Decision for dispute CAC-UDRP-105447

Case number	**CAC-UDRP-105447**
Time of filing	**2023-05-16 10:30:53**
Domain names	**EureXAg.com, EureX24.com**

Case administrator

Name	**Olga Dvořáková (Case admin)**

Complainant

Organization	**Deutsche Börse AG**

Complainant representative

Organization	**Grünecker Patent und Rechtsanwälte PartG mbB**

Respondents

Name	**Ahmad Nadeem**
Name	**Ahmad Nadeem**

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings that are pending or decided and that relate to the Disputed Domain Names.

IDENTIFICATION OF RIGHTS

Complainant states, and provides relevant evidence, that it is the owner of a number of trademark registrations for EUREX since at least 1994, including Int'l Reg. No. 635015 (registered December 5, 1994), as well as other international registration and registrations in the European Union, the United States, the United Kingdom, China, Malaysia and India These registrations are referred to herein as the "EUREX Trademark."

FACTUAL BACKGROUND

Complainant states that it is "one of the leading market place organizers for financial services, particularly trading in shares and other securities worldwide"; that it is "a transaction service provider, which affords international companies and investors access to global capital markets by means of advanced technology"; that "[i]ts product and service portfolio covers the entire process chain from order input to custody of shares and derivatives"; that it "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"; and that it "operat[es] the Frankfurt [Germany] stock exchange."

The Disputed Domain Names were created on September 20, 2022. The Disputed Domain Name <eurexag.com> has been used in connection with a website that includes Complainant's logo and, according to the Complaint, "is clearly aimed at impersonating the Complainant" and "allegedly provides investment services." The Disputed Domain Name <eurex24.com>, according to the Complaint, "is currently not used, but it is connected to the same IP address[]… as <eurexag.com>" and "is apparently registered for future use."

PARTIES CONTENTIONS

Complainant contends, in relevant part, as follows:

Paragraph 4(a)(i): Complainant states that each of the Disputed Domain Names "contain[s] the EUREX Trademark in its entirety"; that "ag" is an abbreviation for "Aktiengeselschaft," which means "stock corporation"; and that "24" "should have no real relevance as the addition of a dictionary term or number or letter to a complainant's mark is insufficient to dispel the impression of confusing similarity."

Paragraph 4(a)(ii): Complainant states that Respondent has no rights or legitimate interests in respect of the Disputed Domain Names because, inter alia, using a domain name to impersonate a complainant "cannot amount to a bona fide offering of goods and services and cannot confer to the Respondents any rights or legitimate interests in the disputed domain names"; and "the mere fact of having registered domain names that include the Complainant's well-known trademarks, as such, is misleading the Internet users as to the origin of these domain names, cannot confer to the Respondent right or legitimate interests."

Paragraph 4(a)(iii): Complainant states that the Disputed Domain Names were registered and are being used in bad faith because, inter alia, "[b]y choosing the disputed domain names consisting of the Complainant's famous trademark EUREX plus common abbreviations ('AG') or meaningless additions ('24'), 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[-]existent association with the Complainant exists," creating a likelihood of confusion under paragraph 4(b)(iv) of the Policy.

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 UDRP).

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 UDRP).

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 UDRP).

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

Identical or Confusingly Similar: Paragraph 4(a)(i):

Based upon the trademark registrations cited by Complainant, it is apparent that Complainant has rights in and to the EUREX Trademark.

As to whether the Disputed Domain Names are identical or confusingly similar to the EUREX Trademark, the relevant comparison to be made is with the second-level portion of each of the Disputed Domain Names only ("eurexag" and "eurex24") because "[t]he applicable Top Level Domain ('TLD') in a domain name (e.g., '.com', '.club', '.nyc') is viewed as a standard registration requirement and as such is

disregarded under the first element confusing similarity test." WIPO Overview 3.0, section 1.11.1.

Here, each of the Disputed Domain Names contains the EUREX Trademark in its entirety. As set forth in section 1.8 of WIPO Overview 3.0: "Where 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."

Accordingly, the Panel finds that Complainant has proven the first element of the Policy.

Rights or Legitimate Interests: Paragraph 4(a)(ii)

Complainant states that Respondent has no rights or legitimate interests in respect of the Disputed Domain Names because, inter alia, using a domain name to impersonate a complainant "cannot amount to a bona fide offering of goods and services and cannot confer to the Respondents any rights or legitimate interests in the disputed domain names"; and "the mere fact of having registered domain names that include the Complainant's well-known trademarks, as such, is misleading the Internet users as to the origin of these domain names, cannot confer to the Respondent right or legitimate interests."

WIPO Overview 3.0, section 2.1, states: "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."

The Panel finds that Complainant has established its prima facie case and without any evidence from Respondent to the contrary, the Panel is satisfied that Complainant has satisfied the second element of the UDRP.

Registered and Used in Bad Faith: Paragraph 4(a)(iii)

Whether a domain name is registered and used in bad faith for purposes of the UDRP may be determined by evaluating four (non-exhaustive) factors set forth in paragraph 4(b) of the UDRP: (i) circumstances indicating that the registrant has registered or the registrant 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 registrant's documented out-of-pocket costs directly related to the domain name; or (ii) the registrant 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 registrant has engaged in a pattern of such conduct; or (iii) the registrant has registered the domain name primarily for the purpose of disrupting the business of a competitor; or (iv) by using the domain name, the registrant has intentionally attempted to attract, for commercial gain, Internet users to the registrant's 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 registrant's website or location or of a product or service on the registrant's website or location.

The Panel agrees with Complainant that bad faith exists here pursuant to both paragraph 4(b)(iv) of the Policy. By using the Disputed Domain Name <eurexag.com> in connection with a website that appears to be for, or at least purports to offer services similar to, Complainant, Respondent has created a likelihood of confusion. See, e.g., DocuSign, Inc. v. Traffic CPMiPV, Maria Carter, WIPO Case No. D2010-0344 (creating a website that appears to be a website for a complainant is "likely fraudulent" and "indicates an intent to deceive or, at a minimum, act in bad faith with the intent for commercial gain."); Emu (Aus) Pty Ltd. and Emu Ridge Holdings Pty Ltd. v. Antonia Deinert, WIPO Case No. D2010-1390 ("a reasonable person who visited the Respondent's website was likely to be misled in relation to the source, sponsorship, affiliation, or endorsement of the website and the products purportedly made available for online sale on the website"); and Houghton Mifflin Co. v. The Weathermen, Inc., WIPO Case No. D2001-0211 ("a visitor to Respondent's site would be likely to believe that it was Complainant's official site" where Respondent's site contained the complainant's mark and character).

Further, under paragraph 4(b)(ii), the registration and use of two Disputed Domain Names as described above clearly evidences a "pattern" of conduct.

Further, regarding <eurex24.com>: WIPO Overview 3.0, section 3.3, states, "From the inception of the UDRP, panelists have found that the non-use of a domain name (including a blank or 'coming soon' page) would not prevent a finding of bad faith under the doctrine of passive holding.

"While panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put."

Here, the EUREX Trademark appears to be distinctive and appears to have a high degree of reputation given that it is protected by numerous registrations worldwide and that it is used by a company with 10,000 employees that has offices in multiple major cities worldwide. Further, Respondent did not submit a response or provide any evidence of actual or contemplated good-faith use.

Accordingly, the Panel finds that Complainant has proven 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. **EureXAg.com**: Transferred
2. **EureX24.com**: Transferred

PANELLISTS

Name	**Douglas Isenberg**

DATE OF PANEL DECISION 2023-06-20

Publish the Decision