

Decision for dispute CAC-UDRP-106654

Case number	CAC-UDRP-106654
Time of filing	2024-07-03 09:57:00
Domain names	DeutscheBoerse-Trading.com

Case administrator

Name	Olga Dvořáková (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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Respondent

Organization	ompupits IT Services
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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

Complainant owns trademark registrations consisting of or including the mark DEUTSCHE BÖRSE in various jurisdictions worldwide, in particular:

- International trademark registration no. 917734 DEUTSCHE BÖRSE Group (&device) with priority of 18.08.2006 for classes 9, 16, 35, 36, 41, 42, 45 with protection for CH, RU;
- German trademark registration no. 30648274 DEUTSCHE BÖRSE (&device) with priority of 4.8.2006 for classes 36, 9, 16, 35, 38, 41, 42, 45;
- German trademark registration no 39404080 "Deutsche Börse" with priority of 29.11.1994 for classes 36, 9, 16, 35, 42;
- EUTM no. 5276738 DEUTSCHE BÖRSE (&device) with priority of 4.8.2006 for classes 9, 16, 35, 36, 38, 41, 42;
- EUTM no. 000886481 "DEUTSCHE BÖRSE" with priority of 24.7.1998 for classes 9, 16, 35, 36, 4.

The Complainant has had rights in the company name Deutsche Börse AG since 1992, which is regularly abbreviated as Deutsche Börse, as AG describes the type of legal entity.

FACTUAL BACKGROUND

Complainant operates Börse Frankfurt (Frankfurt Stock Exchange), and is one of the leading market place organizers for financial services, particularly trading in shares and other securities worldwide. Further, Complainant is a transaction service provider, which affords international companies and investors access to global capital markets by means of advanced technology. Its product and service portfolio covers the entire process chain from order input to custody of shares and derivatives.

Deutsche Börse Group has customers in Europe, the USA and Asia, who are serviced by more than 3,200 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, Complainant is the leading company in its field of business.

The disputed domain name was registered by the Respondent on June 25, 2024 and points to a web site using the Complainant's trade mark in its masthead compete with its umlaut to offer competing financial services.

PARTIES CONTENTIONS

Complainant:

Confusing Similarity

The disputed domain name <DeutscheBoerse-Trading.com> contains the Complainant's well known mark, with the exception of the "umlaut" that is transcribed as "oe". The common way to spell words with umlauts is to replace the "ö" by "oe" or simply replace it with an "o". Both ways to spell the letter are common and widely used and consequently, the transcription of the German "ö" as "oe" is irrelevant and does not avoid a finding of confusing similarity between the disputed domain name and the Complainant's trade mark. (See CAC Case no. 102877 deutsche-boerse.online).

The further element in the disputed domain name "trading" describes the financial trading services for which the Complainant's trademark is ordinarily used. It is a well-established principle that descriptive or generic additions to a trademark, and particularly those that designate the goods or services with which the mark is used, do not avoid confusing similarity of domain names and trademarks (as held in, inter alia, Time Warner Entertainment Company L.P. v. HarperStephens, WIPO Case No.D2000-1254, concerning over 100 domain names including <harrypotterfilms.net>, CAC Case No. 103885, EUREXTRADE.XYZ, EUREXTRAD.BUZZ). See also section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions Third Edition, ("WIPO Jurisprudential Overview 3.0"), which states "[w]here 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".

Rights or legitimate interest

The Respondent is not authorised by the Complainant.

There is no indication that the Respondent operating under "Compupits IT Services" and allegedly a resident in Limasol is commonly known by the disputed domain name.

The disputed domain name <DeutscheBoerse-Trading.com> contains the Complainant's well known trademark in its entirety (with transcription of the Umlaut as explained) and the addition of the element "trading" that is descriptive of the Complainant's services clearly shows that the registration of the disputed domain name itself inherently targets the Complainant and intends to create the incorrect impression that the disputed domain name is operated by or connected with the Complainant.

Further, the disputed domain name is highly similar to the Complainant's main domain name <deutsche-boerse.com>, which is used by the Complainant not only for its main website but also for its official email addresses. Thus, any use of the disputed domain name will always create for the average internet user the impression that this is use by or at least with consent of the Complainant. Thus, based on the intrinsic nature of the disputed domain name itself Respondent's legitimate interests in the disputed domain name can be excluded.

The disputed domain name is pointed to a site that uses the Complainant's trade mark spelt correctly with its umlaut to offer competing services impersonating the Complainant for likely phishing purposes. There is no bona fide offering of goods and services or legitimate non-commercial or fair use of the disputed domain name.

Registered and Used in Bad Faith

Given the distinctiveness and well-known character of the Complainant's trademark and company name as well as the addition of the further element "trading", which is descriptive for the Complainant's services and the use to which the disputed domain name has been put it is clear that the Respondent registered the disputed domain name with knowledge of the Complainant and its trademarks for the purposes of impersonation of the Complainant and likely phishing.

Overall, it must therefore be concluded that Respondent has registered and is using the disputed domain name <DeutscheBoerse-Trading.com> in opportunistic bad faith under paragraph 4(a)(iii) of the Policy and to cause confusion for fraudulent commercial gain.

Respondent:

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

The disputed domain name is confusingly similar to the Complainant's prior trade mark merely transcribing the "umlaut" as "oe" a common way to spell words with umlauts, and adding a hyphen which is punctuation, and the generic word "trading", none of which prevents a finding of confusing similarity between the disputed domain name and the Complainant's trade mark under the Policy.

The Respondent is not authorised by the Complainant or commonly known by the disputed domain name.

The Respondent has not answered this Complaint or rebutted the prima facie case evidenced by the Complainant herein.

The disputed domain name which is inherently deceptive has been used for a site containing the Complainant's mark complete with its umlaut in its masthead offering competing financial services impersonating the Complainant for likely fraudulent purposes and is therefore not a bona fide offering of goods or services. The use is commercial so there is no legitimate non commercial or fair use.

The use of the Complainant's correctly spelled mark with its umlaut in the masthead of the Respondent's site shows that the Respondent is aware of the Complainant and its business, rights and services.

The Respondent is intentionally causing confusion on the Internet for commercial gain and disrupting the business of a competitor. Due to the deceptive nature of the site, it is more likely than not that the purpose of the web site is phishing. Phishing is bad faith per se.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

- 1. **DeutscheBoerse-Trading.com**: Transferred

PANELLISTS

Name	Dawn Osborne
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DATE OF PANEL DECISION 2024-07-27

