

ADMINISTRATIVE PANEL DECISION

Commodity Exchange, Inc., Board of Trade of the City of Chicago, Inc., New York Mercantile Exchange, Inc., and CME Group Inc. v. cbot, comex, main main, and Manlidy, GNN
Case No. D2022-4020

1. The Parties

The Complainants are Commodity Exchange, Inc., Board of Trade of the City of Chicago, Inc., New York Mercantile Exchange, Inc., and CME Group Inc., United States of America (“United States”), represented by Norvell IP llc, United States.

The Respondents are cbot, United States; comex, Hong Kong, China; main main, Hong Kong, China; and, Manlidy, GNN, Singapore.

2. The Domain Names and Registrars

The disputed domain names, <cbotapps.com>, <comexaim.com>, <comexcen.com>, <nymexanc.com>, <nymexant.com>, <nymexep.com>, <nymexfis.com>, <nymexidn.com> <nymextal.com> are registered with PDR Ltd. d/b/a PublicDomainRegistry.com; the disputed domain names <nymexnar.com> and <nymexapp.com> are registered with Name.com, Inc.; the disputed domain name <nymexcel.com> is registered with OwnRegistrar, Inc.; the disputed domain name <nymexkyc.com> is registered with Gname.com Pte. Ltd. (collectively the “Registrars”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 26, 2022. On October 28, 2022, the Center transmitted by email to the Registrars a request for registrar verification in connection with the disputed domain names. On October 28, 29, and 31, the Registrars transmitted by email to the Center their verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainants on October 31, 2022, providing the registrant and contact information for multiple underlying registrants disclosed by the Registrars, and inviting the Complainants to either amend the Complaint adding the Registrar-disclosed registrants as formal Respondents and provide relevant arguments or evidence demonstrating that all named Respondents are, in fact, the same entity and/or that all domain names are under common control; and/or, to file a separate complaint for any domain names for which it is not possible to demonstrate that all named Respondents are in fact the same entity and/or that all domain names are under common control and indicate which domain names will no longer be

included in the current Complaint. The Complainants filed amended Complaints on November 7 and 9, 2022, including arguments for the consolidation.

The Center verified that the Complaint together with the amended Complaints satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the "Policy" or "UDRP"), the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules"), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the "Supplemental Rules").

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondents of the Complaint, and the proceedings commenced on November 10, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 30, 2022. The Respondents did not submit any response. Accordingly, the Center notified the Respondents' default on December 1, 2022.

The Center appointed Edoardo Fano as the sole panelist in this matter on December 7, 2022. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

The Panel has not received any requests from the Complainants or the Respondents regarding further submissions, waivers, or extensions of deadlines, and the Panel has not found it necessary to request any further information from the Parties.

Having reviewed the communication records in the case file provided by the Center, the Panel finds that the Center has discharged its responsibility under the Rules, paragraph 2(a), "to employ reasonably available means calculated to achieve actual notice to Respondent". Therefore, the Panel shall issue its Decision based upon the Complaint, the Policy, the Rules, and the Supplemental Rules and without the benefit of a response from the Respondents.

The language of the proceeding is English, being the language of the Registration Agreements, as per paragraph 11(a) of the Rules.

4. Factual Background

The Complainants are the companies Commodity Exchange, Inc., Board of Trade of the City of Chicago, Inc., and New York Mercantile Exchange, Inc., all of them affiliated with and owned by the Complainant CME Group. They all are United States companies operating in the financial field and respectively owning several trademark registrations for COMEX, CBOT and NYMEX, among which:

- United States Trademark Registration No. 1,036,378 for COMEX, registered on March 23, 1976;
- Singapore Trademark Registration No. T0602983H for COMEX, registered on February 16, 2007;
- United States Trademark Registration No. 1,716,422 for CBOT, registered on September 15, 1992;
- United States Trademark Registration No. 1,731,593 for NYMEX, registered on November 10, 1992;
- Singapore Trademark Registration No. T0212221C for NYMEX, registered on October 4, 2003.

The Complainants also operate on the Internet, owning many domain names incorporating the trademarks COMEX, CBOT, and NYMEX; being "www.cmegroup.com" their official website, to which the domain names <comex.com>, <cbot.com> and <nymex.com> are redirected.

The Complainants provided evidence in support of the above.

According to the Whois records, the disputed domain names were registered on the following dates: <cbotapps.com> on January 29, 2022, <comexaim.com> on February 11, 2022, <comexcen.com> on April 6, 2022, <nymexanc.com> on May 21, 2022, <nymexant.com> on September 4, 2022, <nymexep.com> on April 27, 2022, <nymexfis.com> on May 29, 2022, <nymexidn.com> on May 6, 2022, <nymextal.com> on September 10, 2022, <nymexnar.com> on August 13, 2022, <nymexapp.com> on April 27, 2022, <nymexcel.com> on August 26, 2022, and <nymexkyc.com> on August 11, 2022.

When the Complaint was filed, all the disputed domain names were resolving to almost identical websites in which the Complainants' trademarks were reproduced and the same services as the Complainants were supposedly offered, while presently they all redirect to inactive websites with the exception of <comexcen.com>, <nymexant.com>, and <nymexep.com>.

5. Parties' Contentions

A. Complainants

The Complainants state that the disputed domain names are confusingly similar to their trademarks COMEX, CBOT, and NYMEX, since they fully incorporate the Complainants' trademarks, followed by two to four characters.

The Complainants assert that the Respondents have no rights or legitimate interests in respect of the disputed domain names since they have not been authorized by the Complainants to register the disputed domain names or to use their trademarks within the disputed domain names, they are not commonly known by the disputed domain names and they are not making either a *bona fide* offering of goods or services or a legitimate noncommercial or fair use of the disputed domain names; the disputed domain names resolve to almost identical websites in which the Complainants' trademarks are reproduced and the same services as the Complainants are offered, intentionally creating a false association and confusion with the Complainants' financial field of activity.

The Complainants submit that the Respondents have registered the disputed domain names in bad faith, since the Complainants' trademarks COMEX, CBOT, and NYMEX are distinctive and known in the financial field. Therefore, the Respondents targeted the Complainants' trademarks at the time of registration of the disputed domain names and the Complainants contend that the use of the disputed domain names with the purpose to attract, for commercial gain, Internet users by creating a likelihood of confusion with the Complainants' trademarks as to an affiliation between the Respondents and the Complainants, qualifies as bad faith registration and use. Furthermore, the Complainants suspect that the Respondents could be using the disputed domain names for phishing activities.

B. Respondents

The Respondents have made no reply to the Complainants' contentions and are in default. In reference to paragraphs 5(f) and 14 of the Rules, no exceptional circumstances explaining the default have been put forward or are apparent from the record.

A respondent is not obliged to participate in a proceeding under the Policy, but if it fails to do so, reasonable facts asserted by a complainant may be taken as true, and appropriate inferences, in accordance with paragraph 14(b) of the Rules, may be drawn (see, e.g., *Reuters Limited v. Global Net 2000, Inc.*, WIPO Case No. [D2000-0441](#); *Microsoft Corporation v. Freak Films Oy*, WIPO Case No. [D2003-0109](#); *SSL International PLC v. Mark Freeman*, WIPO Case No. [D2000-1080](#); *Altavista Company v. Grandtotal Finances Limited et. al.*, WIPO Case No. [D2000-0848](#); *Confédération Nationale du Crédit Mutuel, Caisse Fédérale du Crédit Mutuel Nord Europe v. Marketing Total S.A.*, WIPO Case No. [D2007-0288](#)).

6. Discussion and Findings

6.1 Consolidation of Multiple Complainants

The Complainants have requested consolidation of multiple complainants and stated that all the disputed domain names belong to the same person or organization. No objection to this request was made by the Respondents.

Pursuant to the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#)), section 4.11.1, “Paragraph 10(e) of the UDRP Rules grants a panel the power to consolidate multiple domain name disputes. At the same time, paragraph 3(c) of the UDRP 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. In assessing whether a complaint filed by multiple complainants may be brought against a single respondent, panels look at whether (i) the complainants have a specific common grievance against the respondent, or the respondent has engaged in common conduct that has affected the complainants in a similar fashion, and (ii) it would be equitable and procedurally efficient to permit the consolidation”.

The Panel finds that there is sufficient evidence that the disputed domain names are subject to common control, that they are affecting the Complainants’ legal interests in a similar fashion, and that it would be procedurally efficient, fair and equitable to all Parties to accept the Complainants’ consolidation request. The Panel further notes that the Respondents did not object to the consolidation request. The Panel therefore accepts the Complainants’ consolidation request. Hereinafter, the Panel will refer to the Complainants in the singular, *i.e.*, “the Complainant”.

6.2 Consolidation of Multiple Respondents

The Complainant has requested consolidation of multiple respondents and stated that all the disputed domain names belong to the same person or organization. No objection to this request was made by the Respondents.

Pursuant to the [WIPO Overview 3.0](#), section 4.11.2, “Where a complaint is filed against multiple respondents, panels look at whether (i) the domain names or corresponding websites are subject to common control, and (ii) the consolidation would be fair and equitable to all parties. Procedural efficiency would also underpin panel consideration of such a consolidation scenario”. The Panel may consider a range of factors to determine whether consolidation is appropriate, such as examining relevant registrant contact information, and any naming patterns in the disputed domain names, or other evidence of respondent affiliation that indicate common control of the disputed domain names.

The Panel notes that all the disputed domain names are targeting the Complainant’s trademarks resolving to almost identical websites. Further, the Panel notes that the information disclosed for the Respondents is false or incomplete for each individual Respondent, with most information bearing similarities to that disclosed for the other Respondents. The Panel finds that there is sufficient evidence that the disputed domain names are subject to common control, and that it would be procedurally efficient, fair and equitable to all Parties to accept the Complainant’s consolidation request. The Panel further notes that the Respondents did not object to the consolidation request. The Panel therefore accepts the Complainant’s consolidation request. Hereinafter, the Panel will refer to the Respondents in the singular, *i.e.*, “the Respondent”.

6.3 Substantive Issues

Paragraph 4(a) of the Policy lists three elements, which the Complainant must satisfy in order to succeed:

- (i) the disputed domain names are identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and

- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain names; and
- (iii) the disputed domain names have been registered and are being used in bad faith.

A. Identical or Confusingly Similar

The Panel finds that the Complainant is the owner of the trademarks COMEX, CBOT, and NYMEX and that the disputed domain names are confusingly similar to the trademarks COMEX, CBOT, and NYMEX as they fully incorporate the Complainant's trademarks, with the addition of two to four letters in each one of the disputed domain names.

Regarding the addition of the letters "apps", "aim", "cen", "anc", "ant", "ep", "fis", "idn", "tal", "nar", "app", "cel", and "kyc", the Panel notes that it is now well established that the addition of other terms or letters to a domain name does not prevent a finding of confusing similarity between the disputed domain name and the trademark (see, e.g., *Aventis Pharma SA., Aventis Pharma Deutschland GmbH v. Jonathan Valicenti*, WIPO Case No. [D2005-0037](#); *Red Bull GmbH v. Chai Larbthanasub*, WIPO Case No. [D2003-0709](#); *America Online, Inc. v. Dolphin@Heart*, WIPO Case No. [D2000-0713](#)). The addition of the letters "apps", "aim", "cen", "anc", "ant", "ep", "fis", "idn", "tal", "nar", "app", "cel", and "kyc" does not therefore prevent the disputed domain names from being confusingly similar to the Complainant's trademarks. See [WIPO Overview 3.0](#), section 1.8.

It is also well accepted that a generic Top-Level Domain ("gTLD"), in this case ".com", is typically ignored when assessing the confusing similarity between a trademark and a domain name. See [WIPO Overview 3.0](#), section 1.11.1.

The Panel finds that the Complainant has therefore met its burden of proving that the disputed domain names are confusingly similar to the Complainant's trademarks, pursuant to the Policy, paragraph 4(a)(i).

B. Rights or Legitimate Interests

Paragraph 4(a)(ii) of the Policy requires the Complainant to prove that the Respondent has no rights or legitimate interests in the disputed domain names.

The Respondent may establish a right or legitimate interest in the disputed domain names by demonstrating in accordance with paragraph 4(c) of the Policy any of the following circumstances, in particular but without limitation:

- "(i) before any notice to you of the dispute, your 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) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or
- (iii) you are making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue."

According to paragraph 4(a) of the Policy, the Complainant has the burden of proving the three elements of the Policy. However, satisfying the burden of proving a lack of the Respondent's rights or legitimate interests in respect of the disputed domain names according to paragraph 4(a)(ii) of the Policy is potentially quite difficult, since proving a negative circumstance is always more complicated than establishing a positive one. As such, it is well accepted that it is sufficient for the Complainant to make a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain names in order to shift the burden of production on the Respondent. If the Respondent fails to demonstrate rights or legitimate interests in the

disputed domain names in accordance with paragraph 4(c) of the Policy or on any other basis, the Complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy.

The Complainant in its Complaint, and as set out above, has established a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain names. It asserts that the Respondent is not currently associated with the Complainant in any way, is not commonly known by the disputed domain names, and is not making a *bona fide* offering of goods or services or a legitimate noncommercial or fair use of the disputed domain names: the Respondent, on the websites at the disputed domain names, is reproducing the Complainant's trademarks and supposedly offering the same financial services as the Complainant's in an apparent attempt to impersonate the Complainant for purposes of misleading unsuspecting Internet users for the Respondent's presumed commercial advantage.

The *prima facie* case presented by the Complainant is enough to shift the burden of production to the Respondent to demonstrate that it has rights or legitimate interests in the disputed domain names. However, the Respondent has not presented any evidence of any rights or legitimate interests it may have in the disputed domain names, and the Panel is unable to establish any such rights or legitimate interests on the basis of the evidence in front of it.

Moreover, the Panel finds that the composition of the disputed domain names carries a risk of implied affiliation as they effectively impersonate or suggest sponsorship or endorsement by the Complainant. See [WIPO Overview 3.0](#), section 2.5.1. The construction of the disputed domain names, coupled together with the impersonating content, affirms the Respondent's intention of taking unfair advantage of the likelihood of confusion between the disputed domain names and the Complainant as to the origin or affiliation of the websites at the disputed domain names.

Based on the facts of this case, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain names.

The Panel therefore finds that paragraph 4(a)(ii) of the Policy has been satisfied.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy provides that "for the purposes of paragraph 4(a)(iii) [of the Policy], the following circumstances, in particular but without limitation, 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 has acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the 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 its documented out-of-pocket costs directly related to the domain name; or
- (ii) [the respondent has] registered the 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 [the respondent has] engaged in a pattern of such conduct; or
- (iii) [the respondent has] registered the 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 online 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 or service on [the respondent's] website or location."

Regarding the registration in bad faith of the disputed domain names, the reputation of the Complainant's trademarks COMEX, CBOT, and NYMEX in the financial field is clearly established and, given the composition of the disputed domain names and their use in the relevant almost identical websites, the Panel finds that the Respondent obviously knew of the Complainant and deliberately registered the disputed domain names.

The Panel further notes that the disputed domain names are also being used in bad faith since the Respondent is trying to attract Internet users to its websites by creating likelihood of confusion with the Complainant's trademarks in order to allegedly offer the same services as the Complainant's, an activity clearly detrimental to the Complainant's business.

The above suggests to the Panel that the Respondent intentionally registered and is using the disputed domain names in order both to disrupt the Complainant's business, in accordance with paragraph 4(b)(iii) of the Policy, and to attract, for commercial gain, Internet users to its website in accordance with paragraph 4(b)(iv) of the Policy.

Furthermore, the Panel considers that the nature of the disputed domain names, which are almost identical to the Complainant's trademarks with the mere addition of the letters "apps", "aim", "cen", "anc", "ant", "ep", "fis", "idn", "tal", "nar", "app", "cel", and "kyc", further supports a finding of bad faith and intent to confuse users about a non-existent affiliation trading off of the Complainant's reputation and goodwill. See [WIPO Overview 3.0](#), section 3.2.1.

Finally, the Panel deems that there is a risk that the disputed domain names could be used for phishing activities, a very common situation especially in the field of banking and financial services.

Given the totality of the circumstances, the current passive holding of all the disputed domain names, with the exception of <comexcen.com>, <nymexant.com>, and <nymexep.com>, does not prevent a finding of bad faith. See section 3.3 of the [WIPO Overview 3.0](#).

The Panel therefore finds that paragraph 4(a)(iii) of the Policy has been satisfied.

7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain names <cbotapps.com>, <comexaim.com>, <comexcen.com>, <nymexanc.com>, <nymexant.com>, <nymexep.com>, <nymexfis.com>, <nymexidn.com>, <nymextal.com>, <nymexnar.com>, <nymexapp.com>, <nymexcel.com>, and <nymexkyc.com> be transferred to the Complainant.

/Edoardo Fano/

Edoardo Fano

Sole Panelist

Date: December 21, 2022