Decision for dispute CAC-UDRP-100862

Case number	**CAC-UDRP-100862**
Time of filing	**2014-10-13 13:25:22**
Domain names	**fxcm.co.nl**

Case administrator

Name	**Lada Válková (Case admin)**

Complainant

Organization	**Forex Capital Markets LLC**

Complainant representative

Organization	**Safenames Ltd**

Respondent

Organization	**FXCM**

IDENTIFICATION OF RIGHTS

The Complainant has trademark rights in FXCM, amon others
Trademark Date of Registration Registration No. Class(es) Country of TM
FXCM FOREX CAPITAL MARKETS 05 - 08 - 2010 1049102 36, 41 ROMARIN
FXCM 03 - 12 - 2004 872083 36, 41 ROMARIN
FXCM 17 - 09 - 2002 2620953 36 US
FXCM 11 - 10 - 2005 3006018 41 US
FXCM FOREX CAPITAL MARKETS 22 - 09 -2009 3685408 36, 41 US
FXCM 03 - 11 - 2005 003955523 35, 36 OHIM
FXCM 10 - 11 - 2011 T1012662A 36, 41 SingaporeTrademark

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:

Forex Capital Markets LLC (hereafter referred to as "the Complainant") was incorporated in Delaware in 1999 and was the first Forex broker to be listed on the New York Stock Exchange.

The Complainant operates three main brands - FXCM, DailyFX and DailyFXPLUS, all of which relate to trading online. Complainant's brand FXCM is a leading global provider of Forex - meaning foreign exchange - currency trading and related

services to retail and institutional customers. It operates from its main website www.fxcm.com and offers its services in 17 languages. With offices located in the United Kingdom, Germany, Australia, France, Italy, Greece, China, Japan and affiliate offices in Canada, Israel, Chile and Lebanon FXCM has a global reach and 800 employees worldwide.

The Respondent registered and uses the domain FXCM.co.nl.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the Domain Name is identical or confusingly similar to a trademark or service mark in which the complainant has rights (within the meaning of paragraph 4(a)(i)of the Policy). The Complainant has registered several trademarks for the word FXCM in the United States and on an international level. The Respondent uses a domain which is identical (FXCM.co.nl); the country-specific ending of the domain is irrelevant for the trademark questions in this case.

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant has, to the satisfaction of the Panel, shown the Respondent to have no rights or legitimate interests in respect of the Domain Name (within the meaning of paragraph 4(a)(ii)of the Policy). The Panel finds that the Complainant trademarks are distinctive. The Complainant's assertions that the Respondent is not commonly known by the disputed domain name and is not affiliated with nor authorised by the Complainant are sufficient to constitute a prima facie showing of absence of rights or legitimate interest in the disputed domain name on the part of the Respondent. The evidentiary burden therefore shifts to the Respondent to show by concrete evidence that it does have rights or legitimate interests in that name. The Respondent has made no attempt to do so. Nevertheless, it should be mentioned that the Respondent's company name – FXCM – seems to be fully incorporated in the disputed domain name. This might lead to a conclusion that the Respondent is known under the disputed domain name. However, there are obviously no registered trademarks for FXCM registered in favour of the Respondent. Furthermore, there is no evidence (other than the WhoIs record) that the Respondent established a reputation as FXCM at the time of registration of the Domain Name or now. On the contrary, the registration of the disputed domain name by the Respondent seems to be intentionally designed to infringe the Complainant's marks and exploit resulting user confusion. The Panel points out that such a registration does not constitute use in conjunction with a bona fide offering of goods or services, and thus is illegitimate. In other words, The Respondent appears to have formed the company in an attempt to create a false legitimate interest in the disputed domain name. The deliberate formation of a business in order to justify the use of the mark FXCM and to use the same to redirect to a competitor's website does not provide the Respondent with a legitimate interest in the Domain Name. Accordingly, in the absence of a response submitted by the Respondent the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown the Domain Name has been registered and is being used in bad faith (within the meaning of paragraph 4(a)(iii)of the Policy).

The documents provided by the Complainant shows that the domain <fxcm.co.nl> has been used for a website which used the Complainant's trademarked logo, simply changing the text underneath the logo to 'worldwide' and changing the colours used. As the Complainant has shown the page source information revealed that the Respondent has set up links to redirect to other competitor websites such as <fxcm.com.ru/ctrader>, <avafx.com>, <afbfx.com>, <fxopen.com>, <easy-forex.com>, <myfxnet.com>, <bmiforex.com> and has even promoted loans from banks such as HSBC.

The Panel checked the website on 13 November 2014 and noted that the content has been changed; it is impossible to access the website. However, the old website mentioned by the Complainant could be found in the Internet Archive/Waybackmachine https://web.archive.org/web/20140528112034/http://www.fxcm.co.nl/ dated 28 May 2014. Within the UDRP system, panels frequently used the Wayback Machine in order to determine how a domain name has been

used in the past (Karl’s Sales and Service Company, LLC v. LaPorte Holdings, Inc., WIPO Case No. D2004-0929; National Football League v. Thomas Trainer, WIPO Case No. D2006-1440; La Francaise des Jeux v. Domain Drop S.A., WIPO Case No. D2007-1157; The iFranchise Group v. Jay Bean / MDNH, Inc. / Moniker Privacy Services [23658] Case No. D2007-1438). The Respondent has obviously engineered the website using the trademarked logo of the Complainant and links to other parties in order to create a false association or impression that the Complainant has endorsed these third parties which is detrimental to the Complainant.

Furthermore, the Respondent used multiple registrations of domains which obviously infringe upon the Complainant's mark, such as <fxcm.com.sg>, <fxcm.co.id>, and <fxcmworldwide.com>. He used the same "strategy" in using the well-known trademark of a financial trader in the case <ctraderts.com> (Ctrader Limited v Ibnu Rusdi and Private Registration WIPO Case No. D2013-1800); Ctrader Limited is a company who designed a Forex trading platform called CTRADER and holds registered trademarks dating back to 2010. Such prior conduct suggests that the Respondent has engaged in a pattern of conduct of registering domain names in order to prevent the rights holder from registering the same, behaviour which is prohibited by Paragraph 4 (b) (ii) of the Policy.

PROCEDURAL FACTORS

The Panel is satisfied that all procedural requirements under UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

The Complainant is a well-known Forex broker on the New York Stock Exchange. The Respondent has used a domain which is identical with the registered trademarks of the Complainant. Furthermore, he used the Complainant's trademarked logo, simply changing the text underneath the logo to 'worldwide' and changing the colours used. As the Complainant has shown the page source information revealed that the Respondent has set up links to redirect to other competitor websites. Although the website is now closed, the content mentioned by the Complainant could still be found on the Internet Archive/Waybackmachine.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

AND THE DISPUTED DOMAIN NAME(S) IS (ARE) TO BE

1. **FXCM.CO.NL**: Transferred

PANELLISTS

Name	**Thomas Hoeren**

DATE OF PANEL DECISION 2014-11-13

Publish the Decision