Decision for dispute CAC-UDRP-106816

Case number	CAC-UDRP-106816
Time of filing	2024-09-05 09:48:45
Domain names	exnesspartners.com

Case administrator

Name	Olga Slanařová (Case admin)

Complainant

Organization	Exness Holdings CY Limited

Respondent

Name	Muser Jone

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 owns several trade mark registrations consisting of and incorporating the name EXNESS, including the US national trade mark EXNESS, registration No 4953350, first registered on 10 May 2016 in international class 36; and European Union trade mark EXNESS, registration No 018616417, first registered on 24 March 2022 in international classes 9, 36 and 42. The Complainant also refers to an International trade mark registration for the mark EXNESS but provides no further information as to when the mark was first registered. At least the US trade mark registration of the Complainant pre-dates the registration of the disputed domain name.

Furthermore, the Complainant owns a portfolio of domain names consisting of the name EXNESS, including the domain <exness.com> which is connected to the official website of the Complainant and its affiliates through which they inform Internet users globally about their financial services. However, the Complainant has provided no evidence as to when that domain name was first registered.

FACTUAL BACKGROUND

The Complainant is part of Exness Group, an online multi-asset broker founded in 2008. It is established and regulated in markets around the world.

The disputed domain name <exnesspartners.com> was registered on 4 June 2017 and resolves to a log-in page without any other active content.

PARTIES CONTENTIONS

The Complainant contends that all three elements of the UDRP have been fulfilled and it therefore requests the transfer of the disputed domain name to the Complainant. 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 trade mark 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 notes that, while the Complainant is the owner of a number of trade marks consisting of the name EXNESS, it does not itself appear to use these trade marks in the course of trade, such use occurring instead through trading affiliates which are not themselves a party to this proceeding. To the extent that this is the case, and absent any submissions from the Complainant on this issue, the Panel is nevertheless satisfied that, were related parties have rights in the relevant trade mark on which a UDRP complaint is based, the UDRP complaint may be brought by any one of these parties, including the corporate holding company which holds the relevant trade mark rights (see, for example, WIPO Case No. D2008-1368, Embarq Holdings Company LLC v. Domainsbigtime.com <embarqblog.com>; and WIPO Case No. D2010-1728, Endemol Netherland B.V v. David Williams <Endemoltv.com>).

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

With regard to the first UDRP element, the Panel finds that the disputed domain name is confusingly similar with the Complainant's trade mark EXNESS. Indeed, the disputed domain name incorporates the Complainant's trade mark in its entirety but adds the generic term "partners" as a suffix to the Complainant's trade mark. The Panel follows in this respect the view established by numerous other decisions that a domain name which wholly incorporates a complainant's registered trade mark may be sufficient to establish confusing similarity for the purposes of the UDRP (see, for example, WIPO Case No. D2003-0888, Dr. Ing. h.c. F. Porsche AG v. Vasiliy Terkin <porsche-autoparts.com>). The Panel further considers it to be well established that the addition of a generic or descriptive term does not allow a domain name to avoid confusing similarity with a trade mark (see, for example, WIPO Case No. D2019-2294, Qantas Airways Limited v. Quality Ads <qantaslink.com>; and CAC Case No. 102137, Novartis AG v. Black Roses <novartiscorp.com>). Other panels have previously found that "[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" (see WIPO Overview 3.0, section 1.8; and, for example, WIPO Case No. D2023-2542, Merryvale Limited v. tao tao <wwbetway.com>; and WIPO Case No. D2020-0528, Philip Morris Products S.A. v. Rich Ardtea <global-iqos.com>). Against this background, the Panel finds that the addition of the generic term "partners" is not sufficient to alter the overall impression of the designations as being connected with the Complainant's trade mark and does not prevent a likelihood of confusion between the disputed domain name and the Complainant, its trade mark and associated domain names. To the contrary, the disputed domain name rather adds to the likelihood of confusion because the addition of the generic term "partners", in conjunction with the Complainant's trade mark EXNESS, and the resolution of the disputed domain name to a log-in page, suggests that the disputed domain name links to an official website of the Complainant, and implies that it is linked to the Complainant and its business.

With regard to the second UDRP element, there is no evidence before the Panel to suggest that the Respondent has made any use of, or demonstrable preparations to use, the disputed domain name in connection with a bona fide offering of goods or services. Neither is there any indication that the Respondent is making legitimate non-commercial or fair use of the disputed domain name. Indeed, the disputed domain name is not being used for any active website but resolves to a log-in page without any other content. A lack of content at the disputed domain has in itself been regarded by other panels as supporting a finding that the respondent lacked a bona fide offering of goods or services and did not make legitimate non-commercial or fair use of the disputed domain name (see, for example, Forum Case No. FA 1773444, Ashley Furniture Industries, Inc v. Joannet Macket/JM Consultants). The Panel further finds that the Respondent is not affiliated with or related to the Complainant in any way and is neither licensed nor

otherwise authorised to make any use of the Complainant's trade mark or to apply for or use the disputed domain name. Additionally, the Whois information for the disputed domain name does not suggest that the Respondent is commonly known by the disputed domain name. Past panels have held that a respondent was not commonly known by a disputed domain name if the Whois information was not similar to the disputed domain name, as is equally not the case here (see, for example, Forum Case No. FA 1781783, Skechers U.S.A., Inc. and Skechers U.S.A., Inc. II v. Chad Moston / Elite Media Group <bobsfromsketchers.com> ("Here, the WHOIS information of record identifies Respondent as "Chad Moston / Elite Media Group." The Panel therefore finds under Policy ¶ 4(c)(ii) that Respondent is not commonly known by the disputed domain name under Policy ¶ 4(c)(ii)."). Finally, given that the disputed domain name resolves to a log-in page, the Panel notes that the use of a domain name for per se illegitimate activities, such as phishing, can never confer rights or legitimate interests on a respondent. Against this background, and absent any response from the Respondent, or any other information indicating the contrary, the Panel concludes that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

With regard to the third UDRP element, it is reasonable to infer that the Respondent either knew, or should have known, that the disputed domain name would be identical or confusingly similar to the Complainant's trade mark, and that the Respondent registered the disputed domain name in full knowledge of the Complainant's trade mark. Indeed, if the Respondent had carried out a Google search for the term "Exness", the search results would have yielded immediate results related to the Complainant, its websites, and its connected business and services. It is likely that the disputed domain name would not have been registered if it were not for the Complainant's trade mark (see, for example, WIPO Case No D2004-0673 Ferrari Spa v. American Entertainment Group Inc <ferrariowner.com>). Indeed, the Panel considers that the disputed domain name was intentionally designed to be either identical or confusingly similar with the Complainant's trade mark. Furthermore, the disputed domain name resolve to a log-in page without any other active content. First, it is difficult to conceive of any plausible actual or contemplated active use of the disputed domain name by the Respondent that would not be illegitimate on the grounds that it would constitute passing off, an infringement of consumer protection legislation, or an infringement of the Complainant's rights under trade mark law under circumstances where the disputed domain name corresponds to the Complainant's trade mark and is similar to the Complainant's genuine domain name currently used by the latter and its affiliates to promote their services. Secondly, numerous other UDRP decisions have taken the view, which this Panel shares, that the passive holding of a domain name with knowledge that the domain name infringes another party's trade mark rights may in itself be regarded as evidence of bad faith registration and use (see, for example, WIPO Case No. D2000-0003, Telstra Corporation Limited v. Nuclear Marshmallows; and WIPO Case No. D2004-0615, Comerica Inc. v. Horoshiy, Inc.). Finally, the Panel notes that the disputed domain name resolves to a log-in page, which may be regarded as a phishing attempt by the Respondent, seeking to obtain log-in credentials of the Complainant's legitimate customers. The Panel concludes that it is inconceivable that the Respondent would be able to make any good faith use of the disputed domain name for that purpose and, indeed, that such use manifestly constitutes further evidence of bad faith. Absent any response from the Respondent, or any other information indicating the contrary, the Panel therefore also accepts that the Respondent has registered and is using the disputed domain name in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **exnesspartners.com**: Transferred

PANELLISTS

Name	**Gregor Kleinknecht LLM MCIArb**

DATE OF PANEL DECISION 2024-10-11

Publish the Decision