

Decision for dispute CAC-UDRP-105809

Case number	CAC-UDRP-105809
Time of filing	2023-09-26 08:24:43
Domain names	EureXs.com, Tw-EureX.com, EureXSystem.com

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	chuanqi guoji
Name	Ming Wang
Name	Admin Netzlan

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

The Complainant owns trademark registrations for the mark EUREX in many jurisdictions worldwide, in particular the following:

German registration number 303090642 registered on April 24, 2003;

International registration number 695813 registered on March 25, 1998;

EUIPO registration number 000744763 registered on June 8, 1999;

US registration number 2941068 registered on June 8, 1999; and

UK registration number 900744763 registered on June 8, 1999.

FACTUAL BACKGROUND

The Complainant is one of the leading market place organizers for financial services, particularly trading in shares and other securities worldwide. The Complainant has customers in Europe, the USA and Asia, who are serviced by more than 10,000 employees at locations in Germany, Luxembourg, Switzerland and the USA, as well as at representative offices in London, Paris, Chicago, New York, Hong Kong, Dubai, Moscow, Beijing, Tokyo and Singapore. 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.

The domain name <EureXs.com> was registered on August 27, 2023. The domain name <Tw-EureX.com> was registered on September 15, 2023. The domain name <EureXSystem.com> was registered on September 20, 2023. The domain name <EureXs.com> resolves to a website, which operates a trading platform that allows users to trade crypto currencies. The domain names <Tw-EureX.com> and <EureXSystem.com> resolve to a webpage displaying error messages in Chinese language.

PARTIES CONTENTIONS

COMPLAINANT:

- (i) The Complainant owns registrations for the mark EUREX in many jurisdictions worldwide. The disputed domain names are confusingly similar to the Complainant's mark because the disputed domain names incorporate the Complainant's mark in their entirety with the addition of a single letter or generic terms and the ".com" gTLD.
- (ii) The Respondent has no rights or legitimate interests in respect of the disputed domain names. There is no connection between the Respondent and the Complainant or its subsidiaries. The Respondent does not use the disputed domain names in connection with a *bona fide* offering of goods or services, or legitimate noncommercial or fair use because the disputed domain name <EureXs.com> resolves to a website, which operates a trading platform that allows users to trade crypto currencies; and the disputed domain names <Tw-EureX.com> and <EureXSystem.com> resolve to a webpage displaying error messages.
- (iii) The Respondent registered and uses the disputed domain names in bad faith. The disputed domain name <EureXs.com> resolves to a website, which operates a trading platform that allows users to trade crypto currencies. The disputed domain names <Tw-EureX.com> and <EureXSystem.com> resolve to a webpage displaying error messages. The Respondents of these two disputed domain names have registered the disputed domain names to attract investors, misleading them about an actually not existing connection with the Complainant.

RESPONDENT:

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

Preliminary Issue: Multiple Respondents

In the instant proceedings, the Complainant has alleged that the entities which control the domain names at issue are effectively controlled by the same person and/or entity, which is operating under several aliases. Paragraph 3(c) of the Rules for the Policy (the "Rules") provides that a "complaint may relate to more than one domain name, provided that the domain names are registered by the same domain name holder." The Complainant contends that the disputed domain names were registered within 3 weeks. The disputed

domain name <Tw-EureX.com>'s resolving website displayed the same Chinese language error message, which had at least until September 7, 2023 been available under the disputed domain name <EureXs.com>. A traceroute for the domain name <Tw-EureX.com> does also not resolve to the ISP GOOGLE-CLOUDPLATFORM, USA but to the IP address 103.214.141.87 allocated to the ISP "DIYVM-HK" based in Hon Kong. Considering the structural similarities of the disputed domain names <EureXs.com>, <Tw-EureX.com> and <EureXSystem.com>, all containing the Complainant's famous EUREX mark in its entirety and all using capital letters for the characters "E" and "X", it is assumed that they were registered by the same persons or entity. This is further confirmed by a good number of similar domain registrations all containing EUREX as the distinctive element during the last months, which were regularly involving allegedly ISPs located in Hong Kong or the Respondents based in Hong Kong or China, whereby address data provided by the Respondents was regularly evidently incorrect or incomplete. These domain registrations were also regularly used for offering alleged financial services for crypto investments/trading, which were clearly intended to defraud customers.

Given the circumstances above, the Panel finds that all of the disputed domain names are commonly owned/controlled by a single Respondent who is using multiple aliases. The "Respondents" are collectively referred to as 'Respondent.'

The Panel is satisfied that all other 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

Paragraph 15(a) of the Rules for the UDRP ('the Policy') instructs this Panel to "decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable."

Paragraph 4(a) of the Policy requires that Complainant must prove each of the following three elements to obtain an order that a domain name should be cancelled or transferred:

- (1) the domain name registered by respondent is identical or confusingly similar to a trademark or service mark in which complainant has rights; and
- (2) respondent has no rights or legitimate interests in respect of the domain name; and
- (3) the domain name has been registered and is being used in bad faith.

In view of the Respondent's failure to submit a response, the Panel shall decide this administrative proceeding on the basis of the Complainant's undisputed representations pursuant to paragraphs 5(f), 14(a) and 15(a) of the Rules and draw such inferences it considers appropriate pursuant to paragraph 14(b) of the Rules. The Panel is entitled to accept all reasonable allegations and inferences set forth in the Complaint as true unless the evidence is clearly contradictory. See *Vertical Solutions Mgmt., Inc. v. webnet-marketing, inc.*, FA 95095 (FORUM July 31, 2000) (holding that the respondent's failure to respond allows all reasonable inferences of fact in the allegations of the complaint to be deemed true); see also *Talk City, Inc. v. Robertson*, D2000-0009 (WIPO Feb. 29, 2000) ("In the absence of a response, it is appropriate to accept as true all allegations of the Complaint.").

Rights

The Complainant claims rights in the mark EUREX as identified in the section 'Identification of Rights' above. The Panel notes that the WIPO, EUIPO and national trademark registrations are sufficient to establish rights in that mark. Since the Complainant provides evidence of trademark registrations with the EUIPO, the WIPO and other national trademark authorities, the Panel finds that the Complainant has established its rights in the mark EUREX.

The Complainant contends that the disputed domain names <EureXs.com>, <Tw-EureX.com> and <EureXSystem.com> are confusingly similar to the Complainant's mark because they incorporate the Complainant's mark in their entireties with the addition of a single letter or generic terms and the ".com" gTLD. The Panel is of the view that under Policy paragraph 4(a)(i), adding a geographic term or a generic term along with the ".com" gTLD is insufficient in differentiating from the mark. See *The Toronto-Dominion Bank v. George Whitehead*, FA 1784412 (Forum June 11, 2018) ("[S]light differences between domain names and registered marks, such as the addition of words that describe the goods or services in connection with the mark and gTLDs, do not distinguish the domain name from the mark incorporated therein per Policy paragraph 4(a)(i)."); see also *Franklin Covey Co. v. franklincoveykorea*, FA 1774660 (Forum Apr. 11, 2018) (finding that the <franklincoveykorea.com> domain name is confusingly similar to the FRANKLIN COVEY mark, as "[t]he addition of a geographic term and a gTLD do not negate confusing similarity between a domain name and a mark per Policy ¶ 4(a)(i).").

The Panel notes that the disputed domain name <EureXs.com> contains the Complainant's EUREX mark in its entirety. Added is the single character "s." The addition of the final element consisting of the single character "s," which most Internet users would read as a plural form of the trademark, does not prevent confusing similarity. Therefore, the Panel finds that the domain name <EureXs.com> is confusingly similar to the Complainant's mark EUREX.

The Panel also notes that the disputed domain names <Tw-EureX.com> and <EureXSystem.com> contain the EUREX mark in its entirety. The geographical element "-Tw" contained in the domain name <Tw-EureX.com> refers to Taiwan. The term "System" in the domain name <EureXSystem.com> is a generic or descriptive term. Therefore, the Panel finds that the disputed domain names <Tw-

EureX.com> and **<EureXSystem.com>** are also confusingly similar to the Complainant's mark EUREX.

No rights or legitimate interests

The Complainant must first make a *prima facie* case that the Respondent lacks rights and legitimate interests in the disputed domain names under Policy paragraph 4(a)(ii), then the burden shifts to the Respondent to show it does have rights or legitimate interests. See *Croatia Airlines d. d. v. Modern Empire Internet Ltd.*, WIPO Case No. D2003-0455 (the Complainant is required to make out a *prima facie* case that the Respondent lacks rights or legitimate interests. Once such *prima facie* case is made, the Respondent carries the burden of demonstrating rights or legitimate interests in the domain names. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(a) (ii) of the UDRP). See also *Advanced International Marketing Corporation v. AA-1 Corp*, FA 780200 (FORUM Nov. 2, 2011) (finding that a complainant must offer some evidence to make its *prima facie* case and satisfy Policy paragraph 4(a)(ii).

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain names. There is no connection between the Respondent and the Complainant or its subsidiaries. When a response is lacking, WHOIS information may be used to determine whether a respondent is commonly known by the disputed domain names under Policy paragraph 4(c)(ii). The WHOIS information for the disputed domain names lists the registrants as "chuanqi guoji," "Ming Wang" and "Admin Netzan." Nothing in the record suggests that the Respondent was authorized to use the EUREX mark. Therefore, the Panel finds that the Respondent is not commonly known by the disputed domain names per Policy paragraph 4(c)(ii).

The Complainant also contends that the Respondent does not use the disputed domain names in connection with a *bona fide* offering of goods or services, or legitimate noncommercial or fair use. The Panel notes that the disputed domain name **<EureXs.com>** resolves to a website, which operates a trading platform that allows users to trade crypto currencies; and the disputed domain names **<Tw-EureX.com>** and **<EureXSystem.com>** remain inactive.

The Panel observes that passing off as a complainant does not constitute a *bona fide* offering of goods or services or a legitimate noncommercial or fair use per Policy paragraphs 4(c)(i) or (iii). See *Ripple Labs Inc. v. Jessie McKoy / Ripple Reserve Fund*, FA 1790949 (Forum July 9, 2018) (finding the respondent did not use the domain name to make a *bona fide* offering of goods or services per Policy paragraph 4(c)(i) or for a legitimate noncommercial or fair use per Policy paragraph 4(c)(iii) where the website resolving from the disputed domain name featured the complainant's mark and various photographs related to the complainant's business); see also *Wolverine World Wide, Inc. v. Fergus Knox*, FA 1627751 (Forum Aug. 19, 2015) (finding no *bona fide* offering of goods or legitimate noncommercial or fair use existed where Respondent used the resolving website to sell products branded with Complainant's MERRELL mark, and were either counterfeit products or legitimate products of Complainant being resold without authorization).

The Complainant highlights that by using the trademark EUREX as distinctive element of the disputed domain name **<EureXs.com>**, the Respondent implies an affiliation with the Complainant that does actually not exist. This has clearly the purpose to benefit from the Complainant's reputation as a trustworthy provider of financial services. The Panel finds that the Respondent creates a false sense of legitimacy that is to confuse consumers into believing it is related to or affiliated with the Complainant when it is not. Therefore, the Panel finds the Respondent fails to make a *bona fide* offering of goods or services or a legitimate noncommercial or fair use in connection with the domain name **<EureXs.com>** per Policy paragraph 4(c)(i) or (iii).

Next, the Panel notes that the disputed domain names **<Tw-EureX.com>** and **<EureXSystem.com>** remain inactive. Under Policy paragraphs 4(c)(i) and (iii), inactively holding a disputed domain name is generally not considered a *bona fide* offering of goods or services, nor a legitimate noncommercial or fair use. See *Danbyg Ejendomme A/S v. Ib Hansen / guerciotti*, FA1504001613867 (Forum June 2, 2015) (finding that the respondent had failed to provide a *bona fide* offering of goods or services, or a legitimate noncommercial or fair use of the disputed domain name where the disputed domain name resolved to a website that offered both competing hyperlinks and hyperlinks unrelated to the complainant's business); see also *Thermo Electron Corp. v. Xu*, FA 713851 (Forum July 12, 2006) (finding that the respondent's non-use of the disputed domain names demonstrates that the respondent is not using the disputed domain names for a *bona fide* offering of goods or services under Policy paragraph 4(c)(i) or a legitimate noncommercial or fair use pursuant to Policy paragraph 4(c)(iii)). The Complainant provides screenshots of the disputed domain names' resolving websites that display error messages in Chinese language. Therefore, the Panel finds the Respondent does not use the disputed domain names for any *bona fide* offering of goods or services, nor any legitimate noncommercial or fair use in connection with the disputed domain names **<Tw-EureX.com>** and **<EureXSystem.com>** under Policy paragraphs 4(c)(i) and (iii).

The Panel finds that the Complainant has made out a *prima facie* case that arises from the considerations above. All of these matters go to make out the *prima facie* case against the Respondent. As the Respondent has not filed a Response or attempted by any other means to rebut the *prima facie* case against it, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain names.

Bad faith

The Complainant contends that the Respondent registered and uses the disputed domain names in bad faith. The Complainant contends that the disputed domain name **<EureXs.com>** resolves to a website, which operates a trading platform that allows users to trade crypto currencies. The nature of this trading platform is to intentionally mislead potential investors to believe that the trading platform is "safe" as it is operated by the Complainant given the misleading reference to the Complainant's subsidiary EUREX, the lack of any contact information, and the apparently non-existing regulation by the competent financial authorities. The Panel finds that the Respondent's use of the disputed domain name **<EureXs.com>** to pass off as the Complainant and to offer competing services and/or

goods is evidence of bad faith registration and use pursuant to Policy paragraph 4(b)(iv). See *Citadel LLC and its related entity, KCG IP Holdings, LLC v. Joel Lespinasse / Radius Group*, FA1409001579141 (Forum Oct. 15, 2014) (“Here, the Panel finds evidence of Policy paragraph 4(b)(iv) bad faith as Respondent has used the confusingly similar domain name to promote its own financial management and consulting services in competition with Complainant.”); see also *Bank of America, National Association v. Marcos Alexis Nelson*, FA1505001621654 (Forum July 2, 2015) (findings that the respondent had registered and used the disputed domain name in bad faith according to Policy paragraph 4(b)(iv) where it used the disputed domain name to promote its business in real estate and financial services, which were services that competed with the services the complainant offered); see also *Bittrex, Inc. v. Wuxi Yilian LLC*, FA 1760517 (Forum Dec. 27, 2017) (finding bad faith per Policy paragraph 4(b)(iv) where “Respondent registered and uses the <bittrex.com> domain name in bad faith by directing Internet users to a website that mimics Complainant’s own website in order to confuse users into believing that Respondent is Complainant, or is otherwise affiliated or associated with Complainant.”). As such, the Panel finds that the Respondent registered and uses the disputed domain name <**EureXs.com**> in bad faith pursuant to Policy paragraph 4(b)(iv).

Next, the Complainant contends that the disputed domain names <Tw-EureX.com> and <EureXSystem.com> resolve to a webpage displaying error messages. The Respondent of these two disputed domain names has registered the disputed domain names to attract investors, misleading them about an actually not existing connection with the Complainant. The Panel agrees that the passive holding of a domain name does not necessarily circumvent a finding that the domain name is being used in bad faith within the requirements of paragraph 4(a)(iii) of the Policy. See *Dermtek Pharmaceuticals Ltd. v. Sang Im / Private Registration*, FA1310001522801 (Forum Nov. 19, 2013) (holding that because the respondent’s website contained no content related to the domain name and instead generated the error message “Error 400- Bad Request,” the respondent had registered and used the disputed domain name in bad faith pursuant to Policy paragraph 4(a)(iii)). See also *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. D2000-0003 (finding that in considering whether the passive holding of a domain name, following a bad faith registration of it, satisfies the requirements of paragraph 4(a)(iii), the panel must give close attention to all the circumstances of the respondent’s behavior, and a remedy can be obtained under the Policy only if those circumstances show that the respondent’s passive holding amounts to acting in bad faith).

The particular circumstances of this case that the Panel has considered are:

- (i) The Complainant is one of the leading market place organizers for financial services, particularly trading in shares and other securities worldwide. The Complainant 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, the Complainant also operating the Frankfurt stock exchange, which is the leading company in its field of business. Therefore, the Complainant’s EUREX mark is well known in the relevant industry around the world; and
- (ii) The Respondent has provided no evidence whatsoever of any actual or contemplated good faith use by it of the disputed domain names <**Tw-EureX.com**> and <**EureXSystem.com**>.

Taking into account all of the above, the Panel concludes that the Respondent’s passive holding of the disputed domain names <**Tw-EureX.com**> and <**EureXSystem.com**> constitutes bad faith under Policy paragraph 4(a)(iii) and that the Respondent registered and uses the disputed domain names in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

- 1. **EureXs.com**: Transferred
- 2. **Tw-EureX.com**: Transferred
- 3. **EureXSystem.com**: Transferred

PANELLISTS

Name Mr. Ho-Hyun Nahm Esq.

DATE OF PANEL DECISION 2023-10-23

Publish the Decision