

Decision for dispute CAC-UDRP-105078

Case number CAC-UDRP-105078

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Domain names daxglobe.com

Case administrator

Organization Denisa Bilík (CAC) (Case admin)

Complainant

Organization Qontigo Index GmbH

Complainant representative

Organization Grünecker Patent und Rechtsanwälte PartG mbB

Respondent

Name Jarl Nooij

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.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of trademark registrations for DAX, in particular of the following well-known German and EU registrations:

- German Registration No. 2037230 DAX with priority of December 23, 1992,
- German Registration No. 39819140 DAX with priority of April 03, 1998,
- European Union Trademark Registration No. 000042390 DAX with priority of April 01, 1996,
- European Union Trademark Registration No. 000937821 DAX with priority of April 03, 1998,

all of which are protected inter alia for services in the finance sector in International Classes 36 and 35.

The disputed domain name <daxglobe.com> was registered on February 28, 2022.

PARTIES CONTENTIONS

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

The Complainant was founded in 2019 through the combination of Axioma, DAX and STOXX, is part of the well-known Deutsche

Börse Group and its place of incorporation and principal place of business in Eschborn, Germany. It is a leading global provider of innovative index, analytics and risk solutions that optimize investment impact.

The Complainant provides key indices and analytics to enable their customers – financial-products issuers, capital owners and asset managers – to deliver sophisticated and targeted solutions at scale to meet the increasingly demanding and unique sustainability goals of investors and asset owners worldwide. The Complainant has increasingly focused on sustainable investing and has expanded their offering of solutions that help a growing investor base incorporate environmental, social and governance (ESG) criteria into portfolio construction and analysis. They currently publish a number of related indices (e.g. ESG-X Benchmarks, EURO STOXX 50 ESG, DAX 50 ESG, DAX ESG Target) and Climate Benchmarks (e.g. PAB/CTB).

Both the German Federal Supreme Court (ruling of April 30, 2009, docket no. I ZR 42/07 – DAX, point 37) and the German Federal Patent Court (ruling of February 02, 2022, 2005, docket no. 33 W (pat) 74/03 – DAX-Trail/DAX, point II. 1. a)) ruled that the trademark DAX is a well-known mark in terms of the law.

I. The disputed domain name is confusingly similar to the Complainant's well-known Trademarks.

- In cases where a domain name incorporates the entirety of a trademark, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing. This similarity is established whenever a mark is incorporated in its entirety, regardless of other terms added to the domain name.
- The disputed domain name fully incorporates the Complainant's well-known Trademarks, adding only the non-distinctive element "globe" and the generic top-level domain ".com".
- But even if assuming (for discussion purposes only) that the element "globe" was distinctive, the element "dax" would still provide for an at least independently distinctive element of the term "daxglobe". In such an event, the term "daxglobe" would still be perceived as a combination of two separate elements, namely "dax" and "globe". The first of these elements, "dax", which the public will naturally pay more attention to, is identical to the Complainant's well-known DAX trademarks, and will immediately trigger a corresponding notional link.

II. The Respondent does not have any rights or legitimate interest in the domain name

- On the website under the disputed domain name, the Respondent is allegedly providing financial services under the trade name "DaxGlobe", i.e. services identical or similar to the services provided under the Complainant's well-known trademarks. Inter alia on the landing page and in the "About Us" section of the website under the disputed domain name the Respondent is referring to their trade name "DaxGlobe" numerous times.
- The Complainant, however, did not authorize the Respondent to use the trademarks for the provision of any kind of financial services.
- There is also no use or any demonstrable preparations thereof concerning any use of the disputed domain name with respect to a bona fide and legitimate offering of goods or services, according to Paragraph 4(c)(i) Policy.
- To satisfy the requirement of a bona fide and legitimate offer of services, according to Paragraph 4(c)(i) Policy, the site would need to accurately disclose the Respondent's relationship with the Complainant and must not, for example, falsely suggest that it is operated by the Complainant or that the website is the Complainant's official site.
- In the case at hand, the Respondent does not clearly draw the line between themselves and the Complainant. Rather to the contrary, on the website under the disputed domain name, the Respondent is trying to create the false impression of being affiliated with or endorsed by the Complainant by using their well-known DAX trademarks within their trade name "DaxGlobe" numerous times throughout the whole website under the disputed domain name for the alleged offering of identical and similar services.
- The Respondent's alleged registered company name Synnfrey Sol Ltd., on the other hand, is purposefully hidden somewhere within the "Legal" section of the website, which regularly goes unnoticed by the majority of website visitors.
- Therefore, instead of setting themselves apart from the Complainant, the Respondent is obviously aiming at riding on the coattails of the well-known DAX trademark's good reputation within the finance sector.

III. The domain name has been registered and is being used in bad faith

- The disputed domain name is used by the Respondent to create the false impression of being affiliated with the Complainant in order to trigger traffic on the website and to facilitate fraudulent activities.
- By operating the website under the disputed domain name, for own commercial gain the Respondent is taking unfair advantage of the Complainant's well-known DAX trademarks as an indication of (the affiliation with or endorsement by) a trustworthy and reliable origin of services in the finance sector.
- Against the above background, it becomes clear that, by using the disputed domain name, the Respondent intentionally attempts to attract, for commercial gain, Internet users to the website under the disputed domain name, by creating a likelihood of confusion with the Complainant's DAX trademarks as to the source, sponsorship, affiliation, or endorsement of the website and services offered on the website. The described behavior as such is already fraudulent and constitutes a classic case of use of a domain name in bad faith in accordance with Paragraph 4 (b) (iv) Policy.
- Moreover, the Respondent is not even providing any genuine services at all.
- According to two articles on the website "FinTelegram News", the Respondent's offshore entity Synnfrey Sol Ltd. situated in the Commonwealth of Dominica formerly operated under the trade name "Daxiron" as well as the corresponding domain name <daxiron.com> before changing over to the trade name "DaxGlobe" and the disputed domain name. FinTelegram News states that the Respondent is approaching victims across all regulatory regimes on this planet, deceiving them with fake documents to prove their legitimacy and show alleged profits. Innocent users would be lured by fake insurance confirmation policies for their deposits and promises of an alleged bonus of 35% on all their deposits and lose their funds.
- Further, the German Association for the Protection of Damaged Investors ("Schutzgemeinschaft für geschädigte Kapitalanleger

e.V.”) is also urging and alerting investors not to engage with “DaxGlobe”, qualifying the Respondent’s activities as a “scam” and describing parts of their fraud scheme in detail.

- Also, the Swedish Financial Supervisory Authority (“Finanzinspektionen” (FI)) warns (referring to Synnfrey Sol Ltd. as “Daxiron”) that they have not been able to determine that the Respondent is operating a real company. They further flag that the Respondent was not authorized to conduct any financial services. The warning statement by FI referring to Synnfrey Sol Ltd. “Daxiron” was issued on December 16, 2021.
- The disputed domain name was registered by the Respondent on February 28, 2022, i.e. after the FI had issued their warning statement and at a point in time where the Respondent was already pursuing their fraudulent activities as “Daxiron”.

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

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).

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).

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).

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

For the Complainant to succeed it must prove, within the meaning of paragraph 4(a) of the Policy, that:

- (i) The 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 in respect of the domain name; and
- (iii) The domain name has been registered and is being used in bad faith.

I. Identical or Confusingly Similar

1. The Complainant has established the fact that it has valid rights for the German Registration No. 2037230 DAX with priority of December 23, 1992, German Registration No. 39819140 DAX with priority of April 03, 1998, European Union Trademark Registration No. 000042390 DAX with priority of April 01, 1996 and European Union Trademark Registration No. 000937821 DAX with priority of April 03, 1998, all of which protected for services in the finance sector in International Classes 36 and 35.
2. The disputed domain name has been registered on February 28, 2022, i.e. almost 30 years after the first DAX trademark registration, and fully incorporates the Complainant’s trademark DAX in its first part. It is therefore confusingly similar to the trademark for purposes of UDRP (WIPO Jurisprudential Overview 3.0, Section 1.7).
3. The generic term “GLOBE” in the second part of the disputed domain name is often used in the meaning “Earth” or “world-wide” and as the term “DAXGLOBE” doesn’t have any specific meaning itself, this term should be perceived as a combination of two separate elements, namely “DAX” and “GLOBE”. The first of these elements “DAX” is identical to the Complainant’s trademark, is the dominant element of the disputed domain name and will immediately trigger a corresponding link to the Complainant and its trademarks.

4. Therefore, the addition of the non-distinctive term "GLOBE" does not prevent the disputed domain name from being confusingly similar to the Complainant's trademarks. The addition of the generic top level domain ".COM" does not change the overall impression of the designation as being connected to Complainant's trademark.
5. The Panel therefore considers the disputed domain name to be confusingly similar to the Complainant's trademark DAX which the Complainant has rights in accordance with paragraph 4(a)(i) of the Policy.

II. Rights or Legitimate Interests

1. As stated in the WIPO Jurisprudential Overview 3.0 at Section 2.1, while the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.
2. The Complainant stated that the Respondent was providing financial services under the trade name "DaxGlobe", i.e. services identical or similar to the services provided under the Complainant's trademark. The term DAXGLOBE is not used in the disputed domain name only but is further used as the logo of the webpages associated to the disputed domain name and is mentioned in the other parts of the web pages as well.
3. The Complainant has established a prima facie case (not challenged by the Respondent who did not file any response to the complaint) that the Respondent has no rights or legitimate interests in the disputed domain name.
4. The disputed domain name resolves to a page with the offer of the financial services, i.e. the services protected by the Complainant's trademark, and this does not constitute a bona fide offering of goods and services or a legitimate noncommercial fair use. It has not been proved by the Respondent that he has rights or legitimate interests in the disputed domain name or the Respondent is related with the Complainant. Neither license nor authorization has been proven to be granted to the Respondent to make any use of the Complainant's trademark or apply for registration of the disputed domain name.
5. The Panel therefore considers that the Respondent has no rights or legitimate interests in respect of the disputed domain name within the meaning of paragraph 4(a)(ii) of the Policy.

III. Registered and Used in Bad Faith

1. The Complainant has established the fact, that the disputed domain name is used by the Respondent to create the false impression of being affiliated with the Complainant in order to trigger traffic on the website and to facilitate fraudulent activities and intentionally attempts to attract, for commercial gain, Internet users to the website under the disputed domain name, by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of the website and services offered on the website.
2. The Complainant has further established the fact, that the entity operating under the trade name "DAXGLOBE" or previously "DAXIRON" does not seem to be a real company, is operating as "scam" and is approaching victims, deceiving them with fake documents to prove their legitimacy and show alleged profits and its users would be lured by fake insurance confirmation policies for their deposits and lose their funds.
3. The Panel considers that the disputed domain name is not only used in bad faith by the Respondent but was also registered in bad faith with the intention of using it as a fallback position to carry on with their fraudulent activities. Given the distinctiveness of the Complainant's trademark and reputation (as confirmed by two German courts) it is evident that the Respondent had the Complainant and its trademark in mind when registering the disputed domain name.
4. The Panel therefore considers that 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 Panel finally considers that the Complainant has shown that the disputed domain name is confusingly similar to a trademark 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. The Complainant has thus established all three elements of paragraph 4(a) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINANT IS

Accepted

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

1. **daxglobe.com**: Transferred
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PANELLISTS

Name	Petr Hostaš
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DATE OF PANEL DECISION **2023-01-25**

Publish the Decision
