

## **ADMINISTRATIVE PANEL DECISION**

FXDirectDealer, LLC v. Zsolt Bikadi

Case No. D2023-0531

### **1. The Parties**

The Complainant is FXDirectDealer, LLC, United States of America ("United States"), represented by Kolitch Romano Dascenzo Gates, United States.

The Respondent is Zsolt Bikadi, Hungary.

### **2. The Domain Name and Registrar**

The disputed domain name <tritoncapitalmarkets.com> is registered with DropCatch.com LLC (the "Registrar").

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on February 3, 2023. On February 6, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On the same day, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that the Complaint 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 Respondent of the Complaint, and the proceedings commenced on February 14, 2023. In accordance with the Rules, paragraph 5, the due date for Response was March 6, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on March 7, 2023.

The Center appointed Miguel B. O'Farrell as the sole panelist in this matter on March 13, 2023. 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.

#### **4. Factual Background**

The Complainant is a financial services company and one of the international leaders in online foreign exchange trading (Forex) with affiliated jurisdictional entities around the globe, including Triton Capital Markets Ltd., registered in Malta.

The Complainant has received numerous awards throughout the world, including in the United States, the Middle East, and Europe, including “Most Trusted Forex Broker Europe 2012”.

The Complainant owns trademark registrations and pending applications for TRITON CAPITAL MARKETS in several jurisdictions, including:

China Trademark Registration No. 54205994 TRITON CAPITAL MARKETS, registered on August 21, 2022, for “art appraisal; real estate agency services; surety services; charitable fund raising; lending against security.”;

Malaysia Trademark Registration No. TM2021004628 TRITON CAPITAL MARKETS, registered on February 2, 2021, for services including “full line of financial services”;

Indonesia Trademark Registration No. IDM000961703 TRITON CAPITAL MARKETS, registered on April 14, 2022, for services including “full line of financial services via a global communications network”,

The disputed domain name <tritoncapitalmarkets.com> was registered on October 31, 2022 and resolves to a webpage with ads that direct to third parties offering Forex services similar to the Complainant’s services.

#### **5. Parties’ Contentions**

##### **A. Complainant**

The Complainant alleges that it has been and continues to be the international leader in its online foreign exchange trading and education services.

The Complainant claims that the disputed domain name is confusingly similar with the trademark TRITON CAPITAL MARKETS in which the Complainant has rights and that the Respondent has no rights or legitimate interests in the disputed domain name, which was registered and is being used in bad faith.

In view of the disputed domain name’s confusing similarity to the Complainant’s mark, the similarity between the disputed domain website’s linked services and the Complainant’s services increases the likelihood that visitors will falsely believe that the website is operated by, endorsed by, or affiliated with the Complainant.

Furthermore, the Respondent’s use of the website located at the disputed domain name appears to be commercial, indicating that the Respondent’s intent in suggesting affiliation with the Complainant is to misleadingly divert consumers from the Complainant for its own gain via advertising revenue.

Finally, the Complainant requests the Panel to order the transfer of the disputed domain name to the Complainant.

##### **B. Respondent**

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

## 6. Discussion and Findings

According to paragraph 4(a) of the Policy, for this Complaint to succeed in relation to the disputed domain name, the Complainant must prove each of the following, namely that:

- (i) the disputed domain name is identical or confusingly similar with 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 name; and
- (iii) the disputed domain name was registered and is being used in bad faith.

### A. Identical or Confusingly Similar

As set forth in section 1.7 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") the standing test for confusing similarity involves a reasoned but relatively straightforward comparison between the trademark and the disputed domain name to determine whether the disputed domain name is confusingly similar with the trademark. The test involves a side-by-side comparison of the disputed domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name.

The Panel considers that the disputed domain name is confusingly similar with the Complainant's TRITON CAPITAL MARKETS trademark.

The disputed domain name <tritoncapitalmarkets.com> incorporates the Complainant's trademark TRITON CAPITAL MARKETS in its entirety, in one word, with the addition of the ".com" generic Top-Level Domain ("gTLD"). The ".com" gTLD is viewed as a standard registration requirement and is generally disregarded under the first element confusing similarity test, as set forth in section 1.11 of [WIPO Overview 3.0](#).

Accordingly, the Panel finds that the disputed domain name is identical and confusingly similar to the trademark TRITON CAPITAL MARKETS in which the Complainant has rights and that the requirements of paragraph 4(a)(i) of the Policy are fulfilled.

### B. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, a respondent may establish rights to or legitimate interests in a 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 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.

Although the Policy addresses ways in which a respondent may demonstrate rights or legitimate interests in a domain name, it is well established, as it is put in section 2.1 of [WIPO Overview 3.0](#), that a complainant is required to make out a *prima facie* case that the respondent lacks rights or legitimate interests in the domain name. Once such *prima facie* case is made, the burden of production shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain name.

If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.

There is no evidence in the present case that the Respondent has been commonly known by the disputed domain name, enabling it to establish rights or legitimate interests therein. The name of the Respondent does not resemble the disputed domain name in any manner.

Furthermore, there is no evidence in the file to prove any of the circumstances mentioned in paragraph 4(c) of the Policy, nor any other element to prove that the Respondent has legitimate interests or that it has established rights in the disputed domain name.

Likewise, and as further discussed under section 6.C of this decision, it does not seem that the Respondent is making any legitimate noncommercial or fair use of the disputed domain name, which is confusingly similar with the Complainant's trademark TRITON CAPITAL MARKETS, but rather that it intends to use the disputed domain name for the purpose of deriving unfair monetary advantage by confusing Internet users and leading them to believe that the site to which the disputed domain name resolves is a site associated with the Complainant.

As established in section 2.5 of [WIPO Overview 3.0](#): "Fundamentally, a respondent's use of a domain name will not be considered 'fair' if it falsely suggests affiliation with the trademark owner; the correlation between a domain name and the complainant's mark is often central to this inquiry."

As indicated in section 6.A above, the disputed domain name is confusingly similar with the Complainant's trademark TRITON CAPITAL MARKETS and the Respondent is not using the disputed domain name in any way that may be considered fair use.

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 disputed domain name (*Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#)).

Therefore, the Panel considers that the requirements of paragraph 4(a)(ii) of the Policy have been fulfilled.

### **C. Registered and Used in Bad Faith**

The Panel is satisfied that the Respondent must have been aware of the Complainant's trademark TRITON CAPITAL MARKETS mentioned in section 4 above (Factual Background) when it registered the disputed domain name on October 31, 2022.

The Respondent when registering the disputed domain name has adopted the Complainant's trademark TRIOTON CAPITAL MARKETS with the intention to confuse Internet users and capitalize on the fame of the Complainant's trademark for its own monetary benefit.

The fact that there is a clear absence of rights or legitimate interests coupled with no credible explanation for the Respondent's choice of the disputed domain name is also a significant factor to consider that the disputed domain name was registered in bad faith (as stated in section 3.2.1 of [WIPO Overview 3.0](#)).

The Panel finds that the Respondent has registered and uses the disputed domain intentionally to attempt to attract for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement. This amounts to bad faith under paragraph 4(b)(iv) of the Policy.

## 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 name <tritoncapitalmarkets.com> be transferred to the Complainant.

*/Miguel B. O'Farrell/*

**Miguel B. O'Farrell**

Sole Panelist

Date: March 23, 2023