Decision for dispute CAC-UDRP-105052

Case number	CAC-UDRP-105052
Time of filing	2022-12-14 09:20:55
Domain names	eurextradeoptions.com

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

Organization	The Oracle

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

Complainant explains that it is the owner of a number of German (word and word/design) registrations for the trademark EUREX, protected, along others classes, in Class 36 for financial services, in particular the following:

- German Trademark Registration No. 303 09 064 EUREX,
- German Trademark Registration No. 397 56 930 EUREX (and design), and
- International Registrations for the EUREX Trademark under Nos. 635015 and 812147.

In addition, Complainant is the owner of inter alia, the EUTM No. 744763 EUREX and the EUTM No. 3378973 EUREX US.

It further asserts that it owns:

- US registration No. 2941068 EUREX, and
- UK registration No. 900744763 EUREX.

FACTUAL BACKGROUND

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, Luxemburg, 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.

Among others, 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.

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.

PARTIES CONTENTIONS

No administratively compliant Response has been filed.

PARTIES CONTENTIONS - COMPLAINANT:

I. Confusing similarity

The disputed domain name is confusingly similar to the Complainant's "EUREX" trademarks. The disputed domain name contains the EUREX Trademark in its entirety. The further element "tradeoptions" describes the financial trading services for which the Complainant's trademark is ordinarily used. It is a well-established principle that descriptive or generic additions to a trademark, and particularly those that designate the goods or services with which the mark is used, do not avoid confusing similarity of domain names and trademarks.

II. Lack of right or legitimate interest

The Respondent, respectively the entity mentioned on the websites as providing the services, have 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.

By using the trademark EUREX as distinctive element of the disputed domain name together with the descriptive element tradeoptions" describing the Complainant's field of service, the Respondent implies an affiliation with the Complainant that does actually not exist.

In light of the high risk financial services allegedly offered by the Respondent, e.g. the "Silver", "Gold" and "Diamond" package promising 32.2%-52% cumulative capital returns for investments, it is clear that the Respondent is using the alleged affiliation with the Complainant to lure investors to invest into the those Silver, Gold and Diamond packages.

Such almost certainly fraudulent behaviour excludes a finding of rights or legitimate interests.

III. Bad faith registration and use

The Respondent, respectively the person/entity actually controlling the disputed domain name are allegedly providing financial trading services regarding high risk financial assets.

By using the disputed domain name Respondent creates the incorrect impression that at least a connection with the Complainant exists. It is evident that by registering and using the disputed domain, the Respondent has intentionally attempted to attract, for commercial gain, Internet users by creating a deliberate likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation or endorsement of the Respondent's website or of a product or service on the Respondent's website or location. Under the disputed domain the Respondent is allegedly operating a trading platform, which requires that substantial funds are transmitted (the Silver Package starting with an Investment of USD 200, the Diamond Package requiring USD 10.000) to the Respondent for trading purposes.

If the nature of the trading platform is in light of the false claim of an incorporation, the apparently non-existing regulation by the competent financial authorities (contrary to allegations on the website in the About Us section) not straightforward fraudulent (which it likely is), the use of the trading platform for investments purposes is at least extremely risky.

Therefore, to attract investors, it is necessary to appear as a genuine and reputable company. By choosing the disputed domain name <eurextradeoptions.com> consisting of the Complainant's trademark EUREX plus common generic terms in the financial sector, the Respondent tries to intentionally mislead potential investors in order to attract them to its services, making them believe that the website is operated by the Complainant or that at least an, in fact, non-existing association with the Complainant exists.

This is evidence of a bad faith registration and use under paragraph 4(b)(iv) of the Policy

RIGHTS

Paragraph 4(a)(i) of the Policy requires the Complainant to show that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

The Panel relies on both European trademarks: EUTM No. 744763 EUREX and the EUTM No. 3378973 EUREX US.

It also relies on the American trademark No. 2941068 EUREX.

The Panel could check their respective current status.

The disputed domain name is <eurextradeoptions.com> and it wholly incorporates the EUREX trademark. It only differs from the EUREX trademarks by the addition of the generic term “tradeoptions”. This addition does not avoid the confusing similarity to the EUREX trademark.

Thus, the disputed domain name is confusingly similar to the EUREX trademarks.

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

Pursuant to paragraph 4(c) of the Policy, the Respondent may establish rights or legitimate interests in the disputed domain name by demonstrating any of the following:

(i) before any notice to it of the dispute, the Respondent’s use of, or demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a bona fide offering of goods or services; or

(ii) the Respondent has been commonly known by the disputed domain name, even if it has acquired no trademark or service mark rights; or

(iii) the Respondent is making a legitimate non-commercial or fair use of the disputed domain name, without intent for commercial gain, to misleadingly divert consumers, or to tarnish the trademark or service mark at issue.

The Complainant asserts that the Respondent has never been authorized or otherwise been licensed or permitted by the Complainant to use any of its trademarks and is not related in any way with the Complainant.

According to the exhibits provided by the Complainant, the Panel notes that the disputed domain name is used to resolve to a website offering financial services and providing false information on its editor, i.e. on the company offering these financial services.

Financial services are strictly regulated and the situation described by the Complainant puts the internet users at risk.

The Respondent did not respond to the Complainant to rebut its prima facie case. It did not provide any evidence or allege any circumstance to establish that it has rights or legitimate interests in the disputed domain name.

Therefore, the Complainant has established a prima facie case that the Respondent has no rights or legitimate interests in respect to the disputed domain name.

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

Paragraph 4(b) of the Policy sets out examples of circumstances that will be considered by a Panel to be evidence of bad faith registration and use of the disputed domain name.

It provides that:

“For the purposes of paragraph 4(a)(iii), the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a Domain Name in bad faith:

(i) circumstances indicating that the Respondent has registered or the respondent has acquired the Domain Name primarily for the

purpose of selling, renting, or otherwise transferring the Domain Name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of the respondent's documented out-of-pocket costs directly related to the Domain Name; or

(ii) the Respondent has registered the Domain Name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding Domain Name, provided that the respondent has engaged in a pattern of such conduct; or

(iii) the Respondent has registered the Domain Name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the Domain Name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to your website 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 the respondent's website or location or of a product or service on the respondent's website or location."

The EUREX trademarks were registered prior to the disputed domain name.

The Respondent was well aware of the EUREX trademarks when it registered the disputed domain name.

Its creation, adding the generic terms "tradeoptions" to the EUREX trademark proves that it had in mind to use the disputed domain name in relation with trading services.

Given the circumstances of the case, the Panel is of the opinion that, relying on Par. 4(b)(iv) of the Policy: "by using the Domain Name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to your website 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 the respondent's website or location or of a product or service on the respondent's website or location".

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

The EUREX trademark is reproduced in the disputed domain name <eurextradeoptions.com> and is therefore confusingly similar to the EUREX trademark.

The Respondent did not contest the complaint.

The entity identified as offering the financial services available on the website does not exist.

The Respondent was never authorized to use the EUREX trademarks and is not related to the Complainant.

Financial services are strictly regulated and the situation described by the Complainant puts the internet users at risk.

The Respondent was well aware of the EUREX trademarks when it registered the disputed domain name.

Its creation, adding the generic terms "tradeoptions" to the EUREX trademark proves that it had in mind to use the disputed domain name in relation with trading services.

Given the circumstances of the case, the Panel is of the opinion that, relying on Par. 4(b)(iv) of the Policy: "by using the Domain Name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to your website 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 the respondent's website or location or of a product or service on the respondent's website or location".

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **eurextradeoptions.com**: Transferred

PANELLISTS

Name	**Marie-Emmanuelle Haas Avocat**

DATE OF PANEL DECISION 2023-01-24

Publish the Decision