

Decision for dispute CAC-UDRP-103885

Case number	CAC-UDRP-103885
Time of filing	2021-06-29 09:49:56
Domain names	EurexTrade.xyz, EureXTrad.buzz

Case administrator

Organization	Iveta Špiclová (Czech Arbitration Court) (Case admin)
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Complainant

Organization	Deutsche Börse AG
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Complainant representative

Organization	Grünecker Patent und Rechtsanwälte PartG mbB
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Respondent

Name	Nonthawat Tanuwuttiwat
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OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings which are pending or decided and which relate to the disputed domain names.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of a number of German (word and word/design) registrations for the trademark EUREX, in particular the following:

- German Trademark Registration No. 303 09 064 EUREX; and
- German Trademark Registration No. 397 56 930 EUREX (and design).

The Complainant further owns International Registrations for the EUREX mark under Nos. 635015 and 812147.

In addition, Complainant is the owner of

- EUTM No. 744763 EUREX; and

- EUTM No. 3378973 EUREX US.

The aforementioned trademarks are registered in particular in class 36 for financial services.

FACTUAL BACKGROUND

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

The Complainant in these administrative proceedings is Deutsche Börse AG.

The Complainant is one of the leading market place organizers for financial services, particularly trading in shares and other securities worldwide. Moreover, the Complainant is a transaction service provider, which affords international companies and investors access to global capital markets by means of advanced technology. Its product and service portfolio covers the entire process chain from order input to custody of shares and derivatives.

Deutsche Börse Group has customers in Europe, the USA and Asia, who are serviced by more than 9.000 employees at locations in Germany, Luxemburg, Switzerland and the USA, as well as at representative offices in London, Paris, Chicago, New York, Hong Kong, Dubai, Moscow, Beijing, Tokyo and Singapore.

In Germany, Complainant is the leading company in its field of business.

Among others, Deutsche Börse Group organizes one of the world's largest derivative markets under the trademark EUREX and operates one of the world's leading clearing houses with EUREX CLEARING. In the area of securities financing it further operates EUREX REPO.

EUREX Group is made up of the EUREX Frankfurt AG, EUREX CLEARING, EUREX REPO and EUREX Securities Transactions Services GmbH in the derivatives business with representative offices around the world.

EUREX, the futures and options exchange, is one of the world's largest international market organizers for the trading of futures and options on equities and equity indices, as well as of interest rate derivatives. Today, around 370 market participants in 33 countries are connected to the EUREX trading system. More than 7,000 traders are registered with EUREX.

The disputed domain names are confusingly similar to the Complainant's "EUREX" trademarks. Each of the disputed domain names contains the EUREX Trademark in its entirety. In addition, they contain the further element "trade" respectively "trad", which describe the services for which the Complainant's trademark is ordinarily used. It is a well-established principle that descriptive or generic additions to a trademark, and particularly those that designate the goods or services with which the mark is used, do not avoid confusing similarity of domain names and trademarks (as held in, inter alia, Time Warner Entertainment Company L.P. v. HarperStephens, WIPO Case No.D2000-1254, concerning over 100 domain names including <harrypotterfilms.net>).

The disputed domain names are registered via Privacy Service Providers.

On the website available under the disputed domain names the entity providing the services is only identified as EUREX Corporation on the download page for the corresponding apps that is available under the disputed domain name <eurextrad.buzz> and linked from <eurextrade.xyz> under the download buttons for the respective app, respectively as EUREX within the copyright notices - Even on the Section " About us", only the mark EUREX with a stylized E is displayed, but neither the entity operating the services nor any address data are disclosed. Briefly mentioned is also a company "East Fortune", without providing any further information.

However, there is the following reference to the Complainant

"This platform is the world's leading digital asset trading platform. It operates in conjunction with the Deutsche Börse and the Swiss National Stock Exchange (SIX Swiss Exchange). We constantly strive to improve security features to ensure the security of our customers' digital assets. The model is to bring customers projects with sustainable value, and only projects with the highest quality will be selected and provide transaction services."

The Respondent, respectively the entities mentioned on the websites as providing the services, have never been authorized or otherwise been licensed or permitted by the Complainant to use any of its trademarks. The Respondent is also not affiliated in any way with the Complainant.

Not only by using the trademark EUREX as distinctive element of the domain name together with the descriptive element trad(e) describing the Complainant's field of service, but also through the specific reference in the "About us" section to the Complainant, the Respondent implies an affiliation that does actually not exist.

The Respondent, respectively the person/entity actually controlling the disputed domain names are allegedly providing financial trading services regarding high risk financial assets as various cryptocurrencies (Bitcoin (BTC), DASH, EOS, Ethereum (ETH), etc.).

Already by using the disputed domain names they create the incorrect impression that at least a connection with the Complainant exists. This is even increased by the already mentioned reference to the collaboration with Complainant within the About Us section of the website.

It is evident that by registering and using the disputed domain names, the Respondent has intentionally attempted to attract, for commercial gain, Internet users by creating a deliberate likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation or endorsement of the Respondent's website or of a product or service on the Respondent's website or location.

Under the disputed domain names, the Respondent is allegedly operating a trading platform, which certainly requires that funds are transmitted to the Respondent for trading purposes. If the nature of the trading platform is in light of the fact that not even a company name and address is provided and the apparent non-existing regulation by the competent financial authorities (contrary to allegations on the website in the About Us section) not straightforward fraudulent (which it likely is), the use of the trading platforms for investments purposes is at least extremely risky. Therefore, to attract traders, it is necessary to appear as a genuine and reputable company. By choosing the disputed domain names <eurextrade.xyz and eurextrad.buzz> consisting of the Complainant's trademark EUREX plus a common generic term in the financial sector, the Respondent tries to intentionally mislead potential customers in order to attract them to their services, making them believe that the website is operated by the Complainant or that at least an, in fact, non-existing association with the Complainant exists. This is evidence of a bad faith registration and use under paragraph 4(b)(iv) of the Policy (AXA, S.A. v. PrivacyProtect.org / Koddos, Ronald Linco, WIPO Case No. D2010-0270).

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

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

It is well established that the specific top level of a domain name such as ".com", ".org" or in casu ".xyz" and "buzz" does not affect the domain name for the purpose of determining whether it is identical or confusingly similar.

Previous panels have found that the slight spelling variations or addition of generic word elements does not prevent a domain name from being confusingly similar to the complainant's trademark. Adding the word "trad(e)" after the trademark EUREX in the disputed domain names do not take away the confusing similarity between the domain name and the trademark. It does not affect the confusing similarity in this case whether or not the word "trade" is considered distinctive or simply generic as the dominant element EUREX is identical in the trademarks of the Complainant and the disputed domain names. Simple adding of common words is not a sufficient element to escape the finding that the disputed domain names are confusingly similar to the complainant's trademarks and domain names.

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 names (within the meaning of paragraph 4(a)(ii) of the Policy).

The Complainant contends that the Respondent is not affiliated with him nor authorized by him in any way to use his trademarks in a domain names or on a website. The Complainant does not carry out any activity for, nor has any business with the Respondent.

The Respondent has not filed a response or in any other way proven or pointed to any possible legitimate interest in the disputed domain names.

BAD FAITH

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

Given the distinctiveness and well-known character of the EUREX trademark as well as the references made under "About Us" on the webpage of the disputed domain names, it is clear that the Respondent has registered the disputed domain names with knowledge of the Complainant and its trademarks. Given the circumstances of the case, including the provided information of the use and reputation of the Complainant's trademark EUREX and the distinctive nature of this mark, it is inconceivable to the Panel in the current circumstances that the Respondent registered the disputed domain names without prior knowledge of the Complainant and the Complainant's mark.

The Panel therefore finds that the disputed domain names were registered in bad faith.

In addition, the disputed domain names are not used for any bona fide offerings.

All the elements presented by the Complainant surrounding the actual use of the disputed domain names lead to the conclusion that the Respondent has intentionally attempted to attract Internet users to the Respondent's website for commercial gain by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of such websites. Therefore, this Panel finds that the disputed domain names have been registered and are being used in bad faith.

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

1. The three essential issues under the paragraph 4(a) of the Policy are whether:

i. the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and

ii. the Respondent has no rights or legitimate interests with respect to the disputed domain name; and

iii. the disputed domain name has been registered and is being used in bad faith.

2. The Panel reviewed carefully all documents provided by the Complainant. The Respondent did not provide the Panel with any documents or statements. The Panel also visited all available websites and public information concerning the disputed domain names, namely the WHOIS databases.

3. The UDRP Rules clearly say in its Article 3 that any person or entity may initiate an administrative proceeding by submitting a complaint in accordance with the Policy and these Rules.

4. The Panel therefore came to the following conclusions:

a) The Complainant states and proves that the disputed domain names are confusingly similar to its trademarks and its domain names. Indeed, the trademark is partially incorporated in the disputed domain names.

The disputed domain names are therefore deemed confusingly similar.

b) The Respondent is not generally known by the disputed domain names and have not acquired any trademark or service mark rights in the name or mark, nor is there any authorization for the Respondent by the Complainant to use or register the disputed domain names.

The Panel therefore finds that the Respondent does not have rights or legitimate interest with respect to the disputed domain names.

c) It is clear that the Complainant's trademarks and website(s) were used by the Complainant long time before the disputed domain names were registered and that the disputed domain names were registered in bad faith. It is concluded that it is inconceivable that the Respondent will be able to make any good faith use of the disputed domain names.

The Panel therefore finds that the disputed domain names have been registered and are being 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. EUREXTRADE.XYZ: Transferred
2. EUREXTRAD.BUZZ: Transferred

PANELLISTS

Name	Lars Karnoe
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DATE OF PANEL DECISION 2021-08-09

Publish the Decision
