Decision for dispute CAC-UDRP-106479

Case number	CAC-UDRP-106479
Time of filing	2024-04-26 11:43:58
Domain names	xtradesness.org, xtradesness.com, exnesscapitalhub.com

Case administrator

Name	Olga Slanařová (Case admin)

Complainant

Organization	Exness Holdings CY Limited

Respondent

Name	Alexey Gulko

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 owner of the trademark EXNESS registrations on a worldwide basis since 2008. The EXNESS trademarks have been registered under the Madrid System for the international registration of marks and enjoy protection in more than 100 countries, including, inter alia, the USA, the European Union through Africa. One of them, the EU trademark EXNESS (Reg. No. 018616417) was filed on December 3, 2021, granted on March 24, 2022, in connection with the classes 9, 36 and 42.

FACTUAL BACKGROUND

EXNESS HOLDINGS CY LIMITED (“EXNESS” or “Complainant”) is the owner of the trademark EXNESS registrations on a worldwide basis since 2008. The EXNESS trademarks have been registered under the Madrid System for the international registration of marks and enjoy protection in more than 100 countries, including, inter alia, the USA, the European Union through Africa. One of them, the EU trademark EXNESS (Reg. No. 018616417) was filed on December 3, 2021, granted on March 24, 2022, in connection with the classes 9, 36 and 42.

Moreover, the Complainant is also the owner of the large domain names portfolio including <exness.com>, <exness.eu>, <exness.uk>, etc (the Complainant presented evidence showing more than 750 domain names containing the word EXNESS are under its control). Additionally, the Complainant continuously acquires newly available domain names incorporating EXNESS trademark, to enhance its online brand protection and consumer trust. All of them are now connected to the official website <http://www.exness.uk>. The Complainant uses the trademark EXNESS in connection with financial services globally.

The Complainant (EXNESS HOLDINGS CY LIMITED) is a part of Exness Group - an online multi-asset broker that was founded in 2008. It is recognized as an industry leader. Besides its established markets, it is growing fast in MENA, Africa, and Latin America. The claimant complies with the highest regulatory standards and has eight licenses from international regulatory bodies, including many in Europe (Cyprus and the UK).

The disputed domain name <exnesscapitalhub.com> was registered on December 19, 2023, while the disputed domain names <xtradesness.com> and <xtradesness.org> were registered on November 8, 2023 and on January 31, 2024, respectively. The holder of all these three domain names is the Ukrainian resident Alexey Gulko from Kyiv.

The disputed domain names are used to create the fake visibility of non-existent company Exness Capital LTD which purports to provide financial services of the same character as the Complainant's. The Complainant provides that all these three domain names are being maliciously used to perpetrate scams on unsuspecting clients. These fraudulent domain names are intentionally designed to deceive consumers into believing that they are engaging with the Complainant, which is a reputable and established financial services provider. By leveraging the goodwill associated with the EXNESS trademark, the scammers engage in deceptive practices, not only to mislead consumers but also to illegally harvest sensitive personal and financial information.

PARTIES CONTENTIONS

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

The Complainant outlines the clear and compelling connections among the disputed domain names <xtradesness.org>, <xtradesness.com>, and <exnesscapitalhub.com>: (a) each of these domain names was registered through the same registrar; (b) all of them employed WHOIS masking services in an attempt to evade detection (a common tactic utilised by those seeking to conceal their identity and potentially engage in bad-faith registration and use of domain names); (c) each domain name employs an identical favicon, which incorporates the same distinctive logo, creating a strong visual association between the sites; (d) the design of the login areas across these domain names is consistent with one another, further evidencing a coordinated effort to present a unified, albeit misleading, user experience. The Complainant concludes that this pattern of behaviour suggests a strategic intent to capitalise on the bad faith associated with the nefarious purposes such as phishing, fraud, or infringement of intellectual property rights.

In the matter of the disputed domain name <xtradesness.com>, the disclaimer text claims the website to be the property of "Exness Capital LTD", with a physical location listed at "Neas Egkomis 33, Nicosia 2409, Cyprus". The disclaimer asserts that Exness Capital LTD is a trademark owner and does not provide services to a list of specific countries and jurisdictions. However, in fact, the business entity by the name of "Exness Capital LTD" is not registered in Cyprus. Moreover, "Exness capital" is not a registered trademark, further invalidating the claim of lawful ownership and use. This false representation is compounded by the respondent's use of the domain name https://xtradesness.com/, which incorporates the well-known EXNESS mark over its website at different times, thus indicating an intention to mislead or potentially defraud consumers by suggesting an association or affiliation with the legitimate EXNESS brand. The Complainant concludes that the use of such a domain name, coupled with the erroneous information provided in the disclaimer, constitutes bad faith registration and use, warranting action under the Uniform Domain Name Dispute Resolution Policy (UDRP).

The Respondent provided a very short response: "The domains named in the lawsuit were registered without the authorization of the account holder at the godaddy.com domain registrar. These people were fired long ago, but using access to the registration system to which they had access, were able to register the said domains. Due to the fact that the dispute is now open, I cannot remove these domains completely from the godaddy.com domain registration system. As soon as godaddy.com allows me to remove them, I will do so immediately and report back. I will only be happy if the godaddy.com domain registrar removes the domains in question." Later, after the case administrator noted that removing the domain names while the UDRP proceeding is still active is not possible, the Respondent replied: "I understand that, but I was contacted by Gabriela Freire from Exness Holdings CY Limited, we chatted and then my domain registrar blocked my account, and it was no longer about the domains xtradesness.org, xtradesness.com, exnesscapitalhub.com, as the blocking was all, I in turn did my best to make the above domains not function. Such proceedings led to the loss of access to other domains that are not relevant to the case. One of the domains was related to the sale of products for adults, but apparently the interest of Exness Holdings CY Limited has affected this as well."

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 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

THE FIRST ELEMENT: CONFUSING SIMILARITY TEST

<exnesscapitalhub.com>

The disputed domain name <exnesscapitalhub.com> exactly reproduces the Complainant's trademark EXNESS, with the addition of the generic terms "capital" and "hub" which is not sufficient to escape the finding that this disputed domain name is confusingly similar to the trademark. On the contrary, "capitalhub" is the essence of the Complainant's type of business. Therefore, such addition does not change the overall impression of the designation as being connected to the Complainant's trademark.

<xtradesness.com> and <xtradesness.org>

From the Panel's perspective, the disputed domain names <xtradesness.com> and <xtradesness.org> were extracted from the trademark EXNESS based on its phonetical division into two syllables [ex-ness] and insertion of the plural form of the generic word "trade" between these two syllables. Omitting letter "e" in the beginning of the trademark EXNESS (i.e. reducing it to "XNESS") does not produce any phonetical difference because the pronunciation of English inscription "EXNESS" and "XNESS" has no any difference for the average Internet user with the average knowledge of the English language. Therefore, the combination of omitting the first letter "e" from the trademark EXNESS and inserting word "trades" between the syllables [ex-trades-ness] is not sufficient to escape the finding that the disputed domain names <xtradesness.com> and <xtradesness.org> are confusingly similar to the trademark EXNESS. Moreover, using the plural form of the word "trade" (i.e. "trades)" before the ending "-ness" makes it sound even more similar to the pronunciation of the ending of the trademark EXNESS. Additionally, the word "trade", singular or plural, also represent the main method of business in trading financial assets which is the main activity of the Complainant. Therefore, such insertion does not change the overall impression of the designation as being connected to the Complainant's trademark. In this sense, UDRP panels agree that 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 (see paragraph 1.8. of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition 3.0 ("WIPO Jurisprudential Overview 3.0.).

Lastly, the addition of the TLDs such as <.com> or <.org> in a domain name is considered as a standard registration requirement and, therefore, it should be disregarded under the first element of confusing similarity test (see paragraph 1.11 of WIPO Jurisprudential Overview 3.0).

Moreover, the Respondent does not dispute the statements of the Complaint in respect of the confusing similarity of the disputed domain names in question.

Therefore, the Panel concludes that the Complainant has satisfied the requirement under paragraph 4(a)(i) of the Policy and the disputed domain names are confusingly similar to Complainant's mark.

THE SECOND ELEMENT: RESPONDENT'S LACK OF RIGHTS OR LEGITIMATE INTERESTS IN THE DISPUTED DOMAIN NAMES

The second element of the Policy requires that the Complainant establishes that the Respondent has no rights or legitimate interests in the disputed domain name. The generally adopted approach by UDRP panels, when considering the second element, is that if a complainant makes out a prima facie case, the burden of proof shifts to the respondent to rebut it (see WIPO Jurisprudential Overview 3.0, paragraph 2.1).

As it follows from the Response in this case, the Respondent confirmed that "the domains named in the lawsuit were registered without the authorization of the account holder at the godaddy.com domain registrar." In short, the Respondent stated that he has lost the control of his account on the registrar's website and some people who "were fired long ago" used this account to register the domain names in question. Despite the fact that the reliability of Respondent's version raises certain doubts, one can surely conclude that the Respondent does not even try disputing the Complainant's statement of Respondent's lack of rights or legitimate

interests in the disputed domain names. Therefore, the Panel acknowledges that the Complainant presented prima facie evidence that the Respondent is not sponsored by or affiliated with Complainant in any way. Furthermore, the Complainant has not licensed, authorized, or permitted Respondent to use Complainant's trademarks in any manner, including in domain names. The Respondent's name (Alexey Gulko) does not resemble the disputed domain names in any manner. Respondent's use of the disputed domain names does not constitute a bona fide offering of goods or services or a legitimate non-commercial or fair use.

On these bases, the Panel concludes that the Respondent does not have any rights or legitimate interests in regard to the disputed domain names.

THE THIRD ELEMENT: THE DISPUTED DOMAIN NAMES HAVE BEEN REGISTERED AND ARE BEING USED IN BAD FAITH

Paragraph 4(a)(iii) of the Policy indicates that Complainant must assert that the Respondent registered and is using the disputed domain names in bad faith. In this sense, Paragraph 4(b) of the Policy sets out four circumstances which if found by the Panel to be present, shall be evidence of the registration and use of a domain name in 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 complainant, for valuable consideration in excess of the Respondent's documented out-of-pocket costs directly related to the 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 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 domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to the Respondent's website 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 website or location or of a product.

The evidence submitted by the Complainant confirms that its trademark EXNESS is distinctive and has acquired strong reputation in the financial services industry. As the Respondent has not argued with the statements of the Complaint, the Panel finds that Respondent, prior to the registration of the disputed domain names was or should have been aware of the Complainant's trademark, in particular since the first disputed domain name was registered on November 8, 2023, and Complainant's trademark was registered clearly before the registration of the disputed domain names. Previous UDRP panels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names incorporating the mark plus a generic term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith. Accordingly, the Panel finds that the disputed domain names were registered in bad faith.

Past panels have also held that the use of a domain name for purposes other than to host a website may constitute bad faith. Such purposes include sending email, phishing, identity theft, or malware distribution. Many such cases involve the respondent's use of the domain name to send deceptive emails, e.g., to obtain sensitive or confidential personal information from prospective job applicants, or to solicit payment of fraudulent invoices by the complainant's actual or prospective customers (see paragraph 3.4 of WIPO Jurisprudential Overview, version 3.0). The Complainant noted in its Complaint that he "received from more than one of its clients who fell victim to the Respondents; apparently, the Respondents use the Complainant's trademark to pursue financial activities targetting Russian speakers within the European Union." The Respondent did not argue with this statement in his Response. Therefore, in light of the above-mentioned findings, the Panel finds that the evidence submitted by the Complainant supports the argument that by using the disputed domain names, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to the Respondent's website 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 website or location or of a product. Therefore, the Panel concludes that Respondent has registered and is using the disputed domain names in bad faith and thus has satisfied the requirement under paragraph 4(a)(iii) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **xtradesness.org**: Transferred
2. **xtradesness.com**: Transferred

3. **exnesscapitalhub.com**: Transferred

PANELLISTS

Name	**Darius Sauliūnas**

DATE OF PANEL DECISION 2024-05-27

Publish the Decision