

ADMINISTRATIVE PANEL DECISION

FxPro Financial Services Ltd v. Abou Zakhm, Bernadette Selim
Case No. DEU2022-0006

1. The Parties

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

The Respondent is Abou Zakhm, Bernadette Selim, Canada.

2. The Domain Name, Registry and Registrar

The Registry of the disputed domain name <fxpro.eu> is the European Registry for Internet Domains (“EURid” or the “Registry”). The Registrar of the disputed domain name is D-Cube Resource.

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 7, 2022. On March 8, 2022, the Center transmitted by email to the Registry a request for registrar verification in connection with the disputed domain name. On March 9, 2022, the Registry 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 March 16, 2022, providing the registrant and contact information disclosed by the Registry, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on March 23, 2022.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the .eu Alternative Dispute Resolution Rules (the “ADR Rules”) and the World Intellectual Property Organization Supplemental Rules for .eu Alternative Dispute Resolution Rules (the “Supplemental Rules”).

In accordance with the ADR Rules, Paragraph B(2), the Center formally notified the Respondent of the Complaint, and the proceedings commenced on April 4, 2022. In accordance with the ADR Rules, Paragraph B(3), the due date for Response was May 16, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 18, 2022.

The Center appointed Peter Burgstaller as the sole panelist in this matter on May 25, 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 ADR Rules, Paragraph B(5).

4. Factual Background

The Complainant is an exchange provider and owner of the trademark FXPRO, registered in many jurisdictions around the world, including:

- European Union Trade Mark (“EUTM”) Registration No 6460349, registered on October 3, 2008, for services in Class 36;
- Cyprus Trademark Registration No 77924, registered on October 9, 2012, for services in Class 36;
- International Registration, Registration No 1048297, registered April 26, 2010, for services in Class 36, and designated for many countries around the world.

The Complainant owns moreover 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 November 23, 2007.

The disputed domain name was registered on August 9, 2016, and resolves to a parking page offering it for sale.

5. Parties’ Contentions

A. Complainant

The Complainant is a highly regarded exchange provider. The Complainant and its subsidiaries have been awarded many accolades since it began operating.

The Complainant owns various trademark registrations for FXPRO in Europe from 2008 onwards and domain name registrations incorporating the FXPRO mark, including <fxpro.com>, <fxpro.be>, <fxpro.fr>, <fxpro.hu> and <fxpro.it>.

The Complainant has spent significant sums of money promoting its name, brand and trademarks throughout the world, including a partnership with the BMW Sauber Formular 1 team in 2009, the World Rally Championship in 2009, the Fulham and Aston Villa Football Clubs in the English Premier League in 2010, the Virgin Formula 1 team in 2010, and the Monaco Football Club in the French League in 2011.

In 2014, the Complainant’s main website under <fxpro.com> received over 8 million visits from Internet users all over the world and in 2015 (one year before the Respondent registered the disputed domain name) it received over 10.5 million visits.

The disputed domain name incorporates the entirety of the FXPRO trademark; it only adds the country-code Top-Level Domain (“ccTLD”) “.eu”. Hence, the disputed domain name is identical or at least confusingly similar to the FXPRO registered trademark of the Complainant.

The Complainant has not authorized the Respondent to use its FXPRO trademark or any sign that is identical with or confusingly similar to it. There is also no evidence that the Respondent uses the disputed domain name for a *bona fide* offering of goods or services, that the Respondent is commonly known by the disputed domain name or is using the disputed domain name for a legitimate non-commercial or fair use.

Therefore, the Respondent has no rights or legitimate interests in respect of the disputed domain name. There is no feasible situation or circumstance in which the disputed domain name could be legitimately used by the Respondent without infringing the Complainant's FXPRO trademark. Moreover, at the date of registration the disputed domain name by the Respondent the Complainant's trademark FXPRO already enjoyed a global reputation. It is therefore highly improbable that the disputed domain name was registered without prior knowledge of the Complainant's rights and business.

The disputed domain name has not been used since it was registered other than being offered for sale; this constitutes also in bad faith use, since good faith use is in no way plausible, considering the circumstances in the present case.

B. Respondent

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

6. Discussion and Findings

In order to succeed in its Complaint, the Complainant is required under Paragraph B(11)(d)(1) of the ADR Rules to demonstrate the following:

- (i) that the disputed domain name is identical or confusingly similar to a name in respect of which a right is recognized or established by national law of a Member State and/or European Union law; and either
- (ii) that the disputed domain name has been registered by the Respondent without rights or legitimate interests in the name; or
- (iii) that the disputed domain name has been registered or is being used in bad faith.

A. Identical or Confusingly Similar to a name in respect of which a right or rights are recognized or established by national law of a Member State and/or European Union law

The Complainant submitted evidence, which incontestably and conclusively establishes rights in the trademark FXPRO under European Union law.

The disputed domain name is identical to the Complainant's registered trademark FXPRO.

It has long been established in decisions under the ADR Rules that the ccTLD ".eu" is typically ignored when assessing the identity or similarity between a trademark and a domain name.

The Panel therefore finds that the Complainant has met its burden of proving that the disputed domain name is identical to the Complainant's trademark, pursuant to Paragraph B(11)(d)(1)(i) of the ADR Rules.

B. Rights or Legitimate Interests

While the overall burden of proof lies with the complainant, previous 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 disputed domain name. If the respondent fails to show evidence of rights or legitimate interests, the complainant is deemed to have satisfied the second element.

Here, the Complainant has put forward a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name, which has not been rebutted by the Respondent.

Furthermore, the nature of the disputed domain name, being identical to the Complainant's mark, cannot be considered fair as these falsely suggest an affiliation with the Complainant that does not exist.

Noting the above, and in the absence of any Response or allegations from the Respondent, the Panel finds that the Complainant has satisfied Paragraph B(11)(d)(1)(ii) of the ADR Rules.

C. Registered or Used in Bad Faith

Under the ADR Rules there is no need for the Complainant to prove bad faith under Paragraph B(11)(d)(1)(iii), if the Respondent lacks rights or legitimate interests in the disputed domain name.

However, the Panel would like to point out, that in the present case the disputed domain name entirely contains the trademark FXPRO, which in itself constitutes a strong presumption of bad faith.

The Complainant moreover has rights in the registered trademark FXPRO in many jurisdictions, long before the registration of the disputed domain name. It is therefore inconceivable for this Panel that the Respondent registered or has used the disputed domain name without knowledge of the Complainant's rights, which leads to the necessary inference of bad faith.

Finally, the Panel wants to put emphasis on the following:

- the Complainant's trademark FXPRO has a global and high presence on the Internet with various domain name registrations containing the mark FXPRO, including <fxpro.com> or <fxpro.fr>;
- the Respondent has failed to present any evidence of any good faith use with regard to the disputed domain name; it therefore rather appears that the disputed domain name only has been registered in order to prevent the Complainant from reflecting its name and trademark in a corresponding domain name and/or claim money to sell the disputed domain name to the Complainant;
- the disputed domain name incorporates the Complainant's trademark in its entirety, and is thus suited to divert or mislead potential web users from the website they are actually trying to visit (the Complainant's site); and
- there is no conceivable plausible reason for good faith use with regard to the disputed domain name.

Taking all these facts and evidence into consideration this Panel also finds that the disputed domain name has been registered and is being used in bad faith under Paragraph B(11)(d)(1)(iii) of the ADR Rules

7. Decision

For the foregoing reasons, in accordance with Paragraph B(11) of the ADR Rules, the Panel orders that the disputed domain name <fxpro.eu> be transferred to the Complainant¹. The decision shall be implemented by the Registry within thirty (30) days after the notification of the decision to the Parties, unless the Respondent initiates court proceedings in a Mutual Jurisdiction, as defined in Paragraph A1 of the ADR Rules.

/Peter Burgstaller/

Peter Burgstaller

Sole Panelist

Date: June 17, 2022

¹ The remedy sought is transfer of the disputed domain name to the Complainant FxPro Financial Services Ltd. As the Complainant FxPro Financial Services Ltd is established in Cyprus, it satisfies the general eligibility criteria for registration of the disputed domain name set out in Article 4(2)(b) of the Commission Regulation (EC) No. 733/2002 as amended by Regulation (EU) 2019/517 of the European Parliament and of the Council.