

Decision for dispute CAC-UDRP-104278

Case number	CAC-UDRP-104278
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Time of filing	2022-01-27 09:32:34
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Domain names	EUREXRUA.COM , BoerseFrankfurtPro.com, boersefrankfurte.top, boersefrankfurtz.top, eurexja.xyz, eurexfh.xyz, boersefrankfurtw.xyz , eurexsz.top
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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	Multiple Respondents
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OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other pending or decided legal proceedings relating to the disputed domain names. The Complainant has however pointed out that there are two other UDRP proceedings, which have already been decided, concerning almost identical websites associated with domain names targeting the Complainant and its subsidiaries. In particular, the Complainant refers to:

- CAC UDRP proceeding No. 103885, relating to the domain names <eurextrade.xyz> and <eurextrad.buzz>, which ended with a decision dated 29 June 2021, ordering the transfer of the domain names to the Complainant; and
- CAC UDRP proceeding No. 104157, relating to the domain names <boersefrankfurttau.com> and <eurexvip.com>, which ended with a decision dated 21 December 2021, also ordering the transfer of the domain names to the Complainant.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of the following trademarks:

- EUREX (word), German registration No. 30309064, filed on February 19, 2003 and registered on 24 April 2003, for, inter alia, financial services in class 36;
- EUREX (figurative), German registration No. 39756930, filed on 27 November 1997 and registered on 2 February 1998, for, inter alia, financial services in class 36;

- EUREX (word), international registration No. 635015 of 5 December 1994, for, inter alia, financial services in class 36;
- EUREX (word), international registration No. 812147 of 28 July 2003, for, inter alia, financial services in class 36;
- EUREX (word), EUTM registration No. 744763, filed on 13 February 1998 and registered on 8 June 1999, for, inter alia, financial services in class 36;
- EUREX US (word), US No. 3378973, filed on 30 September 2003 and registered on 21 March 2005, for, inter alia, financial services in class 36;
- BÖRSE FRANKFURT (figurative), EUTM registration No. 005228408, with a priority date of 10 August 2006, registered on 30 August 2007, for, inter alia, financial services in class 36; and
- BÖRSE FRANKFURT (figurative), Swiss Trademark Registration No. 552765, with a priority date of 10 August 2006, for, inter alia, financial services in class 36.

In addition, the Complainant owns and operates the domain names <boersefrankfurt.de> and <boerse-frankfurt.com>.

FACTUAL BACKGROUND

The Complainant is one of the leading market place organizers for financial services, particularly trading in shares and other securities worldwide. Moreover, the Complainant is a transaction service provider, which affords international companies and investors access to global capital markets by means of advanced technology. The Complainant organizes one of the world's largest derivative markets under the trademark EUREX and operates one of the world's leading clearing houses under the trademark EUREX CLEARING. In the area of securities financing it further operates through the trademark EUREX REPO. Today, around 370 market participants in 33 countries are connected to the EUREX trading system and more than 7,000 traders are registered with EUREX.

The Complainant is also operating the Frankfurt Stock Exchange.

The 19 disputed domain names have the following registrations date and are registered by different Respondents, as reported below:

1. Domain names in the name of Magdalena Weiser:

- <eurexabd.xyz>, registered on 8 December 2021;
- <eurexgty.top>, registered on 8 December 2021;
- <eurexmjd.xyz>, registered on 8 December 2021;
- <eurexnhk.top>, registered on 8 December 2021.

2. Domain names in the name of Sheena Bridwell:

- <boersefrankfurtmjd.xyz>, registered on 8 December 2021;
- <boersefrankfurtgty.top>, registered on 8 December 2021;
- <boersefrankfurtnhk.top>, registered on 8 December 2021.

3. Domain names in the name of Ji Wan Tao:

- <boersefrankfurte.top>, registered on 8 December 2021;
- <boersefrankfurtz.top>, registered on 8 December 2021;
- <boersefrankfurtw.xyz>, registered on 8 December 2021;
- <eurexja.xyz>, registered on 8 December 2021;
- <eurexfh.xyz>, registered on 8 December 2021;
- <eurexsz.top>, registered on 8 December 2021.

4. Domain names in the name of Yang Tian Ping:

- <eurexrua.com>, registered on 4 December 2021;

- <boersefrankfurtpro.com>, registered on 4 December 2021.

5. Domain names in the name of HUGFJLNV HUANG HUDOWO:

- <boersefrankfurtly.xyz>, registered on 9 September 2021;
- <boersefrankfurtly.buzz>, registered on 9 September 2021.

6. Domain name in the name of HBIOBI JIANG JING:

- <boersefrankfurtru.xyz>, registered on 9 September 2021.

7. Domain name in the name of ylisha aha ann:

- <boersefrankfurtvip.com>, registered on 23 November 2021.

PARTIES CONTENTIONS

The Complainant has requested the consolidation of the proceedings, since in its opinion, the disputed domain names, although apparently registered under the names of different Respondents, are in fact subject to a common control. The circumstances upon which the Complainant relies to demonstrate the existence of a common control in the registration and use of the disputed domain names, are the following (not all these circumstances are simultaneously present):

- same registration dates or registration dates very close one another;
- identical or almost identical websites;
- same Registrars;
- same IP address;
- same domain name structure.

Furthermore, for 11 of the disputed domain names the language of the Registration Agreement is English, while for the remaining eight, it is Chinese. The Complainant has requested that this UDRP proceeding be conducted in English on the basis of the fact that the Respondent appears to be familiar with this language. In particular, two of the eight domain names for which the Registration Agreement is in Chinese, lead to a website, which is also available in English. Furthermore, the Respondent for these domain names has exchanged correspondence in English (see below). Lastly, 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.

Besides these procedural aspects, the Complainant maintains the following.

The disputed domain names are confusingly similar to the Complainant's trademarks EUREX or BÖRSE FRANKFURT, as the case may be.

In particular, some of the disputed domain names fully include the EUREX mark, followed by the elements "rua", "ja", "fh", "sz", "ab", "ty", "mjd" and "hk". Some of these additional elements are understood as geographical references; overall, they do not prevent a finding of confusing similarity.

The other disputed domain names contain the trademark BÖRSE FRANKFURT, with the only difference that the Respondent changed the o-Umlaut to "oe", which is the letter combination that is commonly used on keyboards with international script. The additional letters following the Complainant's trademark are either geographical designations (such as "ru" and "hk") or short acronyms ("vip", "pro"), or letters deprived of a specific meaning. In both cases, they do not affect the dominant element of the disputed domain names, which is "boersefrankfurt".

The Complainant also maintains that the Respondent lacks rights or legitimate interests in the disputed domain names. In particular, the Complainant never authorised, the Respondent to use any of its trademarks in any manner whatsoever, including with the frame of a domain name. The Complainant never granted a license to use its trademarks to the Respondent, and the latter is not affiliated with the Complainant. At the time of the filing of the Complaint, only the disputed domain names

<eurexrua.com>, <boersefrankfurpro.com>, and <boersefrankfurtvip.com> lead to active websites. The websites available under these disputed domain names are largely identical. They offer investment opportunities in high-risk blockchain based derivatives.

For the domain names <boersefrankfurpro.com>, and <boersefrankfurtvip.com> the entity allegedly providing these services is only identified with the copyright notice "(c) Boerse Frankfurt Copyright". Under the "About Us" section of the website, the following statement is displayed "The platform promises that it will strictly abide by the relevant German laws and conduct business under the supervision of financial regulators". Moreover, the platform prominently depicts the acronym "BF" as a logo. For the domain name <eurexrua.com>, the entity allegedly providing the services mentioned above is identified through the claim "(c) 2020 Eurex Copyright" and, in the "About Us" section of the website, the following statement appears: "This platform is the world's leading digital asset trading platform. It operates in conjunction with the Deutsche Börse and the Swiss National Stock Exchange (SIX Swiss Exchange). We constantly strive to improve security features to ensure the security of our customers' digital assets. The model is to bring customers projects with sustainable value, and only projects with the highest quality will be selected and provide transaction services. The core management team members graduated from world-renowned universities and have rich experience in the financial industry and digital asset exchange operations. Based on the groundbreaking open source agreements proposed by BitShares and Ethereum, we are based on the principle of combining with real business practices, Breaking the closed system of the original blockchain, East Fortune visualizes the artificial high-intelligence blockchain operating system. At the same time, it combines artificial intelligence and blockchain technology. We hope to create a world-class blockchain that is truly commercially available. Operating system, platform promise: will strictly abide by relevant laws and conduct business under the supervision of financial regulatory agencies."

Through all these statements and use of the Complainant's trademarks, the Respondent is implying an affiliation that does not exist and is thus misleading the potential consumers as to the true origin of the services offered through the relevant websites . With respect to the other disputed domain names, which do not lead to an active website, any use of them would serve the same purpose as the current one of the active domain names.

Lastly, in respect of bad faith, the Complainant contends that this is the third proceeding containing almost identical domain names and websites. Most of the disputed domain names were registered shortly after the second Complaint was transmitted to the Respondent. As the disputed domain names include the Complainant's trademarks, they convey the incorrect impression that at a connection with the Complainant exists.

At least three of the disputed domain names lead to active websites, where the Respondent is allegedly providing financial trading services of high-risk financial assets such as cryptocurrencies. The statements appearing in the "About Us" section infer that there is a collaboration between the Complainant and the Respondent. These websites do not contain any reference to a company name or address, nor to the regulation applying to the allegedly offered financial services. For attracting traders, it is necessary to appear as genuine and reputable as possible and the Respondent has done so by registering domain names that create a likelihood of confusion with the Complainant's marks and by attempting to mislead consumers by creating an impression of sponsorship, affiliation or endorsement of the Respondent's website, or of a product or service on the Respondent's website.

The Respondent has also actively searched for traders, presenting them the possibility to obtain high earnings, luring them to its website at www.eurexrua.com, where they invested large amounts of money that they were no longer able to recover, instead asking for more through various ruses.

Lastly, the Complainant points out that at least for some of the disputed domain names, the Respondent provided an incorrect address at the time of their registration.

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 notes that there are two procedural issues to be evaluated for this case.

First, the Complainant has requested the consolidation of the proceedings as it considers that although the disputed domain names are apparently registered in the name of different individuals, they are in fact subject to a common control. The Complainant's reasons to support this finding have already been mentioned in the paragraph containing the factual background of this decision. The Panel agrees with the fact that there are various indications that lead to a presumption of common control of the disputed domain names. In particular, most of the disputed domain names share the same IP addresses, all of them were registered on the same day, or within a very short time frame, the structure of the disputed domain names is similar for all of them (Complainant's mark followed by two or three letters), various domain names are registered under the gTLDs ".top" and ".xyz", and the websites associated to the three active disputed domain names have a similar structure. In the absence of any contrary allegation from the Respondent, the Panel concludes that although registered in the name of multiple respondents, the disputed domain names are subject to common control. Furthermore, the consolidation of the proceedings would be procedurally efficient and fair and equitable to all parties. Given the above reasons, the Panel accepts the Complainant's request to have the Complaint filed against multiple respondents.

The second point to be examined concerns the Complainant's request to have this proceeding conducted in English, despite the language of the Registration Agreement of several disputed domain names is in Chinese (while for the rest of them is in English). More specifically, the disputed domain names for which the Registration Agreement is in Chinese are the following (all registered through the Registrar Shanghai Meicheng Technology):

- <eurexrua.com>;
- <BoerseFrankfurtPro.com>;
- <boersefrankfurte.top>;
- <boersefrankfurtz.top>;
- <eurexja.xyz >;
- <eurexfh.xyz>;
- <boersefrankfurtw.xyz>;
- <eurexsz.top>.

According to paragraph 11(a) of the UDRP Rules, "[u]nless 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".

Noting the aim of conducting the proceedings with due expedition, paragraph 10 of the UDRP Rules vests the panel with the authority to conduct the proceedings in a manner it considers appropriate while also ensuring both that the parties are treated with equality, and that each party is given a fair opportunity to present its case.

Generally, panels are inclined to accept a request of change of language when, according to the general circumstances of the case, it is evident that the Respondent is capable of understanding the language requested by the Complainant. In the instant case, the Panel notes that at the time of the filing of the Complaint, two of the disputed domain names for which the language of the Registration Agreement is Chinese, led to active websites in English. This is sufficient evidence of the fact that the individual who allegedly registered these domain names (Yang Tian Ping) is fluent in English. With respect to the other domain names, all allegedly registered in the name of Ji Wan Tao, the Panel notes that despite they do not lead to active websites, they contain well-known trademarks used in the financial field, where English is notably the working language. Furthermore, these disputed domain names are subject to the same common control of the other disputed domain names leading to active English websites, and of those for which the Registration Agreement is English. Therefore, also in this case, there is at least a high probability that the alleged registrant has a good knowledge of English, and that the change of language would not prejudice his right to be treated with equality and to fairly present his case.

For these reasons, and taking also into consideration the need to conduct the proceeding on an expedited basis, the Panel

determines that the language of this proceeding be English.

Therefore, 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. Identity or confusingly similarity of the disputed domain names to the Complainant's trademarks (Paragraph 4(a)(i) of the Policy).

The Panel agrees with the Complainant that all the disputed domain names are confusingly similar to the Complainant's trademarks. In particular, the disputed domain names contain the trademark EUREX, or the trademark BÖRSE FRANKFURT, where the letter "Ö" has been replaced by the letters "oe", which is the letter combination usually adopted to replace the o-Umlaut. Furthermore, after the Complainant's trademarks, the disputed domain names contain single letters or double/triple letter combinations. In some instances, these letters can be perceived as descriptive of a geographic region (e.g. "ru" for Russia and "hk" for Hong Kong), in others it is the common abbreviation for "very important person" (vip), and for the rest they have no meaning. According to section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions Third Edition, ("WIPO Jurisprudential Overview 3.0"), "[w]here the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element".

In light of the foregoing, the Panel is satisfied that the first condition under the Policy is met.

II. The Respondent's rights or legitimate interests in respect of the disputed domain names (Paragraph 4(a)(ii) of the Policy).

While the overall burden of proof rests with the complainant, UDRP panels have recognized that this could result in the often impossible task of proving a negative, requiring information that is often primarily within the knowledge of the respondent. As such, where a complainant makes a prima facie case that the respondent lacks rights or legitimate interests, the burden of production shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain name.

In the case at issue, the Panel finds that the Complainant has at least made a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain names. Primarily, the Complainant has not authorised the Respondent to use its trademarks in any manner whatsoever, including as part of a domain name. Furthermore, the Complainant and the Respondent are not linked by some kind of relation that could justify the registration of domain names containing the Complainant's trademarks. The Respondent does not even appear to be commonly known by the disputed domain names. Some of the disputed domain names lead to websites where the Respondent is allegedly offering high risk financial services. In the "About us" section of these websites, the Respondent uses a misleading terminology that creates the false impression that there is an affiliation with the Complainant and its services. Therefore, both through the registration and the use of the disputed domain names, the Respondent is impersonating or at least suggesting a false sponsorship or endorsement by the Complainant. As already established by the steady case law, this use of the disputed domain names cannot amount to a bona fide offering of goods and services and cannot confer to the Respondent any rights or legitimate interests in the disputed domain names (see section 2.5.1. of the WIPO Jurisprudential Overview 3.0). Moreover, at least some of the disputed domain names have been used in connection with fraudulent activities (see below) and this use can never confer rights or legitimate interests to the Respondent (see section 2.13. of the WIPO Jurisprudential Overview 3.0). With respect to the domain names which are actually passively used, the Panel finds that already the mere fact of having registered domain names that include the Complainant's well-known trademarks, as such, misleading the Internet users as to the origin of these domain names, cannot confer to the Respondent right or legitimate interests.

In light of the foregoing, the Panel is satisfied that also the second condition under the Policy is met.

III. Bad Faith (Paragraph 4(a)(iii) of the Policy).

The Respondent has registered 19 domain names containing the Complainant's well-known trademarks EUREX and BÖRSE FRANKFURT. The registration of a domain name, identical to a third party's renowned trademark by an unaffiliated entity can

by itself create a presumption of bad faith (section 3.1.4 of the WIPO Overview 3.0). In the circumstances of this case, the Panel finds that the Respondent registered the disputed domain names in bad faith.

With respect to use in bad faith, the Complainant has provided enough evidence to show that at least one of the disputed domain names (<eurexrua.com>) was used to defraud an investor who placed his trust in the Respondent who was offering his services through a confusingly similar domain name and a corresponding website containing misleading wording implying an inexistent affiliation with, or endorsement by, the Complainant. The Complainant has also shown that this illegal activity was formerly conducted through another confusingly similar domain name <eurexvip.com>, subject to another UDRP proceeding, which ended with the reassignment of the domain name to the Complainant. As a result, the Respondent has shifted its fraudulent activity to the disputed domain name <eurexrua.com>. Moreover, two other disputed domain names are used in association with websites similar to the one connected to the disputed domain name <eurexrua.com>, thus in a way capable of misleading the Internet users as to the origin of the websites, and reliability of the services provided therewith. Although the majority of the disputed domain names are not used, from the overall situation it is clear that the Respondent has registered them as a backup in case, for some reason, those leading to active sites were no longer available. This is precisely what happened with the domain name <eurexrua.com>, which took over after the domain name <eurexvip.com> was reassigned to the Complainant following a past UDRP proceeding.

Therefore, the Panel concludes that the Respondent has registered and is being using the disputed domain names to intentionally attempt to attract, for commercial gain, Internet users to its website or other on-line location, by creating a likelihood of confusion with the Complainant's marks as to the source, sponsorship, affiliation, or endorsement of its website or location or of a product or service on its web site or location under paragraph 4(b) (iv) of the Policy.

Accordingly, the Panel is satisfied that the third and last condition under the Policy has been met.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **EUREXRUA.COM** : Transferred
2. **BOERSEFRANKFURTVIP.COM**: Transferred
3. **BOERSEFRANKFURTPRO.COM**: Transferred
4. **BOERSEFRANKFURTE.TOP**: Transferred
5. **BOERSEFRANKFURTZ.TOP**: Transferred
6. **EUREXJA.XYZ**: Transferred
7. **EUREXFH.XYZ**: Transferred
8. **BOERSEFRANKFURTW.XYZ** : Transferred
9. **EUREXSZ.TOP**: Transferred
10. **BOERSEFRANKFURTLY.XYZ**: Transferred
11. **BOERSEFRANKFURTLY.BUZZ**: Transferred
12. **BOERSEFRANKFURTRU.XYZ**: Transferred
13. **EUREXABD.XYZ** : Transferred
14. **EUREXGTY.TOP**: Transferred
15. **EUREXMJD.XYZ** : Transferred
16. **BOERSEFRANKFURTMJD.XYZ**: Transferred
17. **EUREXNHK.TOP** : Transferred
18. **BOERSEFRANKFURTGTY.TOP**: Transferred
19. **BOERSEFRANKFURTNHK.TOP**: Transferred

PANELLISTS

Name	Angelica Lodigiani
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DATE OF PANEL DECISION	2022-03-24
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Publish the Decision
