

ADMINISTRATIVE PANEL DECISION

**FXCM Global Services, LLC v. Super Privacy Service LTD c/o Dynadot / xx
XX**

Case No. D2022-2667

1. The Parties

The Complainant is FXCM Global Services, LLC, United States of America (“United States” and “U.S.”), represented by SafeNames Ltd, United Kingdom.

The Respondent is Super Privacy Service LTD c/o Dynadot, United States / xx xx, United States.

2. The Domain Name and Registrar

The disputed domain name <fxcm.cam> is registered with Dynadot, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 21, 2022. On July 21, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 22, 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 July 28, 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 amended Complaint on July 28, 2022.

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 29, 2022. In accordance with the Rules, paragraph 5, the due date for Response was August 18, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 23, 2022.

The Center appointed Colin T. O'Brien as the sole panelist in this matter on August 26, 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

Founded in 1999, the Complainant is London-based retail brokerage company in the foreign exchange ("Forex") market with international offices. The Complainant offers educational courses on Forex trading and has been recognized and awarded for its brokerage and trade-related services.

The Complainant primarily website is "www.fxcm.com" and offers its services in several languages including Chinese and English. The FXCM trademark is part of the Complainant's brand logo and the Complainant uses the mark to establish and promote their social media presence.

The Complainant owns several registrations for FXCM including:

- U.S. Registration Number 2,620,953 in class 36 registered on September 17, 2002;
- European Union Trade Mark Number 003955523 in classes 35, 36, and 41 registered on November 3, 2005;
- Australian Trademark Number 1093998 in classes 36 and 41 registered on June 13, 2006;
- Hong Kong Trademark Number 301708173 in classes 16, 36, and 41 registered on March 29, 2011;
- China Registration Number 12457692 in class 36 registered on March 28, 2016; and
- China Registration Number 12458056 in class 46 registered on September 7, 2016.

The disputed domain name was registered on January 31, 2022, and does not resolve to an active website.

5. Parties' Contentions

A. Complainant

The disputed domain name is identical or confusingly similar to the trademark in which Complainant has rights. The Complainant has attained goodwill and recognition under the mark FXCM, which is a distinctive identifier associated with the Complainant's services. Without addition nor alteration, the disputed domain name replicates the Complainant's distinctive trademark. The generic top-level domain ("gTLD") ".cam" should be disregarded under the first element as it is a standard registration requirement and past UDRP decisions have applied this principle. Therefore, with ".cam" being disregarded, the disputed domain name is identical to the Complainant's mark FXCM.

The respondent has no rights or legitimate interests in respect to the disputed domain name based on the Complainant's prior use of its trademark FXCM and company name. The Respondent does not have any trademark rights, registered or unregistered, to the distinctive term "fxcm", nor are they commonly known by the term. Additionally, the Respondent is not affiliated or related to the Complainant in any way and is also not licensed or otherwise authorized to use the FXCM trademark. With the non-use of the disputed domain name there is not a *bona fide* offering of goods or service. The Respondent's non-use of the disputed domain name is also not a legitimate noncommercial or fair use of the disputed domain name. With the Respondent not being commonly known by the distinctive term "fxcm" nor offering any goods or services,

there is no other motive of registering the disputed domain name then to take advantage of the goodwill and valuable reputation associated with the Complainant's brand.

The Respondent has registered disputed domain name in bad faith and is using it in bad faith. In the twenty years between the Complainant's trademark registration and the registration of the disputed domain name, the Complainant has accrued substantial goodwill as a brand and the FXCM mark has become synonymous with online Forex and CFD trading. Also, when the term "fxcm" is searched on popular Internet search engines, the Complainant's brand and services are listed as the first result. The gTLD ".cam" is also visually similar to ".com" posing a real threat of consumer confusion that could lead to Internet users believing the Complainant's services to be inoperable, damaging consumer trust.

The bad faith of the Respondent is further apparent in their actions to ignore the Complainant's representative to put the Respondent on notice of the Complainant's trademarks and rights. The disputed domain name also does not amount to a functional webpage.

The Respondent has taken active steps to hide its true identity by supplying evidently false details when registering the disputed domain name. The Respondent's name ("xx") and address are evidently false and incomplete.

The Complainant asks that the passive use of the disputed domain name not preclude a finding of bad faith and that the Telstra four-part test be used to determine the Respondent's bad faith. There is also no evidence that the Respondent uses or intends to use the disputed domain name in good faith. The bad faith of the Respondent is further detailed in the fact that it has taken active steps to hide its true identity by supplying false and incomplete details when registering the disputed domain name. The Complainant contends there is no plausible good faith that could be conceived by the Respondent's registration of 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

The Complainant has demonstrated it owns registered trademark rights in the FXCM trademark throughout the world. The FXCM trademark is clearly recognizable in the disputed domain name, and the gTLD ".cam" is typically disregarded under the first element confusing similarity test. See section 1.11 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions Third Edition ("[WIPO Overview 3.0](#)"); see also, *Helpful Things, LLC v. Withheld for Privacy Purposes / Sirikwan Burnett*, WIPO Case No. [D2021-1495](#).

Accordingly, for the purposes of the Policy, the disputed domain name is identical to a mark in which the Complainant has rights.

B. Rights or Legitimate Interests

The Complainant has presented a *prima facie* case that the Respondent has no rights or legitimate interests in respect of the disputed domain name and that the Respondent has not been commonly known by the disputed domain name. The fact that the Respondent obtained the disputed domain name decades after the Complainant had begun using its internationally recognized FXCM mark, indicates that the Respondent sought to piggyback on the mark for illegitimate reasons.

After a complainant has made a *prima facie* case, the burden of production shifts to present evidence demonstrating rights or legitimate interests in the domain name. See, e.g., *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#).

Here, the Respondent has provided no evidence of any rights or legitimate interests in the disputed domain name, and rather the nature of the disputed domain name itself, being identical to the Complainant's well-known FXCM mark, suggests that it was registered to effectively impersonate or falsely suggest sponsorship or endorsement by the Complainant (see section 2.5.1 of the [WIPO Overview 3.0](#)).

In absence of any evidence rebutting the Complainant's *prima facie* case indicating the Respondent's lack of rights or legitimate interests in respect of 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 disputed domain name was registered years after the Complainant first registered and used its FXCM mark. The evidence provided by the Complainant with respect to the extent of use and global recognition of its FXCM mark, a distinctive term created by the Complainant with no meaning other than in connection to the Complainant. This, combined with the absence of any evidence provided by the Respondent to the contrary, is sufficient to satisfy the Panel that, at the time the disputed domain name was registered, the Respondent undoubtedly knew of the Complainant's widely known FXCM mark, and knew it had no rights or legitimate interests in the disputed domain name.

The Respondent's use and registration of the disputed domain name is clearly in bad faith. The Complainant has submitted evidence that there is a high likelihood of confusion with the disputed domain name and the Complainant's mark. The similarity between the gTLD ".cam" of the Respondent, and the gTLD ".com" of the Complainant both visually and in general, just differing by one letter, further demonstrates the high likelihood of confusion between the disputed domain name and the Complainant's registered trademark. Due to how close they are, there could be confusion associating the Complainant's FXCM mark with that of a dysfunctional webpage. With the webpage not being functional, there could also be a real threat of consumer confusion that could lead to online users believing the Complainant's services to be inoperable, damaging consumer trust. Additionally, there is a significant risk the Respondent could configure the mail exchanger records to send false electronic emails to the Complainant or third parties.

The Panel is unable to determine any plausible good faith reason for the Respondent to have registered the disputed domain name containing entirely of the FXCM trademark with the addition of the gTLD ".cam".

The fact that the disputed domain name does not resolve to a website and is being passively held does not prevent a finding of bad faith. When a domain name is being passively held, the question of bad faith use does not squarely fall under one of the non-exhaustive factors set out in paragraph 4(b) of the Policy. However, section 3.3 of the [WIPO Overview 3.0](#), instructs that panelists should examine the totality of the circumstances in each case and that the following factors that have been considered relevant in applying the passive holding doctrine: "(i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put".

Here the Complainant submitted evidence that its fanciful FXCM mark has been used for more than 20 years globally. The Respondent has not offered any evidence to rebut this conclusion, nor has it provided any evidence of its intended use of the disputed domain name. In fact, the Respondent is not using the disputed domain Name in any manner to demonstrate a *bona fide* use or potential use. Lastly, the Respondent concealed its true identity by using a proxy service and then clearly entered false information when the proxy was unmasked. Given these circumstances, the Panel finds the Respondent's passive holding of the

disputed domain name satisfies the requirement of paragraph 4(a)(iii) of the Policy that the disputed domain name was registered and is being used in bad faith by the Respondent.

Accordingly, the Panel finds that 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 <fxcm.cam> be transferred to the Complainant.

/Colin T. O'Brien/

Colin T. O'Brien

Sole Panelist

Date: September 9, 2022