



(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.	HK-1701035
Complainant:	Dexus Holdings Pty Ltd
Respondent:	Dexus Management Limited, and bo wen yin/yin bo wen
Disputed Domain Name(s):	<dexusfx.com> and <dexusefx.com>

1. The Parties and Contested Domain Name

The Complainant is, Dexus Holdings Pty Ltd of PO Box R1822, Royal Exchange, NSW 1225, Australia.

The Respondent is Dexus Management Limited of Unit 04, 7/F, Bright Way Tower, No 33, Mong Kok Road, Kowloon 999077, Hong Kong and bo wen yin/yin bo wen, of heng duo zhen guan duo cun liu kong liu zu 27hao, Taixing, Jiangsu 225418, China.

The domain names at issue are <dexusfx.com> and <dexusefx.com>, (the “Domain Names”) registered by the Respondents with Name.com, Inc. of P.O. Box 6197 Denver CO 80206, United States of America and Bizcn.com, Inc. of 5/F, Tongda International Center, No.18, Gaoxiong Road, Guanyinshan Business District, Siming District, Xiamen Fujian 361008 China, respectively.

2. Procedural History

The Complainant filed the Complaint with the Asian Domain Name Dispute Resolution Centre (ADNDRC) (Hong Kong Office) on 2 November 2017. On 2 November 2017, the ADNDRC transmitted by email to the Registrar a request for registrar verification in connection with the Domain Names. On 3 November 2017, the Registrar transmitted by email to the ADNDRC its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The ADNDRC verified that the Complaint satisfied the formal requirements of the Domain Name Dispute Resolution Policy (the “Policy” or UDRP) and the Rules for Domain Name Dispute Resolution Policy (the “Rules”). In accordance with the Rules, the ADNDRC formally notified the Respondent of the Complaint and the proceeding commenced on 10 November 2017.

The ADNDRC did not receive any response from the Respondent on the due date of the Response which was 30 November 2017, in accordance with paragraph 5 of the Rules.

Accordingly, on 1 December 2017, the ADNDRC informed the parties that no response has been received and it would shortly appoint a single panelist.

On 7 December 2017, the ADNDRC appointed Karen Fong as sole Panelist in this matter. The Panelist accepted the appointment and has submitted a statement to the ADNDRC that she is able to act independently and impartially between the parties.

3. Factual background

The Complainant is an entity within the Dexus Property Group (the “Group”), one of Australia’s leading real estate investment trusts. The Complainant is the parent company of Dexus Funds Management Limited (“DXFM”), which is the investment manager for private client property mandates. DXFM is registered in the Australian Securities and Investments Commission. The Group’s activities include real estate investment in Australia, third party funds management platform and a trading business. It directly owns \$12.2 billion of office and industrial properties and manages a further \$12.7 billion of office, retail, industrial and healthcare properties for third party clients. The Group comprises of more than 425 property professionals who are located in offices in Sydney, Melbourne, Brisbane and Perth.

The Group’s services are provided under the trade mark “DEXUS”. The Complainant’s owns trade mark registrations for the DEXUS trade mark (the “Trade Mark”) in many jurisdictions including Japan, USA, Singapore, Great Britain, Australia, New Zealand and China. The earliest trade mark registration submitted in evidence dates back to 2008.

The Group’s primary website is connected to the domain name <dexus.com >. It is also active in their various social media platforms including Twitter and LinkedIn.

Dexus Management Limited registered the Domain Name <dexusfx.com> on 20 March 2017 and bo wen yin/yin bo wen registered the Domain Name <dexusefx.com> on 17 June 2017. The Domain Names resolve to websites which provide financial investment services (the “Websites”).

4. Parties’ Contentions

A. Complainant

The Complainant contends that the Domain Names are confusingly similar to the Trade Mark, the Respondent has no rights or legitimate interests with respect to the Domain Names and that the Domain Names were registered and are being used in bad faith. The Complainant requests transfer of the Domain Names, both of which it believes are related and under management and control of a single, unknown owner/registrant or the registrants are acting in concert.

The basis of its belief that the registrants are related and under management and control of a single unknown owner/registrant or the registrants are acting in concert are as follows:

- i. The Domain Names both contain the Trade Mark in its entirety.
- ii. Both Websites indicate that they belong to Dexus Funds Management Limited with Registration No 24 060920 783. This is the company name and ACN No

of one of the Group's companies as issued by the Australian Securities and Investments Commission.

- iii. Some links on the Website connected to <dexusefx.com> point to the pages on the Website at <dexusfx.com>.

B. Respondent

The Respondent did not reply to the Complainant's contentions.

5. Findings

A. General

The Policy provides, at Paragraph 4(a), that each of three findings must be made in order for a Complainant to prevail:

- i. Respondent's domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- ii. Respondent has no rights or legitimate interests in respect of the domain name; and
- iii. Respondent's domain name has been registered and is being used in bad faith.

B. Preliminary Procedural Issue - Consolidation of Proceedings

Paragraph 5(f) of the Policy allows a panel to consolidate multiple disputes between parties at its sole discretion and paragraph 10(e) of the Rules empowers a panel to consolidate multiple domain name disputes in accordance with the Policy and Rules. Neither the Policy nor the Rules expressly provide for the consolidation of multiple respondents in a single administrative proceeding. In fact, paragraph 3(c) of the Rules provides that a complaint may relate to more than one domain name provided that the domain names are registered by the same domain name holder. The panel in *Speedo Holdings B.V. v. Programmer, Miss Kathy Beckerson, John Smitt, Matthew Simmons*, [WIPO Case No. D2010-0281](#) reviewed the relevant UDRP decisions in relation to consolidation in multiple respondent's cases and extracted the following general principles:

- (1) Consolidation of multiples registrants as respondents in a single administrative proceeding may in certain circumstances be appropriate under paragraphs 3(c) or 10(e) of the Rules provided the complainant can demonstrate that the disputed domain names or the websites to which they resolve are subject to common control, and the panel having regard to all of the relevant circumstances, determines that consolidation would be procedurally efficient and fair and equitable to all parties.
- (2) The administrative provider should act as a preliminary gatekeeper in such cases by determining whether or not such complaints fulfill the requisite criteria. Once a case is admitted on a *prima facie* basis, the respondent has the opportunity to make its submissions on the validity of the consolidation together with its substantive arguments. In the event that the panel makes a finding that the complaint has not

satisfied the requisite criteria, the complainant is not precluded from filing the complaint against the individual named respondents.

In the present case, each of the Domain Names incorporate the Trade Mark in its entirety. The Websites are linked to each other and also indicate that they belong to one of the associated companies of the Complainant.

The Domain Names have clearly been used to divert customers from the Complainant's website. The Panel accepts the Complainant's contentions set out above. All of them point to the Complainant being the target of common conduct based on the registration and use of the Domain Names and that such conduct interferes with the Trade Marks. Furthermore, the Complainant's claims against the Domain Names involve common questions of law and fact.

The Respondents had the opportunity but did not respond substantively to the Complaint. Accordingly, applying the principles to the facts in this case, the Panel finds that the Complainant has established more likely than not that the Domain Names are subject to common ownership or control. The Panel finds such common control to justify consolidation of the Complainant's claims against the registrants of the Domain Names in this proceeding. The Panel further concludes in the circumstances of this case that consolidation would be fair and equitable to all parties and procedurally efficient, and therefore will allow the consolidation as requested by the Complainant pursuant to paragraph 10(e) of the Rules.

In light of the above, the Respondents may be referred to collectively as the Respondent hereafter.

C) Language of Proceeding

The Rules, paragraph 11, provide that unless otherwise agreed by the parties or specified otherwise in the registration agreement between the respondent and the registrar in relation to the disputed domain name, the language of the proceeding shall be the language of the registration agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceedings. According to the information received from the Name.com, Inc. the language of the registration agreement for the Domain Name <dexusfx.com> is English whilst according to the information received from the Registrar Bizcn.com, Inc., <dexusefx.com> is Chinese. The Complainant submits that the language of the proceeding should be English for the following reasons:

- i. The language of the registration agreement of <dexusfx.com> is English;
- ii. The Complainant is unable to communicate in Chinese and translation of the Complaint would unfairly disadvantage and burden the Complainant and delay the proceedings and adjudication of this matter;
- iii. Such additional delay, considering the obviously abusive nature of the Websites poses continuing risk to Complainant and unsuspecting consumers seeking Complainant or its products;
- iv. The Domain Names are comprised of Latin characters;

- v. The Respondent claims to be a subsidiary of an Australian company;
- vi. The term DEXUS, which is the dominant portion of the Domain Names, does not carry any specific meaning in the Chinese language.

The Panel accepts the Complainant's submissions regarding the language of the proceeding. The Domain Names are linked to each other and the registration agreement of one of them is in English. The Complainant may be unduly disadvantaged by having to conduct the proceeding in Chinese. The Panel notes that in any case all of the communications from the Center to the parties were transmitted in both Chinese and English. There is therefore no question of the Respondent not being able to understand the Complaint. The Respondent chose not to respond to the Complaint. Having considered all the circumstances of this case, the Panel determines that English is the language of the proceeding.

D) Identical / Confusingly Similar

The Panel is satisfied that the Complainant has established that it has rights to the Trade Mark.

The threshold test for confusing similarity involves the comparison between the trade mark and the domain name itself to determine whether the domain name is confusingly similar to the trade mark. The trade mark would generally be recognizable within the domain name. In this case the Domain Names contain the Trade Mark in its entirety with the addition of the descriptive acronym “fx” (or foreign exchange) in <dexusfx.com> and “efx” (or electronic foreign exchange) in <dexusefx.com>. The addition of these terms does nothing to minimise the risk of confusion. There is a long line of authorities on the UDRP which make it clear 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.

For the purposes of assessing identity or confusing similarity under paragraph 4(a)(i) of the Policy, it is permissible for the Panel to ignore the Top Level Domain as it is viewed as a standard registration requirement.

The Panel finds that the Domain Names are confusingly similar to a trade mark in which the Complainant has rights and that the requirements of paragraph 4(a)(i) of the Policy therefore are fulfilled.

D) Rights and Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, a respondent may establish rights to or legitimate interests in the disputed domain name by demonstrating any of the following:

- i. before any notice to it of the dispute, the respondent’s use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or
- ii. the respondent has been commonly known by the domain name, even if it has acquired no trademark or service mark rights; or

- iii. the respondent is making a legitimate non- commercial or fair use of the domain name, without intent for commercial gain, to misleadingly divert consumers, or to tarnish the trade mark or service mark at issue.

Although the Policy addresses ways in which a respondent may demonstrate rights or legitimate interests in a disputed domain name, it is well established that the overall burden of proof rests with the Complainant. The Complainant is required to make out a *prima facie* case that the Respondent lacks rights or legitimate interests. If such *prima facie* case is made, the burden of production shifts to the Respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the disputed domain name. If the Respondent fails to come forward with such appropriate allegations or evidence, the Complainant is generally deemed to have satisfied paragraph 4(a)(ii) of the UDRP. See *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, [WIPO Case No. D2003-0455](#), *Belupo d.d. v. WACHEM d.o.o.*, [WIPO Case No. D2004-0110](#), *Banco Itau S.A. v. Laercio Teixeira*, [WIPO Case No. D2007-0912](#), *Malayan Banking Berhad v. Beauty, Success & Truth International*, [WIPO Case No. D2008-1393](#), and *Accor v. Eren Atesmen*, [WIPO Case No. D2009-0701](#).

The Respondent is not affiliated to the Complainant in any way nor has it been authorised by the Complainant to register and use the Domain Names or in any other way. It does not appear to be commonly known by the Domain Names and does not have any independent right to the Domain Names. It is implausible that when the Respondent registered the Domain Names, it did not know of the existence of the Complainant's business under the Trade Mark especially since it is purporting to be one of the Complainant's subsidiaries offering services under the Trade Mark.

Further the Websites seek to obtain the personal information of customers by registering their accounts on the Websites. The information requested include user name, password, email address, ID or passport number and phone number. This is typical of many phishing sites which make use of such information for fraudulent or other nefarious purposes. There can be no legitimate interest in websites of such nature.

The Panel finds that the Complainant has made out a *prima facie* case, a case calling for an answer from the Respondent. The Respondent has not responded and the Panel is unable to conceive of any basis upon which the Respondent could sensibly be said to have any rights or legitimate interests in respect of the Domain Names.

The Panel finds that the Respondent has no rights or legitimate interests in respect of the Domain Names.

E. Bad Faith

To succeed under the Policy, a Complainant must show that the Domain Name has been both registered and used in bad faith. It is a double requirement.

The Panel is satisfied that the Respondent must have been aware of the Trade Mark when it registered the Domain Names. The Complainant has provided sufficient evidence that the registration of the Domain Names post date the Trade Mark registrations. The very incorporation of the Trade Mark in the Domain Names, the offer of products and services

which are similar to those of the Complainant and the reference to the one of the Complainant's subsidiaries on the Websites confirm the Respondent's awareness of the Trade Mark. Thus, the Panel concludes that the Respondent deliberately registered the Domain Names in bad faith.

The Panel also finds that the actual use of the Domain Names is in bad faith. The Websites depict the Respondent as being part of or related to the Complainant and/or the Group. The content of the Websites is also calculated to give the impression that they have been authorized by the Complainant when this is not the case. Also, the providing of personal information of customers by registering an account on the Websites is likely to be a phishing exercise for the purpose of using such information for fraudulent purposes. The Websites were set up to deliberately mislead internet users that it is connected to, authorised by or affiliated to the Complainant. From the above, the Panel concludes that the Respondent intentionally attempted to attract for commercial gain, by misleading Internet users into believing that the Respondent's website is and the products sold on it are those of or authorised or endorsed by the Complainant.

The Panel therefore concludes that the Domain Name were registered and is being used in bad faith under paragraph 4(b)(iv) of the Policy.

6. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the Domain Names, <dexusfx.com> and <dexusefx.com>, be transferred to the Complainant.

Karen Fong
Panelist

Dated: 1 January 2018