

Decision for dispute CAC-UDRP-105838

Case number	CAC-UDRP-105838
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Time of filing	2023-10-10 10:01:57
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Domain names	aquis-exchange.com
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Case administrator

Name	Olga Dvořáková (Case admin)
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Complainant

Organization	Aquis Exchange PLC
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Complainant representative

Organization	Mr Nick Fenner (TLT LLP)
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Respondent

Organization	Yue Wang ((Translated as 'Travel around the world company'))
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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 name.

IDENTIFICATION OF RIGHTS

The Complainant is the registrant, among others, of the EU trademark registration No. 012178877 "AQUIS EXCHANGE", registered on March 5, 2014, for goods and services in classes 9, 35, 36 and 42.

The disputed domain name was registered by the Respondent on June 27, 2023.

FACTUAL BACKGROUND

The Complainant is a public listed company incorporated in the UK and is authorised and regulated by the UK and French competent authorities to operate Multilateral Trading Facility businesses.

The Complainant provides stock exchanges, trading venues and associated technology.

The Complainant states that it is a very well established and trusted company and part of the financial infrastructure in the UK and EU with an international reputation.

The Complainant considers that the disputed domain name is substantially identical and confusingly similar to the "AQUIS EXCHANGE" trademark.

The Complainant underlines that it does not know the Respondent.

The Complainant points out that it has not authorized any third party to use its trademarks or register any domain name corresponding to them on its behalf.

The Complainant submits that the wording Aquis-Exchange has no generic meaning and there is no legitimate reason for the Respondent to have registered the disputed domain name.

The Complainant observes that it is a listed company in the UK and France, and has been known as "AQUIS EXCHANGE" for over ten years, therefore it is inconceivable that at the time of registration the Respondent did not know the Complainant.

The Complainant contends that the Respondent is not using the disputed domain name in connection with a bona fide offering of goods or services.

The Complainant adds that the Respondent has not been commonly known as Aquis-Exchange.

The Complainant argues that the disputed domain name was registered after the registration of the Complainant's trademarks and after over ten years of the Complainant's trading activity under the name "Aquis Exchange".

The Complainant adds that the Respondent made phishing attempts using an email address associated with the disputed domain name and considers such attempts as evidence of bad faith.

The Complainant concludes that the disputed domain name was both registered and is being used in bad faith.

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 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 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

In accordance with paragraph 4(a) of the Policy, in order to obtain the transfer of the disputed domain name, the Complainant has to demonstrate that:

- (i) The disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (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.

IDENTICAL OR CONFUSINGLY SIMILAR

The first requirement that the Complainant must establish is that the disputed domain name is identical with, or confusingly similar to, the Complainant's trademark or service mark rights.

There are two elements of this test: the Complainant must demonstrate that it has rights in a trademark or service mark and, if so, the disputed domain name must be shown to be identical or confusingly similar to the trademark or service mark.

The Complainant has proven ownership of the registered trademark "AQUIS EXCHANGE", identified in section "Identification of rights" above.

On the question of identity or confusing similarity, what is required is simply a comparison and assessment of the disputed domain name itself to the Complainant's trademark.

The disputed domain name differs from the Complainant's trademark "AQUIS EXCHANGE" only by the addition of the hyphen, and by the presence of the top-level domain ".COM".

It is well accepted that the hyphen is not relevant in the confusing similarity test (see, for example, WIPO case No. D2016-0676).

It is also well established that the top-level domain may generally be disregarded in the confusing similarity test (see, for example, WIPO case No. D2016-2547).

Therefore, the Panel considers that the disputed domain name is confusingly similar to the Complainant's trademark "AQUIS EXCHANGE".

Accordingly, the Panel finds that the Complainant has satisfied paragraph 4(a)(i) of the Policy.

RIGHTS OR LEGITIMATE INTERESTS

The second requirement that the Complainant must prove is that the Respondent has no rights or legitimate interests in the disputed domain name.

Paragraph 4(c) of the Policy provides that the following circumstances can be situations in which the Respondent has rights or legitimate interests in the disputed domain name:

- (i) before any notice to [the Respondent] 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] (as an individual, business, or other organization) [has] been commonly known by the [disputed] domain name, even if [the Respondent] [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.

This is a non-exhaustive list of circumstances in which a respondent can show rights or legitimate interests in a domain name.

The onus of proving this requirement falls on the Complainant. UDRP panels have recognized that proving that a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of "proving a negative".

Accordingly, it is usually sufficient for a complainant to raise a prima facie case against the respondent and the burden of proof on this requirement shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in a domain name.

The Panel finds that the Complainant has made out a prima facie case that the Respondent does not have rights or legitimate interests in the disputed domain name.

In particular, the Complainant states that:

- it does not know the Respondent;
- it has not authorized any third party to use its trademarks or register any domain name corresponding to them on its behalf;
- the wording "Aquis-Exchange" has no generic meaning and there is no legitimate reason for the Respondent to have registered the disputed domain name;
- it is a listed company in the UK and France, and has been known as "AQUIS EXCHANGE" for over ten years, therefore it is inconceivable that at the time of registration the Respondent did not know the Complainant;
- the Respondent is not using the disputed domain name in connection with a bona fide offering of goods or services, but is using it for phishing purposes;

- the Respondent has not been commonly known as "Aquis-Exchange".

In the absence of a Response, there is no indication in the present case that the Respondent is commonly known by the disputed domain name.

Furthermore, the Respondent has failed to demonstrate any of the other non-exclusive circumstances evidencing rights or legitimate interests under paragraph 4(c) of the Policy or other evidence of rights or legitimate interests in the disputed domain name.

The Respondent does not appear to make any legitimate non-commercial or fair use of the disputed domain name, nor any use in connection with a bona fide offering of goods or services. Indeed, the disputed domain name has been used for phishing attacks.

Taking into account that the Complainant does not know the Respondent, that it has not authorized any third party to use the "AQUIS EXCHANGE" trademark or register the disputed domain name, that the wording "Aquis-Exchange" has no generic meaning, that the disputed domain name has been used for phishing attacks and that the Respondent is not commonly known as the disputed domain name, the Panel cannot imagine any possible legitimate justification for this use, and the Respondent has not come forward with any explanation that demonstrates any rights or legitimate interests in the disputed domain name.

Accordingly, the Panel finds that the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

BAD FAITH

Under the third requirement of the Policy, the Complainant must establish that the disputed domain name has been both registered and used in bad faith by the Respondent.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, including:

- (i) circumstances indicating that [the Respondent] [has] registered or [has] 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 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 [the Respondent's] web site 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] web site or location or of a product or service on [the Respondent's] web site or location.

The Panel, on the basis of the evidence presented, agrees with the Complainant's contentions that the disputed domain name was registered in bad faith and that it has been used in bad faith.

The Panel observes that it is well established that the scenarios described in UDRP paragraph 4(b) are non-exclusive and merely illustrative. Therefore, even where a complainant is not able to demonstrate the literal application of one of the above-mentioned scenarios, evidence demonstrating that a respondent seeks to take unfair advantage of, abuse, or otherwise engage in behaviour detrimental to the complainant's trademark would also satisfy the complainant's burden.

Indeed, taking into account the long business activity of the Complainant under the "AQUIS EXCHANGE" name and the registration of the corresponding trademark, which long predated the disputed domain name, it is inconceivable that the Respondent was not aware of the Complainant's rights in the trademark "AQUIS EXCHANGE" when registering the disputed domain name. The Respondent should have performed an internet search, aimed at excluding possible conflicts with third party rights. Therefore, the Respondent has failed to carry out such a search and has to be considered responsible for the resulting abusive registration under the concept of wilful blindness (see, for example, WIPO Case No. D2018-1182). Consequently, this circumstance is considered by the Panel as evidence of bad faith.

Moreover, other panels considered that the use of a domain name in connection with a phishing attempt is considered as evidence of bad faith (see, for example, WIPO Case No. D2022-4600). The Panel agrees with this view and considers that, in the present circumstances, the use of the disputed domain name in connection with phishing attempts supports a finding of bad faith.

The Panel observes that if the Respondent had legitimate purposes in registering and using the disputed domain name it would have filed a response in this proceeding.

The Panel, having taken into account the Respondent's knowledge of the "AQUIS EXCHANGE" trademark at the time of the disputed domain name's registration, that no response to the complaint has been filed, and the use of the disputed domain name in connection with phishing attempts, considers that the disputed domain name was registered and is being used in bad faith.

Accordingly, the Panel finds that the disputed domain name was registered and is being used in bad faith within the meaning of

paragraph 4(b)(iv) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

- 1. **aquis-exchange.com**: Transferred

PANELLISTS

Name	Michele Antonini
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DATE OF PANEL DECISION	2023-11-05
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Publish the Decision