

Decision for dispute CAC-UDRP-105270

Case number	CAC-UDRP-105270
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Domain names	eurex-tw.site, eurex-tn.top, eurex-ch.top, eurmax-taiw.top, EurMax-Ch.top
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Case administrator

Organization	Iveta Špiclová (Czech Arbitration Court) (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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RESPONDENTS

Name	JianDuan Zhang
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Name	Xue Ting Gong
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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

Deutsche Börse AG is the owner of various trademark registrations, in particular:

- German Registration No. 30309064 EUREX filed on February 19, 2003 and duly registered and renewed for classes 35, 36, 39, 41, 42;
- German Registration No. 39756930 EUREX (and design) filed on November 27, 1997 and duly registered and renewed for classes 9, 16, 35, 36, 38, 42;
- IR No. 635015 EUREX registered on December 5, 1994 and duly renewed for classes 9, 35, 36, 42;
- IR No. 812147 Eurex registered on July 28, 2003 and duly renewed for classes 9, 16, 35, 36, 38, 41, 42;
- IR No. 812154 Eurex (&device) registered on July 28, 2003 and duly renewed for classes 9, 16, 35, 36, 38, 41, 42;
- EUTM No. 744763 EUREX filed on February 13, 1998 and duly registered and renewed for classes 9, 16, 35, 36, 38, 42;
- EUTM No. 3378973 EUREX US filed on September 30, 2003 and duly registered and renewed for classes 9, 16, 35, 36, 38, 41, 42;

- US registration No. 2941068 EUREX filed on May 10, 2002 and duly registered and renewed for classes 9, 16, 36;
- UK registration No. 900744763 EUREX filed on February 13, 1998 and duly registered and renewed for classes 9, 16, 35, 36, 38, 42; and
- CN registration no 5591453 EUREX filed on September 7, 2006 and duly registered and renewed for class 36.

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 10.000 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 it 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.

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):

- registration dates very close one another;
- identical or almost identical websites;
- same Registrar;
- same IP address;
- same domain name structure (in particular use of the Complainant's famous EUREX logo).

Furthermore, the Complainant has requested that the proceedings is conducted in English although the language of the registration agreement is Chinese. Actually, it is the Complainant's view that the Respondents are familiar with the English language since the available websites are in English and, in general, the Respondents have shown interest in the financial sector and the business activities in this field are largely conducted in English.

According to the Complainant, the disputed domain names are confusingly similar to Complainant's trademark as they contain the trademark EUREX in its entirety or the distinctive elements of the Complainants EUREX mark (namely the first three characters EUR- and the final character -X). According to Complainant the further elements in the disputed domain names will be understood as mere geographical references.

According to the Complainant, Respondents have no rights or legitimate interest in the disputed domain names. Actually, the Respondents, have never been authorized or otherwise been licensed or permitted by the Complainant to use any of its trademarks. The Respondents are also not affiliated in any way with the Complainant. Not only by using the trademarks EUREX as distinctive element of the disputed domain names, but also through the use of the EUREX logo, the Respondents imply an affiliation that does actually not exist.

According to the Complainant the disputed domain names were registered and are used in bad faith. Actually, by registering the disputed domain names, the Respondents create the incorrect impression that at least a connection with the Complainant exists. This is increased by the prominent use of the Complainant's logo in the websites corresponding to the domain names in dispute. It is evident for the Complainant that by registering and using the disputed domain names, the Respondents have intentionally attempted to attract, for commercial gain, Internet users by creating a deliberate likelihood of confusion with the Complainant's marks as to the source, sponsorship, affiliation or endorsement of the Respondents websites.

PARTIES CONTENTIONS

Complainant's contentions are summarised above.

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain names are 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 names (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 names have been registered and are being used in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy).

PROCEDURAL FACTORS

- Consolidation of Respondents

According to Article 3(c) of Rules for Uniform Domain Name Dispute Resolution Policy ("Rules"), the Complaint may relate to more than one domain name, provided that the disputed domain names are registered by the same domain-name holder. According to Article 10(e) of Rules a Panel shall decide a request by a Party to consolidate multiple domain name disputes in accordance with the Policy and these Rules.

The Complainant requests to consolidate its claims against the registrants of the disputed domain names notwithstanding that the registrant details are different, on the grounds that all the disputed domain names are subject to common control and that it is equitable and procedurally efficient to consolidate the proceedings.

The 5 disputed domain names have the following registrations date and are registered by different Respondents, as reported below:

1. Domain names in the name of Jian Duan Zhang:

- a) <eurex-tw.site>, registered on February 23, 2023;
- b) <eurex-tn.top>, registered on March 6, 2023;

2. Domain names in the name of Xue Ting Gong:

- c) <eurex-ch.top>, registered on October 24, 2022;
- d) <eurmax-taiw.top>, registered on September 8, 2022;
- e) <eurmax-ch.top>, registered on June 28, 2022.

All the disputed domain names are registered through the same Registrar (BIZCN) and share the same IP address (121.127.241.69). The websites corresponding to domain names a) and b) are identical and display the Complainant's EUREX logo. The domain tools screenshots archive under the domain names d) and e) demonstrates that there were identical websites (currently inactive) corresponding to those domain names and that said websites presented many communalities with the websites under domain names a) and b); in particular all these websites show the Complainant's mark EUREX. The domain name c) seems that has never been used until now.

Notwithstanding the differences in registrant details, the Panel considers that all the disputed domain names are under the same common control. In addition to the points raised by the Complainant, it must be noted that all the websites pretend to give the impression to be official websites of the Complainant and all the Respondents originate from China. Finally, the Respondents have had the opportunity to challenge in these proceedings the Complainant assertions of common control but have chosen not to do so.

In previous cases similar to the one at hand the Panel has decided to order the consolidation (see, for example, *Tod's SPA v Web Commerce Communications Limited*; CAC Case No. 103815 and *Deutsche Börse AG v. Iqbal Zafar / Domain Administrator*, See *PrivacyGuardian.org / WhoisGuard Protected*, *WhoisGuard, Inc. / Iqbal Zafar*, *FIX Tech / Host Pakistan*, *Syed Dilawar, Host Pakistan*

The Panel therefore agrees to the Complainant's request, even considering that, due to the circumstances of the present case, it is equitable and procedurally efficient to consolidate the proceedings.

- Language

As far as the language of the proceedings is concerned, Rule 11 states as follows:

"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 Complainant has requested that the language of the proceedings should be English for the reasons listed in the Complaint, even though the language of the Registration Agreement is Chinese. The Panel finds that the Complainant has introduced convincing arguments, having regard to the circumstances of this case, and thus accepts that the proceedings may be in English. In addition to the points raised by the Complainant, it must also be noted that (i) the disputed domain names are in Latin script and not in Chinese script indicating that the websites provided under the disputed domain names are directed to, at the very least, an English-speaking public and (ii) the Respondents did not make any submissions with respect to the language of the proceeding and did not object to the use of English as the language of the proceeding.

The same conclusion was reached by the Panel in previous similar cases (see *Get Fresh Cosmetics v Yongwan Ji*, WIPO Case no. D2016-0379 and *Philip Morris Products S.A. v. (Zhi Ping Xiang), (Yang Yang)*, WIPO Case No. D2021-1578).

The Panel is satisfied that all procedural requirements under the Policy have been met and there is no other reason why it would be inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

Paragraph 4(a) of the Policy provides that to obtain the transfer of the disputed domain name, the Complainant must prove that each of the following elements is present:

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

1a) <eurex-tw.site>; <eurex-tn.top>; <eurex-ch.top>

The Complainant has demonstrated rights through registration and use on the EUREX trademark. The Panel finds that the disputed domain names <eurex-tw.site>, <eurex-tn.top> and <eurex-ch.top> are confusingly similar with the EUREX trademark of the Complainant. Actually, the disputed domain names incorporate said trademark of the Complainant in its entirety. This is sufficient to establish confusing similarity (*Magnum Piering, Inc. v. The Mudjackers and Garwood S. Wilson, Sr.*, WIPO Case No. D2000-1525). The word "-tw", "-tn" and "-ch" which are added in the disputed domain names are disregarded as they are a geographic, non-distinctive terms (*BHP Billiton Innovation Pty Ltd v. Oloyi*, WIPO Case No. D2017-0284, *Accenture Global Services Limited v. Jean Jacques / Luck Loic*, WIPO Case No. D2016-1315; *Wragge Lawrence Graham & Co LLP v. Registration Private, Domains by Proxy LLC / Ian Piggitt*, WIPO Case No. D2015-0135). The generic Top-Level Domain ("gTLD") ".site" or ".top" are also disregarded, as gTLDs typically do not form part of the comparison on the grounds that they are required for technical reasons only (*Rexel Developpements SAS v. Zhan Yequn*, WIPO Case No. D2017-0275; *Hay & Robertson International Licensing AG v. C. J. Lovik*, WIPO Case No. D2002-0122). Therefore, the Panel finds that the disputed domain names <eurex-tw.site>; <eurex-tn.top> and <eurex-ch.top><hoganshop-us.com> are confusingly similar to the EUREX trademark of the Complainant.

1b) <eurmax-taiw.top>; <eurmax-ch.top>

The Panel finds that also the disputed domain names <eurmax-taiw.top> and <eurmax-ch.top> are confusingly similar with the Complainant's EUREX trademark. Actually, it is acceptable that when the only difference (the penultimate letter E of the mark is replaced by the letters MA in the domain names) is located in the middle of the signs there is a likelihood of confusion where the distinctive elements of the mark (namely the first three characters EUR- and the final character -X) are still found in the domain names. The same conclusion was reached by the Panel in a previous similar case where the domain name <telernar.com> was considered confusingly similar to the trademark TELEMAR (*Compagnia Generale Telemar S.p.A. v. chu cash*, WIPO Case No. D2019-1445). Therefore, the Panel finds that the disputed domain names <eurmax-taiw.top> and <eurmax-ch.top> are confusingly similar to the EUREX trademark of the Complainant.

Accordingly, the Complainant has, to the satisfaction of the Panel, shown that the disputed domain names are confusingly similar to a

trademark in which the Complainant has rights. The Complainant therefore succeeds on the first element of the Policy.

2) The Complainant demonstrated that the websites to which the majority of the disputed domain names are linked display the Complainant's trademark suggesting an affiliation that obviously does not exist. The Complainant clearly considers that Respondent has the hope and the expectation that Internet users looking for the brand EUREX will be directed to the websites corresponding to the disputed domain names. The Panel finds that said activity, of course, does not provide a legitimate interest in the disputed domain names under the Policy. Furthermore, the Complainant provided prima facie evidence that the Respondent does not have rights or legitimate interests in respect of the disputed domain names as it was never authorized to use the EUREX trademark by the Complainant. The Respondent, in the absence of any Response, has not shown any facts or element to justify prior rights or legitimate interests in the disputed domain names. The Complainant therefore succeeds on the second element of the Policy.

3) Paragraph 4(b) of the Policy provides a non-exclusive list of circumstances that evidence registration and use of a domain name in bad faith. Any one of the following is sufficient to support a finding of bad faith:

(i) circumstances indicating that the Respondent has registered or acquired the disputed domain name primarily for the purpose of selling, renting, or otherwise transferring the disputed domain name registration to the Complainant who is the owner of the trademark or service mark or to a competitor of that the Complainant, for valuable consideration in excess of the Respondent's documented out-of-pocket costs directly related to the disputed domain name; or

(ii) the Respondent has registered the disputed 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 disputed domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other online 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 Respondent registered the disputed domain names years after the use and registration of the EUREX mark by the Complainant. In consideration of the reputation achieved by EUREX it is clear that the Respondent was surely aware of the Complainant trademark when he registered the domain names in dispute. Moreover, the Respondent appears to have attempted to benefit from the appropriation of the EUREX mark in the disputed domain names. The use of the famous mark EUREX, which is well-known worldwide in the financial sector, for providing financial trading services regarding high-risk financial assets as various cryptocurrencies, clearly indicates that the disputed domain names were chosen by the Respondent to take advantage of the Complainant mark reputation. This finding leads to the obvious conclusion that the disputed domain names have been registered in bad faith (Research In Motion Limited v. Privacy Locked LLC/Nat Collicot - WIPO Case No. D2009-0320; The Gap, Inc. v. Deng Youqian - WIPO Case No. D2009-0113; AXA S.A. v. P.A. van der Wees - WIPO Case No. D2009-0206; BHP Billiton Innovation v. Ravindra Bala - WIPO Case No. D2008-1059).

The Panel also finds that, by linking the disputed domain names to websites offering financial services connected to the Complainant's mark EUREX, the Respondent has intentionally attempted to attract Internet users to its websites for commercial gain, by causing a likelihood of confusion with the trademark EUREX as to the source, sponsorship, affiliation or endorsement of its websites and the products and services promoted therein. As the conduct described above clearly falls within paragraph 4(b)(iv) of the Policy (Triumph International Vietnam Ltd v. Tran Quoc Huy - WIPO Case No. D2017-0340), the Panel concludes that the Respondent registered and is using the disputed domain names in bad faith pursuant to the paragraph 4(a)(iii) of the Policy.

With respect to the disputed domain name <eurex-ch.top>, it must be noted that said domain name seems to be never used until now. Anyway, it is the Panel's view that this disputed domain name has been registered in bad faith because the Respondent was or must have been perfectly aware of the existence of EUREX trademark, which is highly distinctive and unique for the registered goods and services, when the same Respondent registered the domain name <eurex-ch.top>. When considering this, in conjunction with the fact that the Respondent has been passively holding the disputed domain name and has not submitted any evidence suggesting that the domain name was selected for a legitimate use or purpose, an inference of bad faith registration and use is made by the Panel (see, between many others, Incipio Technologies, inc. v. Starfield Services Ltd, WIPO Case No. D2011-0418).

In consideration of the above, the Panel deems that the domain names in dispute were registered and used in bad faith. Accordingly, the Complainant has satisfied also the third element of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **eurex-tw.site**: Transferred
2. **eurex-tn.top**: Transferred
3. **eurex-ch.top**: Transferred

- 4. **eurmax-taiw.top**: Transferred
- 5. **EurMax-Ch.top**: Transferred

PANELLISTS

Name	Guido Maffei
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DATE OF PANEL DECISION	2023-04-21
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Publish the Decision
