Decision for dispute CAC-UDRP-105808

Case number	**CAC-UDRP-105808**
Time of filing	**2024-02-13 08:01:15**
Domain names	**EuroBorseGroup.com, BoerseGroup.com**

Case administrator

Organization	**Iveta Špiclová (Czech Arbitration Court) (Case admin)**

Complainant

Organization	**Deutsche Börse AG**

Complainant representative

Organization	**Grünecker Patent und Rechtsanwälte PartG mbB**

Respondents

Name	**Adrian Chis**
Name	**Ivan Borisov**

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings which are pending or decided and which relate to the second disputed domain name, <boerseGroup.com>. The Complainant said that a Criminal Complaint by a defrauded user against inter alia EURO BÖRSE GROUP as owner of the disputed domain name <euroborsegroup.com> runs before the Spanish Criminal Authorities (IdLexNet 1202410634004103).

IDENTIFICATION OF RIGHTS

The Complainant DEUTSCHE BÖRSE AG registered "DEUTSCHE BÖRSE GROUP" trademarks in several countries, e.g. German trademark reg. no. 306514745 DEUTSCHE BÖRSE GROUP (&device) with priority of 4.8.2006 which is valid, EUTM reg. no. 005299011 DEUTSCHE BÖRSE GROUP (&device) with priority 18.08.2006 and International trademark reg. no. 917734 DEUTSCHE BÖRSE GROUP (&device) with priority of 18.08.2006 with protection for CH, RU. Further he registered German trademark reg. no 39404080 “Deutsche Börse” with priority of 29.11.1994, still valid.

Moreover, Complainant is the owner of a numerous (word and word/design) registrations for the trademark EUREX for many jurisdictions worldwide, e.g. German trademark reg. no. 30309064 EUREX with priority 19.02.2003, EUTM reg. no. 744763 EUREX with priority 13.02.1998, which is valid and registered before the Respondent registered the disputed domain name.

The trade marks of the Complainant are well-known.

The Complainant also provided evidence that it owns a domain containing the name <deutsche-boerse.com> registered well before the two Respondents registered the disputed domain names.

FACTUAL BACKGROUND

The Complainant in these administrative proceedings is Deutsche Börse AG, a global company which was established in 1992 and is based in Frankfurt am Main, Germany. It is the parent company of Deutsche Börse Group which, inter alia, e.g. consists of Eurex Frankfurt AG (100 % subsidiary), Eurex Global Derivates AG (100 % subsidiary), Clearstream Holding AG (100 % subsidiary).

As of 31 December 2022, Complainant and its subsidiaries employed a total of 11,078 staff working at 55 locations worldwide. The business field includes the world-famous DAX index and data, as well as admission, trading and clearing. In 2022, the Deutsche Börse Group has realised a profit of 1.494,4 million euros.

In particular, Deutsche Börse Group operates the Frankfurter Wertpapierbörse (English translation: Frankfurt Stock Exchange; also known as “Deutsche Börse”) and its trading platform Xetra, the global reference market for German equity and exchange-traded funds (ETFs).

Thereby, Deutsche Börse Group is one of the 15 largest stock exchanges in the world in terms of trading volume: Deutsche Börse’s cash markets generated a turnover of 105.01 billion in January 2024.

Furthermore, the Complainant operates Europe’s leading market for trading financial derivatives, the EUREX derivatives exchange. EUREX Group is made up of several companies in the derivatives business with representative offices around the world, which are available under www.eurex.com/ex-en/. More than 7,000 traders are registered with EUREX.

PARTIES CONTENTIONS

The Complainant contends that the requirements of the Policy have been met and that the disputed domain names should be transferred to it.

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

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. Especially a single proceeding was here allowed to consolidate two different Registrants and with each one domain name because there is a great similarity in the signs, the way of registering the domains, their email-addresses and hiding their identity and acting to harm the same company, the Complainant, or the customers of the Complainant.

PRINCIPAL REASONS FOR THE DECISION

It is necessary for the complainant, if it is to succeed in this administrative proceeding, to prove each of the three elements

referred to in paragraph 4(a) of the Policy, namely that:

(i) the domain name is identical or confusingly similar to a trade mark in which the complainant has rights; and

(ii) the respondent has no rights or legitimate interest in respect of the domain name; and

(iii) the domain name has been registered and is being used in bad faith.

The Panel finds that the first disputed domain name <EuroBorseGroup.com> is confusingly similar to the trademarks of the Complainant. The disputed domain name <EuroBorseGroup.com>, incorporates the Complainant's well-known, registered trademark with a generic indication "euro". The addition of the gTLD ".com" does not add any distinctiveness to the disputed domain name. The loss of the letter "e" in Boerse, what stock exchange in English means, does not add any distinctiveness in the allover view. Further is the first wordpart in this disputed domain name "euro" similar to "eurex", the other trademark of the Complainant. The first three letters are identical. In the context of the relevant branch, it is confusing similar. Previous panels have accepted in several cases that EUREX is well known, e.g. CAC Case No. 104536 - <EUREXKR.com>, CAC-UDRP-105809 - <EureXs.com>, <Tw-EureX.com>, <EureXSystem.com>.

The Panel finds that the second disputed domain name <BoerseGroup.com> is confusingly similar to the trademarks of the Complainant. The disputed domain name <BoerseGroup.com>, incorporates entirely the Complainant's well-known, registered trademark disregarding the geographic indication "Deutsche". The addition of the gTLD ".com" does not add any distinctiveness to the Disputed Domain Name. The distinctive wordpart beyond "Deutsche" is "Boerse", what stock exchange in English means. It is distinctive because the German Word is recognizable in the world wide English spoken financial business. Given that Complainant's Marks are recognizable in the disputed domain name EuroBorseGroup.com, and the use of the disputed domain name, the disputed domain name is confusingly similar to the Complainant's marks (WIPO Case No. D2023-2183 - <uk-lw.com>).

The Complainant asserts that the Respondents have no rights or legitimate interests in respect of the disputed domain names. The Complainant has not granted the Respondents any rights to use Complaints trademarks within the disputed domain names, nor are the Respondents affiliated to the Complainant. Moreover, the Complainant contends and provides evidence that both Respondents have not developed a legitimate use in respect of the disputed domain names. The Complainant contends that the Respondents were seeking to use the disputed domains name only to divert consumers to its own business or to fraud. In case of the first disputed domain name the Respondent already had acted criminal, see the provided evidence Criminal Complaint by a defrauded user against the Complainant.

In lack of any Response from the Respondents or any other information indicating the contrary, the Panel concludes that the Respondents have no rights or legitimate interests in respect of the disputed domain names.

The Complainant also asserted and proved that the Respondents tried to attract internet users for commercial gain by creating a likelihood of confusion with the Complainant's trademarks. The Complainant rightfully contended that the disputed domain names are confusing similar to the prior trademarks of the Complainant. The Complainant also referred to the distinctiveness and reputation of its trademarks.

This makes it highly unlikely that the Respondents had no knowledge of the Complainant's prior trademark rights at the time of registration of the disputed domain names. The Complainant rightfully contended that the Respondents have used the disputed domain names intentionally to attract visitors for unfair commercial gain by creating confusion with the Complainant's trademarks, and that the Respondents have used the disputed domain names with that intention, namely in bad faith. See e.g., Accor v. Shangheo Heo / Contact Privacy Inc., WIPO Case No. D2014-1471 where the Panel stated that: "The unopposed allegation of phishing, and the evidence submitted in support of phishing, combined with the likelihood of confusion, is sufficient evidence of bad faith. …It seems likely, as Complainant alleges, that Respondent intentionally attempted to deceive consumers into providing personal and financial information, believing that Respondent was associated with the bona fide services offered by Complainant.". Reference is made also to: CAC case N° 101036, Boehringer Ingelheim Pharma GmbH & Co. KG vs. SKYRXSHOP - <dulcolax.xyz> and WIPO Case no. D2014-0306 Boehringer Ingelheim Pharma GmbH & Co. KG v. Klinik Sari Padma, BAKTI HUSADA.

Furthermore, the Respondents were using a hidden identity and used both the same very extraordinary provider titan. But this argument is not to be discussed further because bad faith is evident, whatsoever.

Accordingly, the Panel finds that the disputed domain names were both registered and used in bad faith and that the Complaint succeeds under 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. **EuroBorseGroup.com**: Transferred
2. **BoerseGroup.com**: Transferred

PANELLISTS

Name	**Harald von Herget**

DATE OF PANEL DECISION 2024-03-27

Publish the Decision