

**Decision for dispute CAC-UDRP-104157**

Case number	<b>CAC-UDRP-104157</b>
Time of filing	<b>2021-11-11 08:50:03</b>
Domain names	<b>BOERSEFRANKFURTAU.COM</b>

**Case administrator**

Organization	<b>Iveta Špiclová (Czech Arbitration Court) (Case admin)</b>
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**Complainant**

Organization	<b>Deutsche Börse AG</b>
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**Complainant representative**

Organization	<b>Grünecker Patent und Rechtsanwälte PartG mbB</b>
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**Respondent**

Name	<b>Yang Tian Ping resp. htrht haichaoth</b>
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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 registrations for the trademarks BÖRSE FRANKFURT and EUREX:

EUREX, in particular the following:

- German Trademark Registration No. 303 09 064 EUREX;
- German Trademark Registration No. 397 56 930 EUREX (and design);
- EUTM No. 744763 EUREX;
- EUTM No. 3378973 EUREX US.

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

BÖRSE FRANKFURT, in particular the following:

- EUTM Registration No. 5228408 and Swiss Trademark Registration No. 552765 BÖRSE FRANKFURT (and design) both registered with priority of 10/08/2006 for classes 9, 16, 36, 42 for, inter alia, financial affairs, in particular services of a stock exchange, of an electronic stock exchange; banking, clearing house, stock exchange and/or financial brokerage services; quotation of stock exchange prices.

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#### FACTUAL BACKGROUND

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

Complainant is one of the leading market place organizers for financial services, particularly trading in shares and other securities worldwide. Moreover, 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, 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. In Germany, Complainant is the leading company in its field of business.

Complainant is also operating the Frankfurt Stock Exchange ("Börse Frankfurt"). Further information on the Frankfurt Stock Exchange is available under the domain boersefrankfurt.de and boerse-frankfurt.com owned and operated by Complainant.

Moreover, 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 following companies in the derivatives business with representative offices around the world.

These companies are:

- EUREX Frankfurt AG – a leading global derivatives exchange trading, amongst other products and services offering the most liquid EUR-denominated equity index and fixed income derivatives, which are available under [www.eurex.com](http://www.eurex.com).
- EUREX CLEARING – one of the leading CCPs (CENTRAL COUNTERPARTIES) globally – assuring the safety and integrity of markets while providing innovation and risk management, clearing technology and client asset production. Details are available under <http://www.eurexclearing.com>.
- EUREX REPO – a leading European market place for international secured funding and financing.
- EUREX Securities Transactions Services GmbH.

Since its inception in 1998, EUREX has continuously set a proven track record in electronic trading and clearing and is proving the success of its business model by providing highly efficient liquidity pools. Having quickly become an integral part of the global derivatives market, EUREX has closed with record volumes of traded contracts almost every year. 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.

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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).

First, the Complainant claims rights in the BÖRSE FRANKFURT and EUREX marks through its trademark registrations. By virtue of its trademark registrations, Complainant has proved that it has rights in the mark under paragraph 4(a) of the Policy. See *Avast Software s. r. o. v Milen Radumilo*, 102384, (CAC 2019-03-12).

Second, the Complaint claims that the prominent part of one of the disputed domain names, <boersefrankfurtau.com>, is confusingly similar to its trademark registrations. In particular, the Complainant points out that the Respondent changed the o-Umlaut to "oe" which is the letter combination that is commonly used on keyboards with international script and the further added element "au" will be rather understood as e.g. a geographic reference to the Australian market and does not prevent a finding of confusing similarity.

Third, the Complainant further claims that another disputed domain name, <eurexvip.com>, contains the EUREX Trademark in its entirety and the additional element "vip" (common abbreviation of "very important person"), increases the similarity between the disputed domain name and the Complainant's EUREX trademark, as "vip" is a descriptive term which reinforces the association between the disputed domain name and the Complainant.

The Panel accepts that additional geographical or financial term does not alter the overall impression of the designation as being connected to the Complainant, instead the additional term may further enhance the similarity between the disputed domain name and the Complainant. The Panel also agrees that o-Umlaut is commonly considered as equivalent to "oe". Furthermore, the ".com" generic top-level domain ("gTLD") is irrelevant when establishing whether or not a mark is identical or confusingly similar for the purposes of paragraph 4(a)(i) of the Policy. See *Belron International Limited v Andrea Paul*, 103381, (CAC 2020-12-09) and *LESAFFRE ET COMPAGNIE v Tims Dozman*, 102430, (CAC 2019-04-02).

For the foregoing reasons, the Panel finds the Complainant has satisfied 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). More specifically, the Complainant must first make a prima facie case that the Respondent lacks rights and legitimate interests in the disputed domain name, and the burden of prove then shifts to the Respondent to show it does have rights or legitimate interests. See *PepsiCo, Inc. v Smith power production*, 102378, (CAC 2019-03-08) ("The Panel finds that the Complainant has made out a prima facie case that arises from the considerations above. All of these matters go to make out the prima facie case against the Respondent. As the Respondent has not filed a Response or attempted by any other means to rebut the prima facie case against it, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.").

First, the Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain names and the Respondent has 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.

Second, the Complainant further contends that the Respondent has been identified as "(c) Boerse Frankfurt Copyright" and "© 2020 Eurex Copyright" under the copyright notice on the both websites.

Having reviewed the screenshots of the websites, the Panel notes that the disputed domain names resolved to active websites claiming to be providing financial services under Complainant's marks which the Respondent has not demonstrated any relevant rights or legitimate interests on the disputed domain name, see *Deutsche Börse AG v. Sonia Howard*, 103870 (CAC 2021-07-18) ("The Complaint has included screenshots of the website operated by the Respondent at the disputed domain

name at the time of the Complainant, which provides uncontradicted evidence that the Respondent intentionally copied the design and structure of the Complainant's website, and included some material purporting to be supplied by the Complainant (e.g. contact details).") The Panel finds that the Complainant has established a prima facie case that the Respondent has no rights or legitimate interests in the disputed domain name and the Respondent has not rebutted the assertion.

For the foregoing reasons, the Panel finds the Complainant has satisfied 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).

The Complainant contends that it's trademarks BÖRSE FRANKFURT and EUREX are widely known and is one of the leading market place organizers for financial services, particularly trading in shares and other securities worldwide. Moreover, Complainant is a transaction service provider, which affords international companies and investors access to global capital markets by means of advanced technology. The Complainant is also operating the Frankfurt Stock Exchange ("Börse Frankfurt").

Given the distinctiveness of the Complainant's trademark and reputation, it is reasonable to infer that the Respondent has registered the domain names with full knowledge of the Complainant's trademark, see *Intesa Sanpaolo S.p.A. v. Intesa Trade LTD*, 104118, (CAC 2021-12-12) ("the Panel agrees with the Complainant that the Respondent was well aware of the Complainant's mark and activity at the time of the registration of the disputed domain names.").

Furthermore, the Complainant also contends that the disputed domain names resolved to websites that the design of the websites and the naming pattern of the domain names are clearly targeting the Complainant and its subsidiaries. The Complainant has provided screenshots of the resolving websites, which displays the BÖRSE FRANKFURT and EUREX marks. The Respondent has not submitted a timely response on the allegations and the false WHOIS information further evinces the bad faith. Accordingly, the Panel agree that by using the domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to your web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location under paragraph 4(b) (iv) of the Policy.

For the foregoing reasons, the Panel finds the Complainant has satisfied 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.

#### PRELIMINARY FINDINGS 1 - CONSOLIDATION OF PROCEEDING:

The Complainant pleads that the websites under the disputed domain names are largely identical. They are also largely identical to the websites that were subject to the previous proceeding (*Deutsche Börse AG v. Sonia Howard*, 103870 (CAC 2021-07-18)). It is evident from the design of the websites, the naming pattern of the domain names clearly targeting the Complainant and its subsidiaries and the timing of the registrations that the disputed domain names are under common control. Moreover, it is apparent that the registrant details provided for <eurexvip.com> (registrant "htrht haichaohth") are apparently fake. It would be therefore fair and equitable to consolidate the proceedings (*Deutsche Börse AG v. Iqbal Zafar / Domain Administrator*, See [PrivacyGuardian.org](https://www.privacyguardian.org/) / [WhoisGuard Protected](https://www.whoisguard.com/), [WhoisGuard, Inc.](https://www.whoisguard.com/) / *Iqbal Zafar, FIX Tech / Host Pakistan, Syed Dilawar, Host Pakistan Online Department / 123-reg Limited*, 123-reg Limited Case No. D2018-1757).

Having reviewed the screenshots provided by the Complainant, the Panel agrees that the not only the design, color scheme but also the content of the websites resolved by the disputed domain names are almost identical. In addition, being a residence in

Hong Kong (HK), the Panel confirms that the address on the WHOIS of one of the disputed domain names, <eurexvip.com>, does not exist which the Panel could not rule out the possibilities that both disputed domain names are under common control. The consensus view of UDRP panels is expressed under section 4.11.2 of the WIPO Overview 3.0 that "Where a complaint is filed against multiple respondents, panels look at whether (i) the domain names or corresponding websites are subject to common control, and (ii) the consolidation would be fair and equitable to all parties. Procedural efficiency would also underpin panel consideration of such a consolidation scenario."

Without receiving a timely response from the Respondent, the Panel is satisfied that the disputed domain names are highly likely under common control by the Respondent and shall be deemed to be consolidated into the present case.

PRELIMINARY FINDINGS 2 - LANGUAGE OF PROCEEDING:

The Complainant request to use English as the language of the current proceeding as the Respondent is apparently familiar with the English language considering that 1. the language of the registration agreement of one of the disputed domain names, <eurexvip.com>, is English; 2. the website[s] available under the disputed domain name[s] [are] also available in the English language; 3. the structure of the disputed domain names together with the services allegedly offered by the Respondent confirms that the Respondent is certainly familiar with the financial sector and the business activities in this field, which are largely conducted in English.

The Panel notes that the language of the Registration Agreement are Chinese and English respectively for the disputed domain names, <boersefrankfurtau.com> and <eurexvip.com> as confirmed by the Registrar. The official Complaint was submitted in English and no Response was received within the required period of time. Pursuant to paragraph 11 of the Rules, 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 is bilingual and is well equipped to deal with the proceeding in both Chinese and English. Having considered the circumstances, it is obvious that the Respondent knows English. Panel believes that it would be fair to both parties to use English as the language of proceeding and it can also uphold the principle of UDRP being a swift dispute resolution process. On this basis, the Panel determines that the language requirement has been satisfied, and decides that the language of proceeding to be English.

PRINCIPAL REASONS FOR THE DECISION

Having established all three elements required under the UDRP Policy, the Panel concludes that relief shall be granted.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **BOERSEFRANKFURTAU.COM**: Transferred
2. **EUREXVIP.COM**: Transferred

PANELLISTS

Name	Mr Paddy TAM
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DATE OF PANEL DECISION 2021-12-21

Publish the Decision