

ADMINISTRATIVE PANEL DECISION

Kaddex, LLC, Kaddex Pty Ltd, Kaddex OÜ, Kaddex Ltd, and KaddexDAO Association v. EGNATHIA GOLF CLUB SOCIETA' DILETTANTISTICA A.R.L., EGNATHIA GOLF CLUB
Case No. D2023-0761

1. The Parties

The Complainants are Kaddex, LLC, United States of America ("United States"), Kaddex Pty Ltd, Australia, Kaddex OÜ, Estonia, Kaddex Ltd, United Kingdom, and KaddexDAO Association, Switzerland (jointly the "Complainants"), internally represented.

The Respondent is EGNATHIA GOLF CLUB SOCIETA' DILETTANTISTICA A.R.L, EGNATHIA GOLF CLUB, Italy, represented by Croke Fairchild Duarte & Beres LLC, United States.

2. The Domain Name and Registrar

The disputed domain name <kaddex.com> (the "Domain Name") is registered with GoDaddy.com, LLC (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on February 21, 2023. On February 21, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On February 21, 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 (Registration Private, Domains By Proxy, LLC) and contact information in the Complaint. The Complainants filed four amended Complaints from February 22, 2023, to February 28, 2023.

The Center verified that the Complaint together with the amended Complaints 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 March 1, 2023. In accordance with the Rules, paragraph 5, the due date for Response was March 21, 2023. The Response was filed with the Center on March 21, 2023.

On March 23, 2023, the Complainants filed a supplemental filing in reply to the Response. On March 27, 2023, both the Respondent and the Complainants filed supplemental filings.

The Center appointed Jeremy Speres as the sole panelist in this matter on March 29, 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 Complainants, trading under the KADDEX mark, are involved in the cryptocurrency industry, specifically the operation of decentralised cryptocurrency exchanges (“DEX”) and blockchain consulting. The Complainants’ primary domain name, which resolves to the Complainants’ primary website, is <kaddex.xyz>, which the Complainants registered on March 7, 2022.

The Complainants own trade mark registrations for the KADDEX mark in numerous jurisdictions, the earliest filed on October 14, 2021, or subsequently, including European Union Trade Mark Registration No. 018577195 KADDEX in classes 9, 36, 38, and 42, with registration date March 11, 2022.

The Respondent operates in the decentralised finance (“DeFi”) industry and has used the KADDEX mark, and the Domain Name, in relation to a DEX since 2021.

The Domain Name was registered on April 14, 2021. The evidence in the record establishes that the Domain Name was, at least as early as June 2021, used for a DEX under the KADDEX mark. Currently the Domain Name redirects to <dao.ecko.finance>, which resolves to a website for “eckoDAO”, ostensibly a community led DeFi ecosystem hosted on the Kadena blockchain.

5. Parties’ Contentions

A. Complainants

The Complainants assert as follows. They have, through a predecessor organisation, used the KADDEX mark since May 15, 2019, in the cryptocurrency industry. The Complainants claim that around January 2021 their founder and beneficial owner, Mr. Michael Williams, discussed his plans to launch a DEX built on the Kadena blockchain publicly in his Telegram channel and privately over Telegram messages with an employee of the Kadena blockchain, Mr. Francesco Melpignano. Mr. Melpignano subsequently, around March 2021, publicly announced that an independent team had approached Kadena asking to launch a DEX on Kadena by forking the existing code and calling it KADDEX, which Kadena had consented to.

Subsequent investigations by third party journalists revealed that Mr. Melpignano was behind the “independent team” mentioned in his public announcement. Mr. Melpignano, via an Italian golf club connected with his family (the Respondent), registered the Domain Name and used it together with the Complainants’ logo, designs, and business ideas to start a DEX business that competes directly with the Complainants under an identical trade mark – KADDEX – piggybacking off of the Complainants’ goodwill and ideas, thereby evidencing bad faith registration and use of the Domain Name. The fact that the Respondent is a golf club, with no apparent connections to the cryptocurrency industry, is a further indication of bad faith. The Respondent also engaged in a campaign of trade mark “trolling”, by applying to register the KADDEX trade mark in the United States and the Complainants’ logo in the European Union, and filing extensions of time to oppose the Complainants’ United States trade mark application, thereby delaying its registration.

B. Respondent

The Respondent asserts as follows. The Domain Name was registered by the Respondent for and on behalf of KADDEXUS Holdings Inc. (who the Respondent joins as a co-respondent) to be used and operated for

the Kaddex DEX business immediately following the registration of the Domain Name. The Respondent presented evidence of an assignment of the Domain Name, dated March 3, 2023, but effective from the registration date of the Domain Name, to “KADDEXDAO”, who the Respondent also joins as a co-respondent and who operates the Respondent’s DEX.

The Respondent has ever since registration of the Domain Name used it for a legitimate and widely used DEX. The Respondent in February 2023 applied to register figurative trade marks comprising its logos in the European Union, which logos are reproduced identically without the Respondent’s consent by the Complainants at their domain name <kaddex.xyz>. The Respondent’s Kaddex business has however outgrown the name Kaddex, having evolved into a comprehensive DeFi ecosystem and not just a DEX, necessitating a rebrand to eckoDAO.

The Domain Name was registered six months before the Complainants filed their first trade mark application. The Complainants’ companies did not exist at the time of registration of the Domain Name, and the Complainants’ domain name, <kaddex.xyz>, was only registered long after registration of the Domain Name. The Complainants have not presented any evidence substantiating their claim to have used the KADDEX mark since 2019. The Complainants are not active or known in the field they claim to be active in and the content accessible at the website associated with <kaddex.xyz> was a clone website of the Respondent’s previous website under the Domain Name and reproduced a logo designed by the Respondent (which is the subject of the Respondent’s trade mark applications).

The Respondent requests a finding of Reverse Domain Name Hijacking (“RDNH”) because the Complainants knew it could not succeed given its clear knowledge of the Respondent’s rights and legitimate interests, clear knowledge of a lack of the Respondent’s bad faith, and attempts to mislead the Panel through unsubstantiated claims such as the claim of use of the KADDEX mark since 2019.

6. Discussion and Findings

A. Consolidation – Multiple Complainants

The Panel notes that the Complainants are five entities within a group of related companies that have a specific common grievance: the Complainants appear to trade under and own numerous trade mark registrations for the KADDEX mark, and the Domain Name is identical to that mark. It would be equitable and procedurally efficient to allow consolidation in these circumstances (WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”) at section 4.11.1).

B. Supplemental Filings

Under the Rules no express provision is made for supplemental filings by either Party, except in response to a deficiency notification or if requested by the Center or the Administrative Panel. Paragraphs 10 and 12 of the Rules in effect grant the Panel sole discretion to determine the admissibility of unsolicited supplemental filings. Admissibility of supplemental filings is to be assessed based on relevance and foreseeability ([WIPO Overview 3.0](#) at section 4.6).

The Complainants’ Supplemental Filing runs to over 40 pages, much of which consists of a) new arguments that could have been anticipated before filing the Complaint; b) rebuttals of the Respondent’s claims that could likewise have been anticipated; and c) repetition of claims made in the Complaint read with its annexures. To that extent, the Complainants’ Supplemental Filing is not admitted.

The Panel admits the Complainants’ Supplemental Filing to the extent that it deals with the new respondents purportedly joined by the Respondent, to the extent that it refutes the RDNH claim, and to the extent that it ostensibly substantiates the Complainants’ claim to have used the KADDEX mark since 2019 (which is directly relevant to the core issue of bad faith).

The Panel admits the Respondent's Supplemental Filing to the extent that it clarifies the other respondents which the Respondent purportedly joins, which is directly relevant to the core issue of bad faith.

C. Identical or Confusingly Similar

The Complainants have registered rights for trade marks identical to the Domain Name. The fact that these rights may only have accrued after registration of the Domain Name does not preclude the Complainants' standing under the first element ([WIPO Overview 3.0](#) at section 1.1.3). The Complainants have satisfied the requirements of paragraph 4(a)(i) of the Policy.

D. Rights or Legitimate Interests

In light of the Panel's findings below in relation to bad faith, it is not necessary to consider the issue of rights or legitimate interests.

E. Registered and Used in Bad Faith

The Domain Name was registered on April 14, 2021, which is: six months before the Complainants applied to register their first trade mark on October 14, 2021; almost a year before the Complainants registered their own domain name <kaddex.xyz> on March 7, 2022; and six months before the Complainants registered their earliest company – Kaddex, LLC – on October 12, 2021. It is thus clear that the Complainants did not exist at the time the Domain Name was registered, nor had the Complainants applied to register their KADDEX mark.

In the Complaint, the Complainants claim to have used the KADDEX mark through a "predecessor organization" since 2019. That organisation is not identified by the Complainants. The only evidence tendered by the Complainants in support of their claim to have used the mark since 2019, filed belatedly in the Complainants' Supplemental Filing, is the filing of specimens of use filed with the United States Patent and Trademarks Office ("USPTO") in support of the Complainants' claimed first use in commerce date (May 15, 2019) for their United States Trade Mark Application No. 97072385 for KADDEX. These specimens consist of undated brochures and marketing material for a KADDEXDEX, as well as a single quotation dated July 1, 2019, purportedly issued by "Kaddex LLC, d/b/a Kaddex" for blockchain and cryptocurrency consulting services to be rendered to a party whose name is redacted.

The brochures and marketing materials are undated and do not support the Complainants' claim to have used the mark since 2019 at all. Regarding the quotation ostensibly issued by Kaddex LLC, according to the Complainants' own Delaware Department of State evidence, that company was only registered on October 12, 2021 – more than two years after the quotation was issued in the name of a company that was not in existence at the time it was issued. No explanation is provided by the Complainants, and this single quotation is therefore of little value in substantiating the Complainants' claim to have used the KADDEX mark since 2019.

In the Complainants' Supplemental Filing the Complainants belatedly state that their Mr. Williams "has been using the name Kaddex as a sole trader since 2019". This contradicts the Complainants' earlier statement to the effect that a "predecessor organization", not Mr. Williams personally, had used the mark since 2019. It also contradicts the quotation tendered as evidence of use since 2019, which was issued in the name of a company and not Mr. Williams.

These inconsistencies with the Complainants' evidence compel the Panel, in terms of its general powers under paragraph 10(d) of the Rules, to afford little if any weight to the Complainants' evidence pertaining to their claims to have used the KADDEX mark since 2019.

Even if the single quotation is taken as evidencing at least some use by the Complainants of the mark in 2019, no evidence is provided as to how the private use of the mark for consulting services could have come to the Respondent's attention. Further to the Panel's general powers under paragraphs 10 and 12 of the

Rules to conduct limited factual research, the Panel independently conducted a Google search for all results featuring the word “kaddex” limited in time to the period spanning January 1, 2019, until the registration date of the Domain Name on April 14, 2021. No convincing results were returned indicating that the KADDEX mark was in use, at least publicly on the Internet as indexed by Google, over that period, either by the Complainants, Mr. Williams, or anybody else.

There is simply no convincing evidence in the record substantiating the Complainants’ claims to have used the KADDEX mark since 2019. There is also no evidence in the record at all substantiating the Complainants’ claims to have shared Mr. Williams’ idea for a DEX called KADDEX with the Respondent via Mr. Melpignano, nor publicly for that matter, in early 2021. If the Complainants had indeed used the KADDEX mark since 2019, given how central that claim is to the bad faith element and the Complainants’ case as a whole, one would have expected the Complainants to tender far more actual evidence than a single quotation (which is in any event problematic for the reasons identified above). The fact that they did not is telling.

As the record stands, there is no convincing evidence that the Complainants nor any predecessor had used the KADDEX mark prior to registration of the Domain Name, nor is there any evidence that the Complainants or any predecessor owned any relevant company or trade mark registrations prior to registration of the Domain Name. On the contrary, there is unrefuted Internet archive evidence showing that the Respondent used the Domain Name from as early as June 2021 in relation to a DEX under the KADDEX mark, predating any proven use by the Complainants of the KADDEX mark themselves.

In the absence of any convincing evidence showing that the Complainants or any predecessor had, prior to registration of the Domain Name, used the KADDEX mark or made demonstrable preparations to use it which the Respondents could have been aware of, the Panel cannot, on balance of probabilities, conclude that the Respondent was aware of the Complainants’ KADDEX mark nor that it targeted that mark in bad faith.

In paragraph A.5 to the Complainants’ Supplemental Filing, the Complainants admit: “At many levels, this proceeding comes down to a he-said-she-said”. The Panel agrees. The respective domain names of the parties have both been used for the same type of cryptocurrency offering, using an identical trade mark and logo. There has thus seemingly been some targeting, but based on the evidence before it, the Panel simply cannot conclude that it was more likely than not the Respondent that was the targeting party. In the apparent absence of evidence of bad faith available in documentary form, the dispute between the parties would appear better suited to resolution by a trial court of competent jurisdiction, with the benefit of discovery and cross-examination.

F. Reverse Domain Name Hijacking

The Complainants are unrepresented, it being accepted that represented complainants are held to a higher standard than unrepresented ones (*Sixsigma Networks Mexico, S.A. DE C.V. v. DYNAMO.COM AUTORENEWAL AND DNS*, WIPO Case No. [D2022-4534](#)). The Panel notes that the Complainants own numerous trade mark and company registrations for the KADDEX mark around the world, and the Complainants would appear to have used the KADDEX mark for an actual cryptocurrency offering. In the circumstances it seems to the Panel, on balance of probabilities, that the Complainants failed to fully understand the bad faith requirements of the Policy rather than that they deliberately set out to act in bad faith in filing the Complaint. The Panel is also mindful that the evidence seems to show some targeting between the parties, but not (clearly at least) who the targeting party was. The Panel therefore declines to find Reverse Domain Name Hijacking.

7. Decision

For the foregoing reasons, the Complaint is denied.

/Jeremy Speres/

Jeremy Speres

Sole Panelist

Date: April 12, 2023