Decision for dispute CAC-UDRP-107147

Case number	**CAC-UDRP-107147**
Time of filing	**2024-12-13 10:30:10**
Domain names	**exnesspartner.com**

Case administrator

Name	**Olga Slanařová (Case admin)**

Complainant

Organization	**Exness Holdings CY Limited**

Respondent

Name	**chanon kanjanarajit**

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, inter alia, a registered owner of the following trademark containing a word element "EXNESS":

- EXNESS (word), International (WIPO) Trademark, registration date 12. 09. 2012, trademark no. 1133115, registered for services in class 36;
- EXNESS (word), EU Trademark, registration date 24. 03. 2022, filing no. 018616417, registered for goods and services in classes 9, 36 and 42;

besides other national trademarks consisting of the “EXNESS“ denomination (collectively referred to as "Complainant's trademarks").

The Complainant’s trademarks are registered and used internationally in connection with financial and monetary services.

The Complainant also operates its primary website at www.exness.com and has a substantial online presence through the registration and use of over 770 domain names incorporating the EXNESS name.

FACTUAL BACKGROUND

The Complainant (Exness Holdings CY Limited) is a part of Exness Group - an online multi-asset broker founded in 2008. It is recognised as an industry leader. Besides its established markets, it is growing fast in MENA, Africa, and Latin America.

The disputed domain name <exnesspartner.com> was registered on 24 October 2024 and it is being held by the Respondent since 14 December 2024.

The domain name website (i.e. website to which the disputed domain name resolves) is currently not genuinely used and it merely displays a message “exnesspartner.com is parked free, courtesy of GoDaddy.com.” and it appears that the disputed domain name is available for sale.

The Complainant seeks transfer of the disputed domain name to the Complainant.

PARTIES CONTENTIONS

COMPLAINANT:

A) CONFUSING SIMILARITY

The Complainant states that:

- The disputed domain name contains “EXNESS” word element, and it is thus almost identical (i.e. confusingly similar) to Complainant’s trademarks;

- The addition of the generic term “PARTNER” is not sufficient to escape the finding that the disputed domain name is confusingly similar to the Complainant's trademarks as it does not prevent the likelihood of confusion between the disputed domain name and the Complainant, Complainant's trademarks and its business;

- The Complainant refers to previous domain name decisions in this regard.

Thus, according to the Complainant the confusing similarity between the Complainant’s trademarks and the disputed domain name is clearly established.

B) NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant states that:

- The Respondent has not been commonly known by the disputed domain name;

- The Complainant has not authorized, permitted or licensed the Respondent to use the Complainant’s trademarks in any manner. The Respondent has no connection or affiliation with the Complainant whatsoever. On this record, the Respondent has not been commonly known by the disputed domain name;

- Furthermore, the disputed domain name website has been during its existence inactive (parking website), which implies that there was no Respondent’s intention to use the disputed domain name for legitimate purposes;

- The Complainant refers to previous domain name decisions in this regard.

C) BAD FAITH REGISTRATION AND USE

The Complainant states that:

- Seniority of the Complainant's trademarks predates the disputed domain name registration and such trademarks are well known in relevant business circles. The Respondent can be considered to be aware of the Complainant's trademark when registering the disputed domain name due to well-known character thereof;

- The disputed domain name (at the time of filing of the complaint) is not genuinely used. In the light of the foregoing, the Complainant asserts that the disputed domain name was registered and used with the sole purpose of selling thereof to the Complainant;

- It is well-founded that registration of the disputed domain name that is confusingly similar to the Complainant’s trademarks which enjoys a strong reputation, plus other facts, such as above described not genuine use of the disputed domain name (inactive holding) are sufficient to establish bad faith under the 4(a)(iii) of the Policy;

- The Respondent uses a WHOIS masking to hide its identity, making it much more difficult for the Complainant to enforce its intellectual property rights. It is known to block or intentionally delay disclosure of the identity and implies a bad faith element.

- The Complainant refers to previous domain name decisions contending that registering a domain name(s) incorporating Complainant’s trademarks (e.g. <exnesspartners.com>), which enjoy high level of notoriety and well-known character, constitute prima facie registration in bad faith, despite a fact that such domain names are not genuinely used.

RESPONDENT:

The Respondent has not provided any response to the Complaint.

RIGHTS

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

A) RIGHTS

Since the disputed domain name and the Complainant's trademarks are not identical, the key element investigated and considered by the Panel is whether the disputed domain name consisting of the term "EXNESSPARTNER" is confusingly similar to the Complainant's trademarks.

The threshold test for confusing similarity under the UDRP involves a comparison between the trademark and the disputed domain name itself to determine the likelihood of Internet user confusion. In order to satisfy this test, the relevant trademark would generally need to be recognizable as such within the disputed domain name. An addition of common, dictionary, generic, or other descriptive terms is typically insufficient to prevent threshold Internet user confusion. Confusing similarity test under the UDRP typically involves a straightforward visual and aural comparison of the trademark with the domain name in question.

Applying the principles described above, the Panel contends that incorporation of a dominant „EXNESS" element of the Complainant's trademarks (which standalone enjoys a high level of distinctiveness) into the disputed domain name constitutes a confusing similarity between the Complainant's trademark and the disputed domain name. The addition of a non-distinctive element – the generic word "PARTNER" cannot prevent the association in the eyes of internet consumers between the disputed domain name and the Complainant's trademarks and thus the likelihood of confusion still exists.

For the sake of completeness, the Panel asserts that the top-level suffix in the disputed domain name (i.e. the ".com") must be disregarded under the identity and confusing similarity tests as it is a necessary technical requirement of registration.

Therefore, the Panel has decided that there is a confusing similarity in this case, it also concludes that the Complainant has satisfied paragraph 4(a)(i) of the Policy.

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant's assertions that the Respondent is not commonly known by the disputed domain name and is not affiliated with nor authorized by the Complainant are sufficient to constitute prima facie showing of absence of rights or legitimate interest in the disputed domain name on the part of the Respondent.

In addition, given the fact that (i) the disputed domain name has not been genuinely used and (ii) in the absence of the Respondent's response, the Panel concludes that there is no indication that the disputed domain name was intended to be used in connection with a bona fide offering of goods or services as required by UDRP.

Consequently, the evidentiary burden shifts to the Respondent to show by concrete evidence that it does have rights or legitimate interests in that name.

However, the Respondent failed to provide any information and evidence that it has relevant rights or legitimate interests in respect

of the disputed domain name (within the meaning of paragraph 4(a) (ii) of Policy).

BAD FAITH

The Respondent has not used the disputed domain name in any real and genuine manner, however, the Panel concludes (as it has been ruled in many similar cases, as for example Case No. CAC-UDRP-106816, <exnesspartners.com> and also Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003, <telstra.org>, Jupiters Limited v. Aaron Hall, WIPO Case No. D2000-0574, <jupiterscasino.com>, Ladbroke Group Plc v. Sonoma International LDC, WIPO Case No. D2002-0131, <ladbrokespoker.com>) that the apparent lack of so-called active use of the domain name(s) without any active attempt to sell or to contact the trademark holder (passive holding), does not as such prevent a finding of bad faith.

Examples of what may be cumulative circumstances found to be indicative of bad faith include cases in which (i) the Complainant has a well-known trademark and (ii) there is no genuine use (e.g. a mere "parking") of the disputed domain name by the Respondent (irrespective of whether the latter should also result in the generation of incidental revenue from advertising referrals).

In addition, it is clear that by addition of a non-distinctive element - suffix “PARTNER” while all other characters of the disputed domain name are identical to the Complainant trademarks, it was the Respondent’s intention to target Internet users who are legitimately excepting the disputed domain name to be in one way or another associated with the Complainant and its business.

For the reasons described above, since (i) there is only a remote chance that the Respondent has registered the disputed domain name just by a chance and without having knowledge about the existence of the Complainant’s rights and business (ii) there is no genuine use of the disputed domain name and (iii) the Respondent clearly misleads the internet users about association of the disputed domain name with the Complainant, the Panel contends, on the balance of probabilities, that the disputed domain name has been registered and is being used by the Respondent in bad faith.

Thus, the Panel has taken a view that 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.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **exnesspartner.com**: Transferred

PANELLISTS

Name	**Jiří Čermák**

DATE OF PANEL DECISION 2025-01-22

Publish the Decision