

Decision for dispute CAC-UDRP-104418

Case number CAC-UDRP-104418

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Domain names eurex.finance

Case administrator

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

Complainant

Organization Deutsche Börse AG

Complainant representative

Organization Grünecker Patent und Rechtsanwälte PartG mbB

Respondent

Name Gabriel McGrath

OTHER LEGAL PROCEEDINGS

The Panel is unaware of any other pending or decided legal proceedings in respect of the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant relies upon the following registered trade marks, amongst others:

- German trade mark registration no. 30309064, registered on 24 April 2003, for the word mark EUREX, in classes 9, 16, 35, 36, 38, 41 and 42 of the Nice Classification;
- German trade mark registration no. 39756930, registered on 2 February 1998, for the word/figurative mark EUREX, in classes 9, 16, 35, 36, 38 and 42 of the Nice Classification;
- EU trade mark registration no. 000744763, registered on 8 June 1999, for the word mark EUREX, in classes 9, 16, 35, 36, 38 and 42 of the Nice Classification; and
- EU trade mark registration no. 003378973, registered on 21 March 2005, for the word mark EUREX US, in classes 9, 16, 35, 36, 38 and 42 of the Nice Classification.

(hereinafter and interchangeably, “the Complainant’s trade mark”; “the Complainant’s trade mark EUREX”; or “the trade mark

EUREX”).

FACTUAL BACKGROUND

The Complainant’s contentions can be summarised as follows:

A. Background history

The Complainant is Deutsche Börse AG, a transaction service provider and one of the world’s leader market place organisers for financial services, in particular trading in shares and other securities.

The Complainant has customers in Europe, the USA and Asia, who are serviced by more than 9,000 employees based in Germany, Luxembourg, Switzerland and the USA, as well as representatives in many walks of the world.

The Complainant, amongst other activities, organises one of the world’s largest derivative markets under the trade mark EUREX and operates one of the world’s leading clearing houses with EUREX CLEARING, including EUREX REPO in the area of securities financing.

EUREX Group is made up of the following companies in the derivatives business: EUREX Frankfurt AG; EUREX CLEARING; EUREX REPO; and EUREX Securities Transactions Services GmbH.

EUREX was set up in 1998 and has since continuously set a proven track record in electronic trading and clearing, having become one of the world’s largest international market organisers for the trading of futures and options on equities and equity indices, as well as of interest rate derivatives.

The Complainant seeks the transfer of the disputed domain name <eurex.finance> to it (“the disputed domain name”) on the grounds set out in section B below.

B. Legal grounds

I. The disputed domain name is confusingly similar to a trade mark in which the Complainant has rights

The Complaint submits that the disputed domain name <eurex.finance> is identical to the Complainant’s trade mark EUREX; and that the generic Top-Level domain (“gTLD”) <.finance> describes the field of business in which the Complainant’s trade mark is well known, such that it increases the risk of Internet users associating the disputed domain name with the Complainant.

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

The Complainant states that the Respondent is not making a bona fide offering of goods or services by means of the disputed domain name, nor is the Respondent using the disputed domain name for legitimate non-commercial or fair use. The Complainant contends, instead, that the website at the disputed domain name (“the Respondent’s website”) diverts Internet users seeking for the Complainant’s services, by intentionally creating a likelihood of confusion with the Complainant’s trade mark as to an affiliation or association between the Complainant and the Respondent and/or between the Respondent and the Complainant’s trade mark.

The Complainant further states that it may be assumed that the disputed domain name was fraudulently registered to impersonate the Complainant – a known trustworthy provider of financial services – with a view to luring Internet users.

In light of the above, the Complainant concludes that the Respondent has no rights or legitimate interests in the dispute domain name.

III. The Respondent registered and is using the disputed domain name in bad faith

The Complainant avers that the disputed domain name has been registered and is being used by the Respondent in bad faith to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant as to the source, sponsorship, affiliation, or endorsement of that website (paragraph 4(b)(iv) of the Policy).

The Complainant submits that the Respondent's website offered Internet users an online form by which to transfer payment without providing any further information about the Respondent's identity. The Complainant claims that, by operating in this fashion, the Respondent's website created the incorrect impression that the service being offered was operated by the Complainant's subsidiary EUREX.

The Complainant therefore concludes that the Respondent has registered and is using the disputed domain name in bad faith.

PARTIES CONTENTIONS

Response

The Respondent submitted a Response on 7 April 2022, the content of which is copied below:

"Hello, I have nothing to do with Eurex.com or german stock market. Eurex is just a name I came up with in my mind, I didn't even know that this site exists.

So, please stop writing me because I'm not paying any fee nor fine, because I have nothing to do with it. I never used Eurex name for anything at all.

So please, kindly stop emailing me."

On 8 April 2022, the Respondent submitted a Nonstandard Communication, the content of which is copied below:

"Hello, I have nothing to do with Eurex.com or german stock market. Eurex is just a name I came up with in my mind. I didn't even know that this site exists. So, please stop writing me because I'm not paying any fee nor fine for something I haven't done. I have nothing to do with it. I never used Eurex name for anything at all. The domain is blocked and I'm not willing to have it again, and not any domain with the eurex name inside. So please, kindly stop emailing me."

RIGHTS

The Panel makes no ruling on this UDRP Policy ground for the reasons articulated in section "Principal Reasons for the Decision" below.

NO RIGHTS OR LEGITIMATE INTERESTS

The Panel makes no ruling on this UDRP Policy ground for the reasons articulated in section "Principal Reasons for the Decision" below.

BAD FAITH

The Panel makes no ruling on this UDRP Policy ground for the reasons articulated in section "Principal Reasons for the Decision" below.

PROCEDURAL FACTORS

A. Preliminary Matter: Language of Proceeding

A.1 The Complainant's language request

The Complaint was filed in English.

The Registrar's Verification response indicated that the language of the registration agreement for the disputed domain name is German.

In the Complaint, the Complainant submitted a request for English to be the language of proceedings, in respect of which the Complainant advanced the following grounds:

- (i) The Respondent's website was in English, and the gTLD <.finance> in the disputed domain name corresponds to an English language term; and
- (ii) The Respondent is apparently familiar with the English language, also in view of the Respondent's civil name.

A.2 The Panel's determination

The Panel is given wide discretion under Rule 11 (a) of the UDRP Rules to determine the appropriate language of the administrative proceedings having regard to all the case circumstances. The Panel notes, however, that Rule 10 (b) and Rule 10 (c) of the UDRP Rules vest the Panel with authority to conduct the proceedings in a manner that it deems appropriate, while also ensuring that the parties are treated with equality, that each party is given a fair opportunity to present its case, and that the proceedings be conducted with due expedition. The Panel is therefore mindful to exercise such discretion carefully and judiciously.

The Panel's determination on the language of proceedings is centred on the following six guiding factors:

- (i) the language of the disputed domain name string: the Panel accepts that English is the only identifiable language in the disputed domain name string. The Panel agrees with the Complainant's assertion that the gTLD <.finance> is a relevant factor which sways in favour of English;
- (ii) the content of the Respondent's website: the Respondent's website used to display content in English only, as asserted by the Complainant, which suggests to the Panel that the Respondent has ample knowledge of the English language;
- (iii) the language(s) of the parties: both Parties are based in Germany, such that German would appear to be the lingua franca in the present matter. Nonetheless, both Parties have participated in these proceedings by making submissions in English only. The Respondent therefore appears to have no difficulty with the English language;
- (iv) the Respondent's behaviour in the course of the proceedings: the Panel notes that the Respondent has made submissions in English only;
- (v) the Panel's overall concern with due process: the Panel has discharged its duty under Rule 10 (c) of the UDRP Rules; and
- (vi) the balance of convenience: while determining the language of proceedings, the Panel has a duty to consider who would suffer the greatest inconvenience as a result of the Panel's determination. On the one hand, the determination of English as the language of proceedings is unlikely to cause the Respondent any inconvenience, not the least given the Parties' submissions being made in English only in this UDRP case. The determination of German as the language of proceedings, on the other hand, is very likely to cause the Complainant a time inconvenience, and to interfere with the overall due expedition of the proceedings under the UDRP Rules.

In view of the above guiding factors, the Panel declares that English be the language of the proceedings.

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

I. The UDRP legal grounds

Pursuant to Rule 15 of the UDRP Rules, the Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the UDRP Policy, the UDRP Rules, and any rules and principles of law that the Panel deems applicable.

Paragraph 4(a) of the UDRP Policy provides the following threshold for the Complainant to meet in order to divest the Respondent of the disputed domain name:

- The disputed domain name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights;
- The Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- The disputed domain name has been registered and is being used in bad faith.

It is therefore incumbent on the Complainant the onus of meeting the above threshold. The evidentiary standard under the UDRP proceedings is the balance of probabilities, which lays down the foundations for panels to determine each of the three Policy elements.

II. The Panel's Procedural Order No. 1

On 15 April 2022, the Panel transmitted to the Parties the Procedural Order No. 1 ("PO1"), the content of which is copied below:

"The Panel has reviewed the available record and has made the following procedural order:

WHEREAS Rule 10 of the UDRP Rules affords a latitude of discretion for panels to conduct a UDRP proceeding as they see fit, so long as it conforms to the procedural legal framework;

WHEREAS the Respondent indicated in his communication of 8 April 2022 that "[...] the [disputed] domain [name] is blocked and I'm not willing to have it [the disputed domain name] again...";

the Panel PROPOSES to issue a decision on the basis of the Respondent's uncontentious approach to the present matter, and the Respondent's overall disinterest in the disputed domain name. Consequently, the Panel is minded not to make determinations on any of the UDRP grounds substantively.

Would the Parties please advise whether they have any objection to the Panel proceeding on this basis and, if so, provide reasons for such objection, by no later than close of business (CET) on Wednesday 20 April 2022."

By virtue of PO1, the Parties have therefore been informed that, subject to any objection/contrary proposal by any Party, it

was the Panel's intention to issue a decision in a rather abbreviated form (without a ruling on the UDRP legal grounds), in reliance upon the Respondent's behaviour in the course of the proceedings, most notably the Respondent's uncontentious approach to the present matter, and the Respondent's overall disinterest in the disputed domain name.

On 19 April 2022, the Complainant sent a Nonstandard Communication in response to the PO1, by which the Complainant agreed with the procedure described in PO1.

As at the date of this decision, the Respondent has not provided any comments in response to PO1.

Therefore, neither Party have objected to the Panel proceeding on the basis set out in PO1.

III. Consent to Transfer

The Panel is given a latitude of discretion under Rule 10 (a) of the UDRP Rules to conduct a UDRP proceeding in such manner as it considers appropriate, so long as it conforms to the procedural legal framework.

The Panel notes that, while the Complainant has sought the transfer of the disputed domain name to it, the Respondent has not resisted the Complainant's remedy nor has the Respondent shown any interest in maintaining the disputed domain name. On the contrary, the Respondent has stated that he is no longer interested in the disputed domain name.

The Panel also notes that neither Party suggested that the Panel should not proceed as proposed, i.e. to issue a decision based on the Respondent's disinterest in the disputed domain name, and without determining the UDRP legal grounds.

In the matter of consent to transfer, the Panel alludes to paragraph 4.10 of the WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Jurisprudential Overview 3.0"), according to which: "[...] Where parties to a UDRP proceeding have not been able to settle their dispute prior to the issuance of a panel decision using the "standard settlement process" described above, but where the respondent has nevertheless given its consent on the record to the transfer (or cancellation) remedy sought by the complainant, many panels will order the requested remedy solely on the basis of such consent. In such cases, the panel gives effect to an understood party agreement as to the disposition of their case (whether by virtue of deemed admission, or on a no-fault basis)..."

The Panel also acknowledges that there may be circumstances where panels, despite having had sight of the respondent's consent to transfer or cancel a domain name, should instead proceed to making findings substantively, and some examples of these circumstances are set out in paragraph 4.10 of the WIPO Overview 3.0: "[...] Scenarios in which a panel may find it appropriate to do so include (i) where the panel finds a broader interest in recording a substantive decision on the merits – notably recalling UDRP paragraph 4(b)(ii) discussing a pattern of bad faith conduct, (ii) where while consenting to the requested remedy the respondent has expressly disclaimed any bad faith, (iii) where the complainant has not agreed to accept such consent and has expressed a preference for a recorded decision, (iv) where there is ambiguity as to the scope of the respondent's consent, or (v) where the panel wishes to be certain that the complainant has shown that it possesses relevant trademark rights".

The Panel is of the view that none of the above scenarios appear to be present in this case. Instead, the Panel considers that the issue that lies ahead of the Panel in this case concerns whether the Respondent's approach toward the disputed domain name – uncontentious and acquiescent/accommodating – is material to a finding in favour of the Complainant and akin to a "summary judgment".

The Panel has considered the available record and has interpreted the Respondent's words "The domain is blocked and I'm not willing to have it again" and "I have nothing to do with it. I never used Eurex name for anything at all." as an implied consent and a deemed agreement to transfer the disputed domain name to the Complainant on a "no-admission" basis.

Consequently, the Panel takes no stance and thus makes no finding as to whether the disputed domain name has or has not

violated the Policy – and rather, the Panel orders the transfer of the disputed domain name to the Complainant premised on the Respondent’s implied consent to transfer.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. EUREX.FINANCE: Transferred
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PANELLISTS

Name	Dr Gustavo Moser
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DATE OF PANEL DECISION 2022-04-20

Publish the Decision
