Decision for dispute CAC-UDRP-102877

Case number	CAC-UDRP-102877
Time of filing	2020-01-30 11:04:48
Domain names	DEUTSCHE-BOERSE.ONLINE

Case administrator

Name	Šárka Glasslová (Case admin)

Complainant

Organization	Deutsche Börse AG

Complainant representative

Organization	Grünecker Patent und Rechtsanwälte PartG mbB

Respondent

Name	Aleksey Kuchkov

OTHER LEGAL PROCEEDINGS

The panel is not aware of any other legal proceedings related to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of the following trademark registrations:

- International trademark registration no. 917734 DEUTSCHE BÖRSE Group (&device) with priority of 18.08.2006 for international classes 9, 16, 35, 36, 41, 42, 45 with protection for CH, RU;

- German trademark registration no. 30648274 DEUTSCHE BÖRSE (&device) with priority of 4.8.2006 for international classes 36,9,16, 35, 38, 41, 42, 45;

- German trademark registration no 39404080 “Deutsche Börse” with priority of 29.11.1994 for international classes 36, 9, 16, 35, 42

- EUTM no. 5276738 DEUTSCHE BÖRSE (&device) with priority of 04.08.2006 for international classes 9, 16, 35, 36, 38, 41, 42;

- EUTM no. 000886481 "DEUTSCHE BÖRSE" with priority of 24.07.1998 for international classes 9, 16, 35, 36, 42.

FACTUAL BACKGROUND

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

A. Language of the Proceedings

The Complainant requests that the proceeding shall be conducted in the English language.
Paragraph 11(a) of the Rules provides that “unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding”. The Panel may also order that any documents submitted in a language other than that of the proceeding should be translated.

The registrar is offering its services in the Russian (www.reg.ru) and English (www.reg.com) language. Essential documents are available in the English language (www.reg.com). The Complainant is not aware of the language of the Registration Agreement, which was the basis for the registration of the disputed domain name. According to the information provided by the Registrar the language of the Registration Agreement is Russian

However, as regularly noted by previous UDRP panels, paragraph 11 of the Rules must be applied in accordance with the overriding requirements of paragraphs 10(b) and 10(c) of the Rules that the parties are treated equally, that each party is given a fair opportunity to present its case and that the proceeding takes place with due expedition (see e.g. General Electric Company v. Edison Electric Corp. a/k/a Edison Electric Corp. General Energy, Edison GE, Edison-GE and EEEGE.COM, WIPO Case No. D2006-0334). Accordingly, account should be taken of the risk that a strict and unbending application of paragraph 11 of the Rules may result in delay, and considerable and unnecessary expenses of translating documents.

In deciding whether to allow the proceedings to be conducted in a language other than the language of the Registration Agreement, and to require the Complainant in an appropriate case to translate the Complaint into the language of that agreement, the Panel must have regard to all “the relevant circumstances”. The factors that the Panel should take into consideration include whether the Respondent is able to understand and effectively communicate in the language in which the Complaint has been made and would suffer no real prejudice, and whether the expenses of requiring translation and the delay in the proceedings can be avoided without at the same time causing injustice to the parties (see SWX Swiss Exchange v. SWX Financial LTD, WIPO Case No. D2008-0400).

According to the email correspondence provided, the Respondent corresponds with third parties in English and is therefore familiar with the English language. Also the Complainant’s website to which the disputed domain name refers is available in English, but not in Russian. It has to be assumed that the Respondent is able to understand the language of the website to which the disputed domain name refers.

Finally, the disputed domain name is clearly used for illegitimate activities. Any further delay would increase the risk that further users are defrauded.

B. Identical of confusingly similar

As already elaborated under (I), the disputed domain name is identical or confusingly similar to the Complainant’s trademark registrations.

C. The Respondent does not have any rights or legitimate interest in the domain name

The Complainant has also not licensed or otherwise authorized the Respondent to register the disputed domain name. There is no indication that the Respondent is using the disputed domain name to offer bona fide goods and services or making a legitimate non-commercial or fair use of the disputed domain name. The disputed domain name is redirecting users to the Complainant’s authentic website and therefore to the services provided by the Complainant. Thus, increasing the impression that also the emails sent with email addresses based on the disputed domain name are authentic. This impression is further reinforced by the allocation of an IP-address based in Frankfurt, i.e. where the Complainant has its registered office, to the

disputed domain name.

As already discussed under (II) the domain name is therefore exclusively used for impersonating the Complainant and using the Complainant's reputation as a well-known trustworthy and reliable provider of financial services for defrauding third parties. This can never confer rights or legitimate interests on a respondent (compare WIPO Overview 3.0, section 2.13.1.).

D. Registered and used in bad faith

Based on the use of the disputed domain name to impersonate Complainant in emails to third parties to perpetrate fraud as documented by the emails, it is more than likely that Respondent "solely registered the disputed domain name for fraudulent purposes." L'Oréal v. Cimpress Schweiz GmbH, WIPO Case No. DCO2017-0021; see GOLDEN GOOSE S.P.A. v. WhoisGuard Protected / Wei Zhang, WIPO Case No. D2018-2442. Thus, the disputed domain name was registered and used in bad faith.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed 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).

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 disputed domain name (within the meaning of paragraph 4(a)(ii) of the Policy).

BAD FAITH

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

Regarding the language of the proceedings, the Panel accepts to render the decision in English. It has been proven than all us of the domain name in dispute is in English, the Respondent corresponds with third parties in that language and is therefore familiar with the English language.

PRINCIPAL REASONS FOR THE DECISION

I. RIGHTS

The disputed domain name is confusingly similar to the Complainant's registered trademarks since it reproduces the Complainant's mark 'DEUTSCHE BÖRSE'. The disputed domain name even uses the hyphen in the middle of the words, just like on the Complainant's official website.

II. NO RIGHTS OR LEGITIMATE INTERESTS

The Respondent has not submitted any response. Therefore, it has submitted no information on possible rights or legitimate interests it might hold. On its part, the Complainant has submitted information and arguments which allow it to be reasonably assumed that the Respondent has no rights or legitimate interest in the domain name in dispute.

As the WIPO Arbitration and Mediation Center pointed out in UDRP case No. D20020856:

“As mentioned [in the decision], the Respondent has not filed a Response and is therefore in default. In those circumstances when the Respondent has no obvious connection with the disputed Domain Names, the prima facie showing by the Complainant that the Respondent has no right or legitimate interest is sufficient to shift the burden of proof to the Respondent to demonstrate that such a right or legitimate interest exists.“ WIPO Case No. D20020273 <sachsenanhalt>; WIPO Case No. D20020521 <volvovehicles.com>.

Furthermore, the disputed domain name redirects to the Complainant's website, which implies an implicit recognition that the Complainant is the legitimate owner of the name.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.

III. BAD FAITH

The Respondent has, as a result of his default, not invoked any circumstances which could invalidate the Complainant´s allegations and evidence with regard to the Respondent´s registration and use of the disputed domain name in bad faith.

It is demonstrated that the disputed domain name is being used in such a way as to impersonate the Complainant's official website. The Respondent is thus attempting to mislead Internet users into thinking that its email address is from the Complainant. This impersonation is aided by the very meaning of the ONLINE top-level domain name. It is therefore clear that the Respondent registered the domain name for this purpose.

Paragraph 4(b) (iiii) of the Policy provides that the following circumstances are deemed to be evidence that the Respondent has registered and is using the disputed domain name in bad faith:

(iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation or endorsement of its website or location or of a product or service on its website or location.

As mentioned in Andrey Ternovskiy dba Chatroulette v. Alexander Ochki, WIPO Case No. D2017-0334:

"It is clear in the Panel's view that in the mind of an Internet user, the disputed domain names could be directly associated with the Complainant's trademark, which is likely to be confusing to the public as suggesting either an operation of the Complainant or one associated with or endorsed by it (see AT&T Corp. v. Amjad Kausar, WIPO Case No. D2003-0327)."

It has, therefore, been satisfactorily demonstrated to the Panel that the disputed domain name has been registered and used in bad faith.

For the reasons stated above, it is the decision of this Panel that the Complainant has satisfied all three elements of paragraph 4(a) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **DEUTSCHE-BOERSE.ONLINE**: Transferred

PANELLISTS

Name	**José Ignacio San Martín**

2020-03-23

DATE OF PANEL DECISION 2020-03-23

Publish the Decision