

ADMINISTRATIVE PANEL DECISION

SIX Swiss Exchange AG, and SIX Group AG v. Emrah Ucan Case No. DIO2022-0044

1. The Parties

The Complainant is SIX Swiss Exchange AG, and SIX Group AG, Switzerland, represented Meisser & Partners AG., Switzerland.

The Respondent is Emrah Ucan, Estonia.

2. The Domain Name and Registrar

The disputed domain name <swissexchange.io> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 7, 2022. On September 7, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 7, 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 (is Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on September 20, 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 September 20, 2022.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the .IO Domain Name Dispute Resolution Policy (the “Policy”), the Rules for .IO Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for .IO 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 September 21, 2022. In accordance with the Rules, paragraph 5, the due date for Response was October 11, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 2, 2022.

The Center appointed Adam Taylor as the sole panelist in this matter on November 8, 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 Complainants operate one of the principal stock exchanges in Switzerland known as the “SIX Swiss Exchange”. The Complainants are collectively referred to hereafter as “the Complainant”, unless it is necessary to refer to them separately.

The Complainant has a presence in more than 24 countries.

The Complainant owns International Registration no. 996722 for SIX SWISS EXCHANGE, registered on February 11, 2009, in Classes 9, 16, 35, 36, 38, 41, 42 and 45.

The disputed domain name was registered on July 20, 2022.

The disputed domain name has been used to resolve to a website branded with a “Swiss Exchange” logo and purported to offer various investment plans. The following appeared on the Frequently Asked Questions page: “What is Swiss Exchangejk company? Swiss Exchangejk platform is an international investment company. The activity of our company is aimed at the cryptocurrency trading, forex, stocks and providing investment services worldwide.”

The Respondent did not reply to the Complainant’s cease and desist letter dated August 10, 2022.

5. Parties’ Contentions

A. Complainant

The following is a summary of the Complainant’s contentions.

The Complainant is the owner of the International Registration for SIX SWISS EXCHANGE.

The Complainant’s trade mark is very well-known in the financial world and it is also known worldwide as “Swiss Exchange”.

The disputed domain name is confusingly similar to the Complainant’s trade mark, which it incorporates almost in its entirety. Omission of the term “SIX” does not diminish the likelihood of confusion between the trade mark and the disputed domain name.

It is clear that the disputed domain name was chosen to attract Internet users seeking the Complainant and its marks. This is supported by the fact that the Respondent selected the disputed domain name rather than a domain name containing “exchangejk”, despite allegedly being called “Swiss Exchangejk”.

The Respondent lacks rights or legitimate interests in the disputed domain name.

The Respondent is not authorised in Switzerland to provide the financial services it purports to offer or to act as an authorised financial market infrastructure.

The Respondent has not used the disputed domain name for a *bona fide* offering of goods or services. The Respondent purports to offer the same services as the Complainant using the same mark in order to create a likelihood of confusion with the Complainant’s mark. The Respondent surmises that the Respondent’s website may even be fraudulent, given that the Respondent has not responded to the Complainant’s correspondence.

There is no evidence that the Respondent has been commonly known by the disputed domain name, which has no apparent connection with Respondent's own name or any business it is operating. Furthermore, the Complainant can find no evidence that a company called "Swiss Exchangejk" actually exists. In any case, it is illogical that such a company is using the disputed domain name rather than say <exchangejk.com> or similar.

Nor is the Respondent making a legitimate noncommercial or fair use of the disputed domain name. The Respondent is using the disputed domain name for commercial, possibly fraudulent, gain.

The Complainant has not authorised the Respondent to use its trade mark.

The disputed domain name was registered and is being used in bad faith.

The Complainant's mark SIX SWISS EXCHANGE was already known in the financial world before the disputed domain name was registered. As the Respondent is allegedly active in the field of finance, it must be presumed that the Respondent was at all times aware of the Complainant's name and trade marks.

The term "Swiss Exchange", *i.e.*, even without "SIX", is uniquely associated with the Complainant.

The fact that the Respondent uses this mark, although allegedly bearing another name and not complying with relevant regulatory requirements, shows that the disputed domain name was registered and used in bad faith.

Despite having no connection with the Complainant, the Respondent has set out to mislead users into thinking that they are accessing an official website of the Complainant, including by use of a "login" option.

The Respondent provides no contact details apart from an email address.

The use of the word "Swiss" for a company that has no connection with Switzerland is clearly abusive.

B. Respondent

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

6. Discussion and Findings

Under the Policy, the Complainant is required to prove on the balance of probabilities that:

- the disputed domain name is identical or confusingly similar to a trade mark in which the Complainant has rights;
- the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- the disputed domain name has been registered or is being used in bad faith.

A. Consolidation - Preliminary Issue

The principles governing the question of whether a complaint may be brought by multiple complainants are set out in section 4.11 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)")¹.

¹ Although [WIPO Overview 3.0](#) is directed to the Uniform Domain Name Dispute Resolution Policy ("UDRP"), given the similarity between the UDRP and the Policy, it is appropriate to have regard to these principles except to the extent that the Policy diverges from the UDRP.

The Panel is satisfied that (a) the Complainants, which are part of a group of companies, have a specific common grievance against the Respondent and that the Respondent has engaged in common conduct that has affected the Complainants in similar fashion and (b) it would be equitable and procedurally efficient to permit the consolidation.

B. Identical or Confusingly Similar

The Complainant has established registered rights in the mark SIX SWISS EXCHANGE.

Section 1.7 of [WIPO Overview 3.0](#) makes clear that the first element functions primarily as a standing requirement. The test for confusing similarity involves a reasoned but relatively straightforward comparison between the complainant's trade mark and the disputed domain name. Where at least a dominant feature of the relevant mark is recognisable in the disputed domain name, it will normally be considered confusingly similar to that mark for purposes of UDRP standing.

Also, as explained in section 1.7 of [WIPO Overview 3.0](#), the overall facts and circumstances of a case, including relevant website content, may support a finding of confusing similarity in certain situations, particularly where it appears that the respondent registered the domain name precisely because it believed that the domain name was confusingly similar to a mark held by the complainant.

In the Panel's view, the term "Swiss Exchange" is a sufficiently dominant feature of the Complainant's mark that is recognisable in the disputed domain name. This constitutes confusing similarity for the purposes of this first element.

For the above reasons, the Panel concludes that the disputed domain name is confusingly similar to the Complainant's trade mark and that the Complainant has therefore established the first element of paragraph 4(a) of the Policy.

C. Rights or Legitimate Interests

Paragraph 4(c) of the Policy gives examples of circumstances which, if proved, suffice to demonstrate that a respondent possesses rights or legitimate interests.

As to paragraph 4(c)(i) of the Policy, for reasons explained in section 6D below, the Panel considers that the Respondent has used the disputed domain name to intentionally attempt to attract, confuse and profit from Internet users seeking the Complainant's goods and/or services. Such use of the disputed domain name could not be said to be *bona fide*.

Nor is there any evidence that paragraphs 4(c)(ii) or (iii) of the Policy are relevant in the circumstances of this case.

The Panel finds that the Complainant has established a *prima facie* case of lack of rights or legitimate interests and there is no rebuttal by the Respondent.

For the above reasons, the Panel concludes that the Complainant has established the second element of paragraph 4(a) of the Policy.

D. Registered or Used in Bad Faith

For the following reasons, the Panel considers that the Respondent has intentionally attempted to attract Internet users to its website for commercial gain by creating a likelihood of confusion with the Complainant's trade mark in accordance with paragraph 4(b)(iv) of the Policy:

1. As mentioned above, the disputed domain name comprises a dominant part of the Complainant's trade mark. Furthermore, the Respondent has not appeared in this proceeding to contest the

Complainant's assertion that it is known worldwide by the abbreviated version of its name "Swiss Exchange" and that this name is uniquely associated with the Complainant.

2. The Respondent is engaged in financial services and therefore likely to have been aware of the Complainant's trade mark, which long pre-dates the registration of the disputed domain name.
3. The Respondent has used the disputed domain name for a website creates the impression that it is officially associated with the Complainant by purporting to offer financial products for sale and by the lack of any prominent disclaimer.
4. If the name "Swiss Exchangejk" were legitimate, it is likely that the Respondent would have selected a domain name, and logo, that included the initials "jk".
5. The lack of any contact details, apart from an email address, on the website of a company purporting to offer financial services is suggestive of illegitimacy.
6. The Respondent has not responded to the Complainant's assertions of bad faith / fraud in pre-action correspondence and in this proceeding.

For the above reasons, the Panel considers that the Complainant has established the third element of paragraph 4(a) of the Policy.

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 <swissexchange.io> be transferred to the Complainant.

/Adam Taylor/

Adam Taylor

Sole Panelist

Date: November 22, 2022