (word), United States Trademark Registration No. 4,418,706, registered on October 15, 2013; FXDD (device), United States Trademark Registration No. 3,991,011, registered on July 5, 2011; FXDD (device), International Trademark Registration No. 1125315, registered on May 21, 2012; and FXDDCLOUD (word), United States Trademark Registration No. 4,459,224, registered on December 31, 2013.

The disputed domain name was registered on July 10, 2021.

The disputed domain name resolves to a website where the Complainant’s FXDD (device) trademark is displayed. In this website a digital asset platform, as well as a “multi-platform terminal access” to an online trading platform, are promoted.

5. Parties’ Contentions

A. Complainant

The Complainant claims that:

- (a) the disputed domain name is confusingly similar to the Complainant’s trademark;
- (b) the Respondent lacks any rights or legitimate rights in the disputed domain name; and
- (c) the Respondent has registered and is using the disputed domain name in bad faith.

B. Respondent

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

6. Discussion and Findings

To succeed, the Complainant must demonstrate that all of the elements enumerated in paragraph 4(a) of the Policy have been satisfied, namely:

- (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.

A. Identical or Confusingly Similar

The Complainant has established rights in the FXDD trademarks.

The disputed domain name consists of the FXDD trademark in its entirety combined with the term “ex”. This Panel agrees with the Complainant’s assertion that the addition of the term “ex” in the disputed domain name does not prevent a finding of confusing similarity between the Complainant’s trademark and the disputed domain name.

See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.8: “Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element”. Furthermore, the applicable Top Level Domain (“TLD”) “.com” is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test (see section 1.11.1 of [WIPO Overview 3.0](#)).

Accordingly, the Panel finds that the Complainant has satisfied paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

This Panel finds that the Complainant has made a *prima facie* case that the Respondent does not have rights or legitimate interests in the disputed domain name. The Respondent does not appear to be commonly known by the name “fxddex” or by any similar name. The Respondent has no connection to or affiliation with the Complainant and the Complainant has not licensed or otherwise authorized the Respondent to use or register any domain name incorporating the Complainant’s trademarks. The Respondent does not appear to make any legitimate noncommercial or fair use of the disputed domain name, nor any use in connection with a *bona fide* offering of goods or services. In fact, it appears that the disputed domain name is used for a website that is intentionally designed to fraudulently suggest an affiliation with the Complainant. Moreover, the Respondent has not replied to the Complainant’s contentions claiming any rights or legitimate interests in the disputed domain name.

The Panel finds that the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Panel, based on the evidence presented, accepts and agrees with the Complainant’s contentions that the disputed domain name was registered and is being used in bad faith.

The disputed domain name was registered many years after the Complainant’s trademarks were registered. In addition, owing to the substantial presence established by the Complainant worldwide, it is at the least very unlikely that the Respondent was not aware of the existence of the Complainant’s trademarks when registering the disputed domain name that is confusingly similar to the Complainant’s trademark. Moreover, when considering the construction of the disputed domain name (*i.e.*, the addition of the acronym “ex” for “exchange”, relating to the field of commerce in which the Complainant operates) and the use to which the disputed domain name has been put, the Respondent’s intent when registering the disputed domain name seems clearly oriented on targeting and benefiting from the reputation of the Complainant.

The Respondent’s knowledge of the FXDD mark is particularly obvious, given that the FXDD trademark is displayed on the website at the disputed domain name.

Therefore, it is more likely than not that the Respondent, when registering the disputed domain name, had knowledge of the Complainant's earlier rights to the FXDD trademark.

This Panel finds that the Respondent's use of the Complainant's FXDD trademark in the disputed domain name (and in the underlying website) indicates the Respondent's intent to use the FXDD trademark to create the false impression of an association with the Complainant, and to use the Complainant's reputation and goodwill in its FXDD mark to attract unwitting consumers to the Respondent's website. This amounts to bad faith use.

The bad faith registration and use of the disputed domain name is also affirmed by the fact that, in this proceeding, the Respondent has not denied any of the assertions of bad faith made by the Complainant.

Accordingly, the Panel finds, based on the evidence presented, that the Respondent registered and is using the disputed domain name in bad faith. Therefore, the Complainant has satisfied 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, <fxddex.com>, be transferred to the Complainant.

/Fabrizio Bedarida/

Fabrizio Bedarida

Sole Panelist

Date: May 31, 2022