

## **ADMINISTRATIVE PANEL DECISION**

HDR Global Trading Limited v. Vasiliy Grischin

Case No. D2023-1946

### **1. The Parties**

The Complainant is HDR Global Trading Limited, Seychelles, represented by Snell & Wilmer, LLP, United States of America ("United States").

The Respondent is Vasiliy Grischin, Ukraine.

### **2. The Domain Name and Registrar**

The disputed domain name <bitmextradings.site> is registered with Hosting Concepts B.V. d/b/a Registrar.eu. (the "Registrar").

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on April 28, 2023. On May 3, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 4, 2023, 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 (CHingishan) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 5, 2023, 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 the same date.

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 May 12, 2023. In accordance with the Rules, paragraph 5, the due date for Response was June 1, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on June 6, 2023.

The Center appointed Assen Alexiev as the sole panelist in this matter on June 28, 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 Complainant was established in 2014. It owns and operates one of the largest cryptocurrency trading platforms in the world and offers financial trading services in the field of digitized assets and cryptocurrencies. The Complainant's business currently averages several hundreds of millions to a billion USD or more of trading volume per day.

The Complainant's wholly-owned subsidiary HDR SG PTE. LTD, Singapore, is the owner of the following trademark registrations for the sign BITMEX (the "BITMEX Trademark"):

- the European Union trademark BITMEX with registration No.016462327, registered on August 11, 2017, for services in International Class 36;
- the United Kingdom trademark BITMEX with registration No. 00003218498, registered on June 2, 2017, for services in International Class 36; and
- the International trademark BITMEX (figurative) with registration No. 1514704, registered on October 10, 2019, for goods and services in International Classes 9 and 36.

The Complainant claims being the owner of the domain name <bitmex.com> registered in 2003, which resolves to its official website, and of the domain names <bitmex.info>, <bitmex.finance>, <bitmex.financial>, <bitmex.money>, and <bitmex.exchange>, all registered in 2017.

The disputed domain name was registered on February 26, 2023. It resolves to a parked webpage containing pay-per-click links. According to the evidence submitted by the Complainant, it previously resolved to an active website that displayed the Complainant's BITMEX Trademark and offered cryptocurrency trading services. At the time the Complaint was filed, the disputed domain name did not resolve to any active website.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

The Complainant states that the disputed domain name is confusingly similar to its BITMEX Trademark, because it incorporates this trademark in its entirety in combination with the dictionary word "trading," commonly used in relation to cryptocurrencies.

According to the Complainant, the Respondent has no rights or legitimate interests in respect of the disputed domain name, because it is not commonly known under the disputed domain name and is not related to the Complainant, and the Complainant has never authorized the Respondent to use the BITMEX Trademark. The Complainant points out that the disputed domain name previously resolved to a webpage allegedly offering cryptocurrency trading services, while displaying the BITMEX Trademark and the Complainant's red and blue logo. According to the Complainant, the Respondent impersonated the Complainant to attract business to a competing website. The Complainant adds that the fact that the disputed domain name at the time of filing of the Complaint resolved to an inactive webpage did not demonstrate use of it in connection with a *bona fide* offering of goods or services or a legitimate noncommercial or fair use of the disputed domain name.

The Complainant contends that the disputed domain name was registered and is being used in bad faith. The Complainant notes that it has spent years building its cryptocurrency trading platform and making its BITMEX Trademark recognized internationally. According to it, the Respondent registered the disputed domain name years after the Complainant acquired rights in the BITMEX Trademark and years after it began building its cryptocurrency trading platform under that trademark, and did this to capitalize on the goodwill associated with the BITMEX Trademark by attempting to confuse consumers as to the source and ownership of the disputed domain name.

The Complainant submits that the Respondent's knowledge of the BITMEX Trademark is evident through the Respondent's use of this trademark and red and blue logo on the website at the disputed domain name which offered competing cryptocurrency trading services under the BITMEX Trademark. According to the Complainant, the Respondent sought to disrupt the Complainant's business by intentionally passing itself off as the Complainant to defraud and attract the Complainant's customers and offer them competing services for the Respondent's own commercial gain.

## **B. Respondent**

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

## **6. Discussion and Findings**

### **6.1. Procedural considerations – Location of the Respondent**

Under paragraph 10 of the Rules, the Panel is required to ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case, and also that the administrative proceeding takes place with due expedition. The location of the Respondent disclosed by the Registrar appears to be in Ukraine, which is subject to an international conflict at the date of this Decision that may impact case notification. It is therefore appropriate for the Panel to consider, in accordance with its discretion under paragraph 10 of the Rules, whether the proceeding should continue.

The record shows that the written notice could not be delivered by postal-mail to the Respondent's mailing address disclosed by the Registrar, in terms of the paragraph 2(a)(i) of the UDRP Rules. However, it appears that the Notification of Complaint emails were delivered to the Respondent's email address, as provided by the Registrar. Therefore, there is no evidence that the case notification was not successfully delivered to the disclosed Respondent's email address. The Notification of Complaint was also sent by the Center via the Registrar contact forms.

As noted above, the Complainant has submitted evidence showing that the disputed domain name previously resolved to a website that displayed the Complainant's BITMEX Trademark and offered cryptocurrency trading services. At the time the Complaint was filed, the disputed domain name was inactive. Moreover, it would appear that the Respondent has changed the use of the disputed domain name at some point after commencement of the proceedings, as it currently resolves to a parked webpage containing pay-per-click links.

The Panel notes that the Respondent appears to be capable of controlling the disputed domain name and its content and that, having apparently received notification of the Complaint by email and contact forms provided by the Registrar, he would have been able to formulate and file a Response in the administrative proceeding in case he wished to do so.

The Panel concludes that the Respondent allegedly located in Ukraine has been given a fair opportunity to present its case, and so that the administrative proceeding takes place with due expedition, the Panel will proceed to a Decision accordingly.

## A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of the BITMEX Trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1

As discussed in section 1.4.1 of the [WIPO Overview 3.0](#), a trademark owner's affiliate such as a subsidiary of a parent or of a holding company, or an exclusive trademark licensee, is considered to have rights in a trademark under the UDRP for purposes of standing to file a complaint. The Panel sees no reason not to apply the same approach here, where the BITMEX Trademark is registered by a wholly-owned subsidiary of the Complainant. On this basis, the Panel accepts that the Complainant has rights in the BITMEX Trademark for the purposes of the Policy.

The Panel finds that the BITMEX Trademark is recognizable within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to this trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

While the addition of other terms (here, "tradings") may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the BITMEX Trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Based on the available record, the Panel finds the first element of the Policy has been established.

## B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

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

Having reviewed the record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant's *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name.

The Panel considers that the record of this case reflects that:

before any notice to the Respondent of the dispute, the Respondent did not use, nor has it made demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services. Paragraph 4(c)(i) of the Policy, and [WIPO Overview 3.0](#), section 2.2;

the Respondent (as an individual, business, or other organization) has not been commonly known by the disputed domain name. Paragraph 4(c)(ii) of the Policy, and [WIPO Overview 3.0](#), section 2.3;

the Respondent is not making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue. Paragraph 4(c)(iii) of the Policy, and [WIPO Overview 3.0](#), section 2.4;

the record contains no other factors demonstrating rights or legitimate interests of the Respondent in the disputed domain name.

Panels have held that the use of a domain name for illegal activity (e.g., impersonation/passing off) can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

In the present case, the disputed domain name represents a combination of the Complainant's BITMEX Trademark and the dictionary word "tradings", which Internet users may well perceive as being an official online location where they may use the Complainant's services. The Respondent has used the disputed domain name for a Russian-language website that prominently featured at its top the BITMEX Trademark and the Complainant's logo. The website stated "Инвестируй быстро и удобно" (in English: "Invest quickly and easily"), described the provider of the website as "Известный международный бренд на рынке онлайн инвестиций и трейдинга. С 1997 года мы помогаем клиентам инвестировать и торговать широким кругом финансовых инструментов, включая валюты, акции компании-мировых лидеров, золото и другие металлы, нефть и газ, фондовые индексы. [...]" (in English: "A well-known international brand in the online investment and trading market. Since 1997, we have been helping clients to invest in and trade a wide range of financial instruments, including currencies, shares of companies - world leaders, gold and other metals, oil and gas, stock indices.") The website displayed on its title page a button with the text "Инвестировать сейчас" (in English: "Invest now") and contained no contact details of the provider of the website, but included the copyright notice "© 2023 BitMEX." This design and content of the Respondent's website undoubtedly impersonates the Complainant and is likely to mislead visitors that they would be dealing with the Complainant if they invest through this website, which may affect their perception of the financial risk involved in such transaction. Besides the inherent financial risk, an investment naturally includes also a disclosure of personal data and financial information, and it is unclear who would have received it if a visitor of the Respondent's website had made an investment through it. The combination of circumstances that are present here, coupled with the absence of a Response or any allegation to the contrary, leads the Panel to the conclusion that it is more likely than not that the registration and use of the disputed domain name by the Respondent represents a fraudulent activity, which cannot give rise to rights or legitimate interests in the disputed domain name.

Based on the available record, the Panel finds the second element of the Policy has been established.

### **C. Registered and Used in Bad Faith**

The Panel notes that for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular but without limitation, that if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

The Panel considers that the record of this case reflects that:

The Respondent has registered the disputed domain name primarily for the purpose of disrupting the business of a competitor. Paragraph 4(b)(iii) of the Policy, and [WIPO Overview 3.0](#), section 3.1.3.

The Respondent has intentionally attempted to attract, for commercial gain, Internet users to its web site or other on-line location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's web site or location or of a product or service on the Respondent's web site or location. Paragraph 4(b)(iv) of the Policy, and [WIPO Overview 3.0](#), section 3.1.4.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

Panels have held that the use of a domain name for illegal activity (e.g., the impersonation/passing off, or other types of fraud) constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

As already discussed, the disputed domain name is a combination of the Complainant's trademark and a dictionary word that describes its services. The Respondent has not provided any explanation for its choice of the disputed domain name and for its plans how to use it, and the undisputed evidence shows that after its registration, the disputed domain name has resolved to a website that impersonated the Complainant and invited visitors to make investments, thus competing with the Complainant for the same customers. This shows that the Respondent knew of the Complainant when registering the disputed domain name, and targeted its BITMEX Trademark with its registration and use. The Respondent's conduct appears to the Panel as being a fraudulent activity that may include a misuse of the personal data, financial information and financial resources of Internet users. Such conduct constitutes bad faith.

Neither the inactive website at the time of filing the Complaint, nor the current sponsored commercial links hosted at the website to which the disputed domain name resolves to, prevent a finding of bad faith. Rather, the passive holding and current commercialization of the disputed domain name further reinforce the notion that there was no good faith explanation for the registration and use of the disputed domain name.

Based on the available record, the Panel finds the third element of the Policy has been established.

## 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, <bitmextradings.site>, be transferred to the Complainant.

*/Assen Alexiev/*

**Assen Alexiev**

Sole Panelist

Date: July 12, 2023