

## Decision for dispute CAC-UDRP-104182

Case number CAC-UDRP-104182

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Domain names eurexchanger.com

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### 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

Name Tom Hardy

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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 name.

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#### IDENTIFICATION OF RIGHTS

The Complainant owns the following Trademark Registrations for the mark EUREX:

- German Trademark Registration No. 303 09 064;
  - German Trademark Registration No. 397 56 930;
  - International Registrations Nos. 635015 and 812147;
  - European Union Trademark Registration No. 744763; and
  - European Union Trademark Registration No. 3378973.
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#### FACTUAL BACKGROUND

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

The Complainant is the leading European derivatives exchange and marketplace organizer for financial services, particularly trading in shares and other securities worldwide. It has provided these services under the trademark EUREX since 1998 and uses the website address [www.eurex.com](http://www.eurex.com). Around 370 market participants in 33 countries are connected to the EUREX

trading system and more than 7,000 traders are registered with the Complainant.

The disputed domain name was registered on December 30, 2020 and resolves to a website that displays the EUREX trademark and logo as well as the notice "EUREX A Member of Deutsche Börse Group". The website claims to provide a cryptocurrency trading platform which requires that substantial funds be transferred to the Respondent for trading purposes. These financial trading services use the Complainant's trademark to deceive members of the public into believing that they can safely invest funds through the Respondent's company.

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#### PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

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#### 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).

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#### 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).

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#### 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).

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#### 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.

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#### PRINCIPAL REASONS FOR THE DECISION

A. The disputed domain name is confusingly similar to a trademark or service mark in which the Complainant has rights

Paragraph 4(a)(i) of the Policy requires that the Complainant demonstrate its ownership of trademark rights and that the disputed domain name is confusingly similar to such trademark. *Boehringer Ingelheim Animal Health France / Merial v. S Jon Grant, 103255 (CAC September 30, 2020)* ("it is imperative that the Complainant provides evidence that it has rights in a trade mark or service mark, following which the Panel shall assess whether or not the disputed domain name is identical or confusingly similar to the Complainant's trade mark(s).").

The Complainant has submitted screenshots from the website of the German Patent and Trademark Office and from the TMView website as evidence that it owns registered rights to its asserted EUREX trademark in Germany, the European Union, and other jurisdictions. The earliest of these reflects a registration date of June 8, 1999. Registration with such offices has been found sufficient to satisfy the threshold requirement of proving trademark rights under Paragraph 4(a)(i) of the Policy. *Margaritaville Enterprises, LLC v. Neil Wein, FA 1916531 (FORUM November 9, 2020)* ("It is well established by decisions under this Policy that a trademark registered with a national authority is evidence of trademark rights"). The disputed domain name, which was registered on December 30, 2020, adds the word "changer" to the EUREX trademark and the Complainant asserts that this increases the confusing similarity of the disputed domain name as a portion of the Complainant's business involves acting as a derivatives exchange. The domain name further adds the ".com" gTLD. Thus, the Complainant asserts that the second level of the disputed domain name is confusingly similar to the asserted trademark and will lead internet users to wrongly believe that the disputed domain name is endorsed by the Complainant. Prior panels have found confusing similarity under similar fact situations. *Avast Software s.r.o. v. Milen Radumilo, 102384 (CAC April 19, 2019)* ("it is well accepted that where the relevant trademark is recognizable within the disputed domain name, the addition of descriptive terms would not prevent a finding of confusing similarity.").

Also, the extension “.com” typically adds no meaning or distinctiveness to a disputed domain name and may most often be disregarded in the Paragraph 4(a)(i) analysis. *Novartis AG v. Wei Zhang*, 103365 (CAC December 9, 2020) (“it is generally accepted that the addition of the top-level suffix in the domain name (e.g., ‘.com’) is to be disregarded under the confusing similarity test”).

Accordingly, the Panel finds that the Complainant has rights to its claimed trademark and that the addition of a descriptive word thereto in the disputed domain name is insufficient to avoid a finding that it is confusingly similar to the Complainant’s trademarks. Thus, the Complainant has satisfied Paragraph 4(a)(i) of the Policy.

#### B. The Respondent has no rights or legitimate interests in respect of the disputed domain name

Pursuant to Paragraph 4(a)(ii) of the Policy, the Complainant has the burden of making a prima facie showing that the Respondent has no rights or legitimate interests in the disputed domain name. *Cephalon, Inc. v. RiskIQ, Inc.*, 100834 (CAC September 12, 2014). Once this burden is met, it then shifts to the respondent to demonstrate that it does have rights or legitimate interests in the domain name.

Paragraph 4(c) of the Policy offers the Respondent several examples of how to demonstrate its rights or legitimate interests in the disputed domain name. While the Complainant does not specifically cite or reference these in its Complaint, the Panel will nevertheless analyse each example set out in Paragraph 4(c).

With reference to Paragraph 4(c)(ii) of the Policy the Complaint states that “there is no connection between the Respondent and the Complainant”. The Respondent has not participated in this case and so it does not contest this. As such, the Panel concludes that the Respondent is not affiliated with the Complainant, nor is it authorized or licensed to use the Complainant’s trademark or to seek registration of any domain name incorporating the asserted trademark. Furthermore, the Registrar for the disputed domain names identifies the Registrant as Tom Hardy. There is no evidence that the Respondent is known otherwise and its use of the Complainant’s trademark on its website does not, alone, support a different conclusion. *Madonna Ciccone, p/k/a Madonna v. Dan Parisi and "Madonna.com"*, D2000-0847 (WIPO October 16, 2000) (“use which intentionally trades on the fame of another” should not be considered. “To conclude otherwise would mean that a Respondent could rely on intentional infringement to demonstrate a legitimate interest, an interpretation that is obviously contrary to the intent of the Policy.”) Based upon the available evidence in this case, the Panel cannot conclude that the Respondent is commonly known by the disputed domain name.

Next, under Paragraphs 4(c)(i) and 4(c)(iii) of the Policy the Panel considers whether the Respondent is using the disputed domain name to make a bona fide offering of goods or services or whether it is making a legitimate non-commercial or fair use of the disputed domain name. The disputed domain name resolves to a website that makes prominent use of the Complainant’s trademark and claims to offer online cryptocurrency exchange services. Using a confusingly similar domain name to pass oneself off as a Complainant is not a bona fide offering of goods or services or a legitimate non-commercial or fair use per Paragraphs 4(c)(i) or (iii) of the Policy. See *Ripple Labs Inc. v. Jessie McKoy / Ripple Reserve Fund*, FA 1790949 (FORUM July 9, 2018) (finding that the Respondent did not use the disputed domain name to make a bona fide offering of goods or services per Paragraph 4(c)(i) of the Policy or for a legitimate non-commercial or fair use per Paragraph 4(c)(iii) where the website resolving from the disputed domain name featured the Complainant’s mark and various photographs related to the Complainant’s business). Here, the Complainant claims that the Respondent uses the disputed domain name to pass itself off as the Complainant in order to deceive members of the public and “benefit from the Complainant’s reputation as a trustworthy provider of financial services.” The Complainant provides screenshots of the Respondent’s resolving website and claims that the site fraudulently impersonates the Complainant and “prominently displays an [sic] Eurex logo”. The Panel notes that the website claims to offer financial services that are very similar to those offered by the Complainant and a footnote on the page states that the site is “Powered By Eurex A Member of Deutsche Börse Group”. The Respondent has not filed a Response nor made any other submission in this case. As the Complainant has made out a prima facie case of impersonation for commercial gain that has not been rebutted by the Respondent, upon a preponderance of the evidence before it the Panel finds that the Respondent fails to make a bona fide offering of goods or services or a legitimate non-commercial or fair use of the disputed domain name per Paragraphs 4(c)(i) or (iii) of the Policy.

### C. The disputed domain name was registered and used in bad faith

Under Paragraph 4(a)(iii) of the Policy, the Complainant must demonstrate both that the disputed domain name was registered and is being used in bad faith. Further guidance on that requirement is found in Paragraph 4(b) of the Policy, which sets out four examples of possible actions by the Respondent that may satisfy this burden of proof.

Inherently prerequisite to a finding of bad faith under Paragraph 4(a)(iii) of the Policy is some attribution of knowledge of the Complainant's claimed trademark, whether actual or based upon a conclusion that the Respondent should have known of the trademark. See, *Domain Name Arbitration*, 4.02-C (Gerald M. Levine, Legal Corner Press, 2nd ed. 2019) ("Knowledge and Targeting Are Prerequisites to Finding Bad Faith Registration"); *USA Video Interactive Corporation v. B.G. Enterprises*, D2000-1052 (WIPO December 13, 2000) (claim denied where "Respondent registered and used the domain name without knowledge of Complainant for a bona fide commercial purpose."). See also, *WIPO Overview 3.0*, par. 3.1.1 (when examining whether "circumstances indicate that the respondent's intent in registering the disputed domain name was in fact to profit in some fashion from or otherwise exploit the complainant's trademark", Panels may consider such issues as "the respondent's likely knowledge of the complainant's rights"). Here, the Complainant claims that it is "the leading company in its field of business" and that "around 370 market participants in 33 countries are connected to the EUREX trading system. More than 7,000 traders are registered with EUREX." In support, the Complainant submits screenshots from its [www.eurex.com](http://www.eurex.com) and [www.deutsche-boerse.com](http://www.deutsche-boerse.com) websites which set out the scope of the Complainant's businesses. Most importantly, the Respondent's website itself prominently and repeatedly displays the Complainant's EUREX trademark and is focussed entirely on cryptocurrency financial services. Further, the website at the disputed domain name displays the footnote "Powered By Eurex A Member of Deutsche Börse Group" and, on the "Terms" page of the site the Respondent refers to itself as "EUREX Frankfurt Aktiengesellschaft" and "Eurex". From this evidence, the Panel concludes that the Respondent had actual knowledge of the Complainant's trademark at the time it registered the disputed domain name.

Next, the Complainant argues that the Respondent registered and uses the disputed domain name in bad faith as the Respondent fraudulently impersonates and passes itself off as the Complainant. Using a confusingly similar domain name to pass oneself off as a complainant can demonstrate bad faith under Paragraphs 4(b)(iii) and (iv) of the Policy. See *Abbvie, Inc. v. James Bulow*, FA 1701075 (FORUM November 30, 2016) ("Respondent uses the <abbvie.com> domain name to impersonate Complainant's CEO. Such use is undeniably disruptive to Complainant's business and demonstrates bad faith pursuant to Policy Paragraph 4(b)(iii), and/or Policy Paragraph 4(b)(iv)"). The Complainant asserts that the disputed domain name is used to "create the incorrect impression that at least a connection with the Complainant exists" and that, by using the EUREX trademark, "the Respondent tries to create the impression that the services are trustworthy". The evidence in this case shows that the Respondent has, for commercial gain, used its website at the disputed domain name to pass itself off as the Complainant to actual and potential customers in furtherance of allegedly promoting cybercurrency exchange services. The Respondent has not participated in this case to explain its actions and so, based upon a preponderance of the available evidence, the Panel finds it highly likely that the Respondent registered and uses the disputed domain name in bad faith by disrupting the Complainant's business, per Paragraph 4(b)(iii) of the Policy, and by seeking commercial gain through confusion with the Complainant's trademark, per Paragraph 4(b)(iv).

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FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. EUREXCHANGER.COM: Transferred

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### PANELLISTS

Name	Steven M. Levy, Esq.
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DATE OF PANEL DECISION 2021-12-17

