

ADMINISTRATIVE PANEL DECISION

FxPro Financial Services Ltd. v. Ekaterina Shelud'ko, ForexAW.com
Case No. D2022-1189

1. The Parties

The Complainant is FxPro Financial Services Ltd., Cyprus, represented by Venner Shipley LLP, United Kingdom.

The Respondent is Ekaterina Shelud'ko, ForexAW.com, Russian Federation.

2. The Domain Name and Registrar

The disputed domain name <fx-pro.pro> is registered with Internet Domain Service BS Corp (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on April 5, 2022. On April 5, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 6, 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 7, 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 April 12, 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 April 14, 2022. In accordance with the Rules, paragraph 5, the due date for Response was May 4, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on May 5, 2022.

The Center appointed Assen Alexiev as the sole panelist in this matter on May 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 is a foreign exchange provider. In 2014, its website at “www.fxpro.com” received over 8 million visits from Internet users all over the world, and in 2015, it received over 10.5 million visits.

The Complainant is the owner of the following trademark registrations for FXPRO (the “FXPRO trademark”):

- the European Union trademark FXPRO with registration No. 006460349, registered on October 3, 2008, for services in International Class 36;
- the United States of America trademark FXPRO with registration No. 5234067, registered on June 27, 2017, for services in International Class 36;
- the United Kingdom trademark FXPRO with registration No. UK00906460349, registered on October 3, 2008, for services in International Class 36; and
- International trademark FXPRO with registration No. 1048297, registered on April 26, 2010, for services in International Class 36.

The Complainant is also the owner of the domain names <fxpro.com>, registered on March 26, 2002, <fxpro.fr>, registered on November 13, 2008, <fxpro.be>, registered on September 29, 2008, <fxpro.hu>, registered on February 22, 2009, and <fxpro.it>, registered on May 14, 2014. These domain names resolve to the Complainant’s main website.

The disputed domain name was registered on May 18, 2017. It resolves to a website criticizing the Complainant.

5. Parties’ Contentions

A. Complainant

The Complainant submits that the disputed domain name is identical or highly similar visually, phonetically and conceptually, to the FXPRO trademark of the Complainant, because it is composed of this trademark, divided by a hyphen, to which has been added the “pro” suffix.

According to the Complainant, the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant points out that its FXPRO trademark predates the disputed domain name by years, and that it has spent significant amounts promoting this trademark throughout the world, including through a partnership with the BMW Sauber Formula 1 team and sponsorships of the World Rally Championship, the Fulham and Aston Villa Football Clubs, the Virgin Formula 1 team and the Monaco Football Club. The Complainant adds that it has been awarded many accolades since it began operating.

The Complainant maintains that the Respondent has no registered rights in the name FXPRO and is not known by the disputed domain name, and states that it has not authorized the Respondent to use the FXPRO trademark. According to the Complainant, the Respondent is not using the disputed domain name in connection with a *bona fide* offering of goods or services. The Complainant points out that it is evident from the content of the Respondent’s website that the Respondent chose the disputed domain name deliberately and with the Complainant’s rights in mind, and adds that the disputed domain name contains no element showing that the Respondent is not affiliated with or authorized by the Complainant. Thus, according to the Complainant, the disputed domain name would be perceived by the public as being affiliated with or authorized by the Complainant. According to the Complainant, the Respondent cannot demonstrate rights and legitimate interests in the disputed domain name merely by virtue of the fact that its

intention was to use it to publish material critical of the Complainant, and the Respondent's right to exercise freedom of speech does not extend to an entitlement to disseminate its views by deliberately and misleadingly cloaking itself as the Complainant in order to maximize its audience.

The Complainant contends that the disputed domain name was registered and is being used in bad faith. According to it, the Respondent, through its registration of the disputed domain name, is relying on the substantial reputation and goodwill of the Complainant's FXPRO trademark and is seeking to benefit from it. The Complainant submits that the registration of the disputed domain name took unfair advantage of the Complainant's rights and is detrimental to them, as the registration of the disputed domain name blocks the Complainant from registering it. Based on the text on pages of the website resolving from the Respondent's company name, <forexaw.com>, it appears that the Respondent provides advice on foreign exchange trading and is therefore is a competitor of the Complainant.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy sets forth the following three requirements, which have to be met by the Complainant to obtain the transfer of the disputed domain name:

- (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.

By the Rules, paragraph 5(c)(i), it is expected of a respondent to: "[r]espond specifically to the statements and allegations contained in the complaint and include any and all bases for the Respondent (domain name holder) to retain registration and use of the disputed domain name [...]."

The Respondent has however submitted no Response and has not disputed the Complainant's contentions and evidence in this proceeding.

A. Identical or Confusingly Similar

The Complainant has submitted evidence to demonstrate its registered rights in the FXPRO trademark.

The Panel notes that a common practice has emerged under the Policy to generally disregard the generic Top-Level Domain ("gTLD") section of domain names for the purposes of the comparison under the Policy, paragraph 4(a)(i). See section 1.11.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"). The Panel sees no reason not to follow the same approach here, so it will disregard the ".pro" gTLD of the disputed domain name.

The relevant part of the disputed domain name incorporates the FXPRO trademark with the addition of a hyphen between "fx" and "pro". The addition of this hyphen in the disputed domain name has a low effect on its appearance, and the disputed domain name can be regarded as a typosquatted version of the FXPRO trademark, which remains easily recognizable in it. It has already been held by previous UDRP panels that in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing. See section 1.7 of the [WIPO Overview 3.0](#).

Therefore, the Panel finds that the disputed domain name is confusingly similar to the FXPRO trademark.

B. Rights or Legitimate Interests

While the overall burden of proof in UDRP proceedings is on the complainant, UDRP 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. See section 2.1 of the [WIPO Overview 3.0](#).

The Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name, stating that it has not authorized it to use the FXPRO trademark, and that the Respondent’s adoption of the disputed domain name was intended to benefit from the goodwill of this trademark by impersonating the Complainant in order to divert unsuspecting consumers to the Respondent’s website which contains critical materials for the Complainant, and in order to maximize its audience. The Complainant adds that the Respondent provides advice on foreign exchange trading and is therefore a competitor to it. The Complainant has thus established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name.

The Respondent has not disputed the Complainant’s statements and the evidence submitted by it. It has not provided any plausible explanation of its actions. The evidence submitted by the Complainant shows that the website at the disputed domain name has contained critical materials against the Complainant. The name of the Respondent coincides with a domain name which resolves to a website offering services related to the financial sector.

As discussed in section 2.5 of the [WIPO Overview 3.0](#), a respondent’s use of a domain name will not be considered “fair” if it falsely suggests affiliation with the trademark owner; the correlation between a domain name and the complainant’s mark is often central to this inquiry. UDRP panels have found that domain names identical to a complainant’s trademark carry a high risk of implied affiliation. Even where a domain name consists of a trademark plus an additional term (at the second- or top-level), UDRP panels have largely held that such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner.

As further discussed in section 2.6 of the [WIPO Overview 3.0](#), UDRP jurisprudence recognizes that the use of a domain name for fair use such as noncommercial free speech, would in principle support a respondent’s claim to a legitimate interest under the Policy. However, Panels find that even a general right to legitimate criticism does not necessarily extend to registering or using a domain name identical to a trademark (*i.e.*, <trademark.tld> (including typos)); even where such a domain name is used in relation to genuine noncommercial free speech, panels tend to find that this creates an impermissible risk of user confusion through impersonation.

The Panel considers that the composition of the disputed domain name indeed impersonates or suggests sponsorship or endorsement by the Complainant, as it reproduces the FXPRO trademark with only a slight modification through the addition of a hyphen between “fx” and “pro”, which may well be regarded as a typo. There is no additional derogatory term (*e.g.*, <trademarksucks.com>) that would tend to communicate, *prima facie* at least, that there is no such affiliation and that the disputed domain name is intended for a criticism website.

Therefore, and in the lack of any arguments or evidence to the contrary, the Panel does not regard the Respondent’s use of the disputed domain name as “fair” and giving rise to rights or legitimate interests of the Respondent in it.

On the basis of the above, the Panel finds that the Complainant's *prima facie* case has remained un rebutted, and that the Respondent does not have rights or legitimate interests in the disputed domain name.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy lists four illustrative alternative circumstances that shall be evidence of the registration and use of a domain name in bad faith by a respondent, namely:

“(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or

(ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product or service on your website or location.”

In the present case, the disputed domain name is almost identical to the Complainant's FXPRO trademark and can be regarded as a typosquatted version of it, and is being used for a website that contains critical materials for the Complainant. The Complainant submits that the Respondent is a competitor to it, and the Respondent's name indeed coincides with a domain name that offers services related to the financial sector, while the website at the disputed domain name refers to third party websites that offer financial or related services.

In view of the above, the Panel finds that the Respondent was aware of the Complainant and of the FXPRO trademark when registering the disputed domain name, and that by registering and using it, the Respondent is more likely to have engaged in an attempt to disrupt the business of a competitor or to pass itself off as the Complainant to attract the Complainant's customers to its website or to other resources featured on its website. This leads the Panel to the conclusion that the Respondent has registered and used the disputed domain name in bad faith.

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 <fx-pro.pro> be transferred to the Complainant.

/Assen Alexiev/

Assen Alexiev

Sole Panelist

Date: June 10, 2022