

Decision for dispute CAC-UDRP-104058

Case number	CAC-UDRP-104058
Time of filing	2021-10-07 09:39:18
Domain names	deutsche-börse.com, deutschebörse.com

Case administrator

Organization	Denisa Bilík (CAC) (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

Organization	Maximus Holding, Inc.
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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 the following registered trademarks (among others):

German registered trademark:

DEUTSCHE BÖRSE, word mark, registered April 20, 1998 under number 39404080, for goods and services in Nice classes 9, 16, 35, 36 and 42.

European Union registered trademark:

DEUTSCHE BÖRSE, word mark, registered November 14, 2000 under number 886481, for goods and services in Nice classes 9, 16, 35, 36 and 42.

FACTUAL BACKGROUND

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

The Complainant has its place of incorporation and principal place of business in Frankfurt am Main, Germany. It is a leading marketplace organizer for financial services, trading in shares and other securities worldwide, having customers in Europe, the United States of America ("USA") and Asia, who are serviced by more than 3,200 employees at locations in Germany, Luxembourg, Switzerland and the USA, as well as at representative offices in London, Paris, Chicago, New York, Hong Kong, Dubai, Moscow, Beijing, Tokyo and Singapore

The Complainant owns trademark registrations consisting of, or with, the element DEUTSCHE BÖRSE in various jurisdictions worldwide and, since 1992, company name rights for Deutsche Börse AG, which is regularly abbreviated as Deutsche Börse. The Complainant's website is found at "www.deutsche-boerse.com".

The disputed domain names are identical to the Complainant's trademark and the addition of a hyphen to the first disputed domain name does not render it dissimilar from said mark.

The Complainant has not licensed or otherwise authorized the Respondent to register the disputed domain names. There is no indication that the Respondent is using the disputed domain names to offer bona fide goods and services, nor is it making a legitimate non-commercial or fair use of the disputed domain names.

Users accessing the disputed domain names are redirected to various websites, including (1) "de.newzmayo.me" which contains an article about crypto currencies under the title "China startet offizielle Kryptowährung: Die Weltbank und Regierungen sind entsetzt" (China starts official crypto currency: Worldbank and Governments are shocked), including a link to a sales platform for crypto currencies; and (2) "predirect.net" with the title "„Löwen “ System macht Deutsche Bürger reich! Sendung darf nicht ausgestrahlt werden, der Sender ist stinksauer BILD untersucht die Wahrheit über das geheime System zum Geld verdienen" ("Lion" System Makes German Citizens Rich! Programme may not be broadcast, broadcaster is furious BILD investigates the truth about the secret system for making money"). Said page contains links to software promising miraculous profits with investments into crypto currencies.

In addition, occasionally the user is redirected to pages requiring the user to agree to push notices. Previously, paid links e.g. to "Best Retirement Stocks" or to the "Best Brokerage Account" were also displayed on the page.

The Respondent has registered numerous internationalized domain names reflecting well-known brands, such as:

<Citröen.com>
<Citröen.net>
<Škoda.net>
<Löwenbräu.com>
<Südmilch.com>
<Südzucker.com>

See also Wüstenrot Holding AG v. Maximus Holding, Inc., WIPO Case No. D2005-0942.

There is a clear pattern of the Respondent registering domain names corresponding to well-known brands, which are then used for generating revenue and directing online users to potentially fraudulent websites, as the aforementioned websites advertising dubious crypto currency investments. It is obvious that the disputed domain names are identical to the Complainant's trademarks. The Complainant is operating the Frankfurt Stock Exchange and enjoys an outstanding reputation as a reliable provider of financial services, and the disputed domain names are perfectly suited for these purposes.

This use is not a legitimate non-commercial or fair use of the disputed domain names, as it uses the goodwill of the famous DEUTSCHE BÖRSE mark to generate revenue and direct online users to potentially fraudulent websites.

Respondent's use of the disputed domain names, which are automatically redirecting online users to third-party websites, is

an indication of bad faith use. This is particularly so where Respondent presumably attracts commercial gain through redirecting traffic to these third-party websites, as becomes evident by the page with the text "No Sponsors" displayed on 25 October, 2020.

The online user is, most often, redirected to either a fraudulent website, or websites, which instruct the user to do something, such as clicking "Allow" on a pop-up box. Such websites demonstrate characteristics typical of fraudulent websites, whether through phishing (inputting personal data or depositing money to a website) or through downloading malware (by downloading a file or permitting the website to carry out a function).

Thus, it is apparent that the disputed domain names were 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 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).

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).

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).

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 has demonstrated that it has UDRP-relevant rights in its DEUTSCHE BÖRSE registered trademark.

The disputed domain names are internationalized domain names which translate in compatible applications as <deutsche-börse.com> and <deutschebörse.com>. It is long-accepted in cases under the Policy that an internationalized domain name is equivalent to its application-translated version, and thus the comparison proceeds between the Complainant's mark and the disputed domain names rendered as <deutsche-börse.com> and <deutschebörse.com> respectively.

The Complainant points out that the second level of the first disputed domain name contains the Complainant's said trademark in exactly the same alphabetic order, with the space between the two words merely replaced by a dash or hyphen to create "deutsche-börse". In addition, it has noted that the second level of the second disputed domain name contains the Complainant's said trademark in exactly the same alphabetic order, merely missing the space between the two words in the mark entirely, so as to create "deutschebörse".

The presence of the hyphen in the first disputed domain name does not alter the fact that the Complainant's DEUTSCHE BÖRSE mark is fully recognizable therein on a straightforward side-by-side comparison. Likewise, on a similar comparison, the missing space in the second disputed domain name is of no significance, given that spaces are not permitted in domain names for technical reasons. The generic Top-Level Domain in respect of each of the disputed domain names, in this case ".com", is typically disregarded for the purposes of the comparison under the first element analysis of the Policy. Accordingly, the Panel finds that the disputed domain names are both confusingly similar to the Complainant's DEUTSCHE

BÖRSE trademark.

Based on its submissions in the Complaint, the Panel is satisfied that the Complainant has established a prima facie case that the Respondent does not have rights or legitimate interests in the disputed domain names. For example, the Complainant notes that it has not licensed or otherwise authorized the Respondent to register the disputed domain names, and that there is no indication that the Respondent is using the disputed domain names to offer bona fide goods and services, nor is it making a legitimate non-commercial or fair use of the disputed domain names. The Complainant describes the use to which the disputed domain names have been put, namely, to publish articles promoting various crypto currency schemes which may be fraudulent in nature, to seek permission from users to allow unwanted “push notifications”, and to redirect users to sites involved in phishing or distribution of malware.

The Respondent has failed to rebut the Complainant’s prima facie case in that it has not filed a Response. There are no surrounding facts or circumstances tending to show that the Respondent may otherwise have rights or legitimate interests in either of the disputed domain names. It is therefore reasonable in the circumstances for the Panel to find that that the Respondent has no such rights or legitimate interests therein.

The Panel finds that the Complainant has successfully made out a case of registration and use in bad faith in respect of the disputed domain names. The disputed domain names are almost identical to the Complainant’s distinctive DEUTSCHE BÖRSE registered mark, which is well-known in connection with financial services. Said mark was registered long before the registration date of the disputed domain names, the registration date being August 6, 2003 in the case of both of the disputed domain names. The Complainant’s uncontradicted submissions indicate that the Respondent has used the disputed domain names in connection with the promotion of various allegedly fraudulent crypto currency and other financial schemes of an apparently dubious nature. In addition, the Complainant’s evidence shows that the Respondent has previously used at least one of the two disputed domain names in connection with pay-per-click advertising promoting various financial schemes. The Panel considers it reasonable to infer from these facts and circumstances (in the absence of any evidence or submissions from the Respondent to the contrary) that the Respondent more probably than not had knowledge of the Complainant and its DEUTSCHE BÖRSE trademark when the Respondent registered each of the disputed domain names and, likewise, that it had the requisite intent to target such mark for its own commercial gain.

The Complainant has provided evidence of the manner of use of the disputed domain names, which suggests that the Respondent is intentionally using the fame of the Complainant’s mark in the financial services arena to entice Internet users to become involved with various financial schemes of a dubious nature. There are also serious allegations that the disputed domain names redirect on occasion to websites engaged in phishing and/or the distribution of malware. All of these matters, taken together, demonstrate on the balance of probabilities that the Respondent has engaged in deliberate targeting of the Complainant’s mark with a view to confusing Internet users for its own commercial gain. As far as the Panel is concerned, this constitutes prototypical cybersquatting and could not on any view be regarded as good faith registration and use of the disputed domain names.

In addition to the above finding of registration and use in bad faith, the Complainant’s case is supplemented by evidence that the Respondent has engaged in a pattern of conduct whereby it has registered various other internationalized domain names corresponding to well-known trademarks in order to prevent the owner of the trademark concerned from reflecting its mark in a corresponding domain name. The volume of domain names concerned, together with a finding of registration and use in bad faith against the Respondent by the panel in *Wüstenrot Holding AG v. Maximus Holding, Inc.*, WIPO Case No. D2005-0942, involving an internationalized domain name based a trademark described by the panel as “original and distinctive”, also points firmly in the direction of a finding of registration and use in bad faith in its own right.

The Respondent has failed to address the Complainant’s contentions by way of any Response and did not advance any alternative motivation for its registration and use of the disputed domain names which might have indicated that its actions were in good faith. In the absence of such, the Panel cannot conceive of any suitable submissions which the Respondent might have made in the circumstances of the present case.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. DEUTSCHE-BÖRSE.COM: Transferred
 2. DEUTSCHEBÖRSE.COM: Transferred
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PANELLISTS

Name	Andrew Lothian
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DATE OF PANEL DECISION 2021-11-04

Publish the Decision
