

ADMINISTRATIVE PANEL DECISION

FXCM Global Services, LLC v. hongda Kong, hongdayouxiangongsi
Case No. D2022-2759

1. The Parties

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

The Respondent is hongda Kong, hongdayouxiangongsi, China.

2. The Domain Names and Registrars

The disputed domain name <fxcmfinance.com> is registered with FLAPPY DOMAIN, INC.;

The disputed domain name <fxcmsms.com> is registered with KQW, Inc.; and

The disputed domain name <gyfxcm.com> is registered with PocketDomain.com Inc. (collectively, “the Registrars”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on July 27, 2022. On July 27, 2022, the Center transmitted by email to the Registrars a request for registrar verification in connection with the disputed domain names. On July 28, 2022, July 29, 2022, and August 2, 2022, respectively, the Registrars transmitted by email to the Center their verification responses confirming that the Respondent is listed as the registrant and providing the contact details.

On August 3, 2022, the Center transmitted an email communication to the Parties in English and Chinese regarding the language of the proceeding. On August 3, 2022, the Complainant confirmed its request that English be the language of the proceeding. The Respondent did not comment on the language of the proceeding.

The Center verified that 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 in English and Chinese of the Complaint, and the proceedings commenced on August 12, 2022. In accordance with the Rules, paragraph 5, the due date for Response was September 1, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on September 2, 2022.

The Center appointed Francine Tan as the sole panelist in this matter on September 7, 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, FXCM Global Services, LLC, is a United Kingdom-based company operating as a retail broker in the foreign exchange ("Forex") market. Founded in 1999, the Complainant is a leading provider of online Forex trading, CFD (Contract for Differences) trading, and related services. The Complainant states that its services aim to provide global traders with innovative trading tools and high-quality training educators. Such tools include mobile trading, one-click order execution and trading from real-time charts. The Complainant also offers educational courses on Forex trading.

The Complainant has been awarded many awards and accolades for its provision of brokerage and trade-related services. The Complainant enjoys worldwide reputation in its area of expertise, namely the Forex and CFD marketplaces. The Complainant has numerous offices located around the world, including in Germany, Australia, France, Hong Kong China, and South Africa.

The Complainant offers its clients enhanced packages as part of the Complainant's services, including "FXCM Pro", which provides retail brokers, small hedge funds and emerging market banks access to wholesale execution and liquidity. "FXCM Prime" provides high and medium frequency funds access.

The Complainant markets its services to Chinese-speaking online users. The Complainant's 20th Anniversary Campaign was widely covered in Chinese-language media, the Complainant has participated in conferences in China, and its website received just under 600,000 sessions from Chinese users between January and March 2020.

The Complainant predominantly operates from its main official website "www.fxcm.com", and offers its services in several languages including, but not limited to, English, Chinese, German, French, and Italian.

The Complainant and its related entities have also registered domain names which feature the FXCM trade mark including e.g. <fxcm.asia>, <fxcm.bo>, <fxcm.ba>, <fxcm.broker>, amongst others. The Complainant also offers a mobile application which is available on Apple Store and Google Play.

The Complainant utilizes the FXCM trade mark as part of its brand logo:



It states that it has established a social media presence and uses the FXCM mark to promote its services on Facebook (www.facebook.com/FXCM, with approximately 87,000 followers), Twitter (www.twitter.com/FXCM, with approximately 107,700 followers), and YouTube (www.youtube.com/FXCM, with approximately 18,300 subscribers).

The Complainant is the owner of the following registered trade marks registrations for FXCM:

- U.S. Trade Mark Registration No. 2,620,953, registered on September 17, 2002;
- European Union Trade Mark Registration No. 003955523, registered on November 3, 2005;

- Australian Trade Mark Registration No. 1093998, registered on December 3, 2004;
- Hong Kong, China Trade Mark Registration No. 301708173, registered on March 29, 2011;
- China Trade Mark Registration No. 12458056, registered on September 7, 2016; and
- China Trade Mark Registration No. 12457692, registered on March 28, 2016.

The disputed domain names <fxcmfinance.com> and <fxcmsms.com> were registered on February 21, 2022, and <gyfxcm.com> was registered on February 28, 2022. All of the disputed domain names redirect to websites displaying numerous links to online casino and betting websites and pornographic material.

A cease-and-desist letter was sent by the Complainant's representative to the Respondent on March 28, 2022. No response was received.

5. Parties' Contentions

A. Complainant

1. The disputed domain names are confusingly similar to the Complainant's FXCM trade mark in which the Complainant has rights. The disputed domain names all contain the distinctive FXCM mark with the addition of the terms or letters, "finance", "sms" and "gy". The Complainant operates in the financial services industry, particularly Forex trading. Thus, the addition of the word "finance" does not negate confusing similarity. The generic Top-Level Domain ".com" should be disregarded under the first element of the Policy as it is a standard registration requirement.

2. The Respondent has no rights or legitimate interests in respect of the disputed domain names. The Respondent does not have any trade mark rights in the term "FxcM" or any other terms used in the disputed domain names. There is also no evidence that the Respondent holds unregistered trade mark rights in the term "FxcM" or any other terms used in the disputed domain names. The Respondent has not been licensed by the Complainant to use the disputed domain names featuring the FXCM trade mark.

3. The Respondent uses the disputed domain names to redirect Internet users to websites displaying numerous links to online casino and betting websites, as well as pornographic material. Such use of the disputed domain names is not a *bona fide* offering of goods or services. The disputed domain names have no generic meaning relating to gambling or pornographic content, which indicates that the Respondent used the FXCM mark to redirect traffic to other websites for its own gain.

4. The Respondent registered and is using the disputed domain names to unfairly free ride on the success and popularity of the Complainant's FXCM trade mark by capitalizing on web traffic received from confusingly similar variations of the FXCM mark. Using the Complainant's trade mark to attract and redirect traffic to third-party websites is not *bona fide*.

5. The Respondent is neither commonly known by the distinctive term "FxcM", nor is it offering any goods or services under the name "FxcM". Therefore, there is no plausible reason for the registration and use of the disputed domain names, other than for the purpose of keeping them from the Complainant and to take advantage of the goodwill and valuable reputation attached to the FXCM brand.

6. The Respondent likely earns revenue and benefits commercially from the use of the disputed domain names to redirect Internet users to various third-party websites. Further, redirecting Internet users to adult content tarnishes the Complainant's FXCM brand.

7. The disputed domain names were registered and are being used in bad faith and this is evidenced by the following:

a. The Complainant's earliest trade mark registration predates the registration date of the disputed domain names by 20 years.

- b. The Complainant has accrued substantial goodwill in the FXCM mark since its establishment in 2002, including in the Respondent's jurisdiction.
- c. A search for FXCM on popular Internet search engines such as Google and Baidu would lead to listings of the Complainant's FXCM brand and services as the top results. The FXCM trade mark registrations can also be found on public trade mark databases.
- d. The Respondent did not respond to the Complainant's cease-and-desist letter.
- e. Given the strong reputation in the Complainant's FXCM brand, the circumstances indicate that the Respondent is intentionally exploiting the commercial value and goodwill of the Complainant's brand to attract and redirect Internet users to third-party websites.
- f. It is impossible to conceive of any potential legitimate use of the disputed domain names which are obviously connected to the Complainant's FXCM brand and services.

B. Respondent

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

6. Discussion and Findings

6.1 Preliminary Issue: Language of the Proceeding

The language of the Registration Agreements for the disputed domain names is Chinese. The Complainant requested that the language of the proceeding be English for these reasons:

- (i) Neither the Complainant nor its representatives are familiar with the Chinese language.
- (ii) One of the disputed domain names contains the English word, "Finance".
- (iii) The Respondent did not indicate a lack of English proficiency after receiving the cease-and-desist letter from the Complainant's representatives.
- (iv) To proceed in Chinese, the Complainant would have to retain specialized translation services at a cost which is very likely to be higher than the overall cost of the proceedings.
- (v) The Respondent appears to be familiar with and fluent in English as, amongst other things, he registered numerous other domain names which incorporate English words, such as but not limited to: <gazebo-cottages.com>, <chemists-shop.com>, <cooperativegrainandsupplycompany.com>, <aboutsnooker.com> and <90thdegree.com> (collectively, "the other domain names").

The Respondent did not comment on the language of the proceeding.

Paragraph 11(a) of the Rules provides that:

"Unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding."

The intention of paragraph 11(a) is to allow panels a measure of flexibility and discretion to consider the entire circumstances of each case, to ensure fairness between the parties, while at the same time not

undermining the mandate for the proceeding to be administered in an expeditious manner. (See section 4.5.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”).) The relevant points of consideration would include the parties’ level of familiarity with the respective languages, the expenses to be incurred, the possibility of delay in the proceeding if translations are required, as well as the language of the domain names in dispute and of the resolving websites.

Having considered the relevant factors and interests of the respective parties, the Panel determines that it would be appropriate for English be the language of the proceeding. The Panel is persuaded that the Respondent would not be prejudiced as it is probably familiar with and understands the English language, taking into account its selection of the language/script of the disputed domain names which comprise the Complainant’s FXCM trade mark, and prior cases involving the Respondent in which the language of the other domain names was English. The Respondent had, moreover, been notified by the Center, in both Chinese and English language, of the commencement of the proceeding, the language of the Registration Agreements and deadline for filing a Response. It therefore had ample opportunity to object or propose to submit its Response in Chinese, but it did not do so. In the absence of any objection and justification therefor by the Respondent, the Panel does not find it procedurally efficient to have the Complainant translate the Complaint into Chinese. This would cause unnecessary delay in the proceeding.

6.2 Substantive Issues

A. Identical or Confusingly Similar

The Complainant has established it has rights in the FXCM trade mark. The disputed domain names incorporate the Complainant’s FXCM mark, and the addition of the term “finance”, and the letters “sms” and “gy”, respectively, which do not prevent a finding of confusing similarity with the Complainant’s trade mark. (See section 1.8 of the [WIPO Overview 3.0](#).) The FXCM trade mark is recognizable in the disputed domain names.

The Panel accordingly finds that the first element of paragraph 4(a) of the Policy has been satisfied.

B. Rights or Legitimate Interests

The Panel finds that the Complainant has established a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain names. The Complainant’s extensive use and registrations of the FXCM trade mark predate the registration dates of the disputed domain names. The Complainant did not license nor authorize the Respondent to use FXCM as a trade mark or in a domain name. Neither is there any evidence that the Respondent is commonly known by any of the disputed domain names. The use of the disputed domain names which incorporates the Complainant’s well-established trade mark for use in redirecting Internet traffic to gambling and pornographic websites does not constitute a legitimate noncommercial or fair use of the disputed domain names within the meaning of paragraph 4(c)(iii) of the Policy.

Having established a *prima facie* case, the burden of production shifts to the Respondent to show that it has rights or legitimate interests in the disputed domain names. The Respondent did not file a Response in the present case to rebut the Complainant’s assertions and evidence.

In the circumstances, the Panel concludes that the Respondent has no rights or legitimate interests in the disputed domain names.

The Panel therefore finds that the second element of paragraph 4(a) of the Policy has been satisfied.

C. Registered and Used in Bad Faith

The Panel is persuaded in the circumstances of this case that the Respondent targeted the Complainant and its well-established FXCM mark. There is no other reason for the Respondent to have registered the disputed domain names, which incorporate the Complainant's FXCM trade mark except for the sole purpose of riding off the reputation and goodwill therein, and creating confusion with, the Complainant's FXCM trade mark. This is all the more apparent from the fact that the Complainant owns and operates the domain name <fxcm.com>, which the Respondent would very likely have been aware of.

"If ... circumstances indicate that the respondent's intent in registering the disputed domain name was in fact to profit in some fashion from or otherwise exploit the complainant's trademark, panels will find bad faith on the part of the respondent. While panel assessment remains fact-specific, generally speaking such circumstances, alone or together, include: (i) the respondent's likely knowledge of the complainant's rights, (ii) the distinctiveness of the complainant's mark, (iii) a pattern of abusive registrations by the respondent, ... (v) threats to point or actually pointing the domain name to trademark-abusive content, ... (vii) failure of a respondent to present a credible evidence-backed rationale for registering the domain name, Particularly where the domain name at issue is identical or confusingly similar to a highly distinctive or famous mark, panels have tended to view with a degree of skepticism a respondent defense that the domain name was merely registered for legitimate speculation (based for example on any claimed dictionary meaning) as opposed to targeting a specific brand owner." (See section 3.1.1 of the [WIPO Overview 3.0](#).)

The Panel finds that there has been bad faith registration and use by the Respondent in respect of all three disputed domain names. The facts and circumstances which support the finding include the following:

- (i) the high degree of distinctiveness and reputation of the Complainant's FXCM mark;
- (ii) the Respondent's likely knowledge of the Complainant's rights in the FXCM mark;
- (iii) the failure of the Respondent to respond to the cease-and-desist letter, to submit a Response, or to provide any explanation to support that it has rights or legitimate interests in the disputed domain names; and
- (iv) the implausibility of any good faith use to which the disputed domain names may be put.

The Respondent fully appreciated the value associated with the FXCM trade mark, which is why it registered the disputed domain names which incorporate the Complainant's FXCM mark and the addition of the term "finance" in the first disputed domain name. The Panel therefore concludes that the Respondent has registered and is using the disputed domain names in bad faith.

The Panel therefore finds that the third element of paragraph 4(a) of the Policy has been satisfied.

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 names <fxcmfinance.com>, <fxcmsms.com>, and <gyfxcm.com> be transferred to the Complainant.

/Francine Tan/

Francine Tan

Sole Panelist

Date: September 13, 2022