

## **ADMINISTRATIVE PANEL DECISION**

XR Group LLC v. Paul Vieira

Case No. D2023-3882

### **1. The Parties**

The Complainant is XR Group LLC, United States of America (“United States”), represented by Katten Muchin Rosenman LLP, United States.

The Respondent is Paul Vieira, Singapore.

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

The disputed domain name <xrtradinc.biz> (the “Domain Name”) is registered with Dynadot Inc (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 16, 2023. On September 18, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On September 18, 2023, the Registrar transmitted by email to the Center its verification response, disclosing registrant and contact information for the Domain Name which differed from the named Respondent (Super Privacy Service LTD c/o Dynadot) and contact information in the Complaint. The Center sent an email communication to the Complainant on September 22, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on September 25, 2023.

The Center verified that the Complaint together with the amended 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 September 29, 2023. In accordance with the Rules, paragraph 5, the due date for Response was October 19, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 23, 2023.

The Center appointed Nicholas Smith as the sole panelist in this matter on November 17, 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 United States financial services firm that has since 2010 offered financial services, including financial instruments and trading services, under a trademark consisting of the words XR TRADING (the "XR TRADING Mark"). The Complainant claims that it also owns common law rights in the mark XR in standard characters and as a logo.

The Complainant registered the XR TRADING Mark in the United States on April 12, 2011 (registration number 3,945,460) for services in class 36.

The Domain Name was registered on February 13, 2023. The Domain Name is presently inactive but prior to the commencement of the proceeding resolved to a website inviting users to run a wallet application. When accessed through a mobile application, it resolved to a website (the "Respondent's Website") that prominently reproduced the XR TRADING Mark and a logo almost identical to the Complainant's stylized XR logo. The Respondent's Website purported to offer a cryptocurrency wallet and cryptocurrency trading services and invited users to deposit funds. The Complainant has received a number of complaints from individuals who transferred their money to the Respondent under the misapprehension that they were dealing with the Complainant and have subsequently been unable to withdraw their funds.

#### **5. Parties' Contentions**

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

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the Domain Name.

Notably, the Complainant contends that:

- a) It is the owner of the XR TRADING Mark, having registered the XR TRADING Mark in the United States. The Domain Name is confusingly similar to the XR TRADING Mark as it consists of a minor misspelling of the XR TRADING Mark, merely replacing the letter "g" with "c" and adding the ".biz" generic Top-Level Domain ("gTLD").
- b) There are no rights or legitimate interests held by the Respondent in respect of the Domain Name. The Complainant has not granted any license or authorization for the Respondent to use the XR TRADING Mark. The Respondent is not commonly known by the XR TRADING Mark, nor does it make a legitimate noncommercial or fair use of the Domain Name. Rather, the Domain Name is used for a website impersonating the Complainant as part of a broader fraudulent scheme to encourage users to transfer money to the Respondent which it does not return, which does not provide the Respondent with rights or legitimate interests in the Domain Name.
- c) The Domain Name was registered and is being used in bad faith. The Domain Name is being used for a website that impersonates the Complainant in an attempt to perpetuate fraud.

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

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

## 6. Discussion and Findings

### A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the Domain Name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

A domain name which consists of a misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for the purpose of the first element. Here the replacement of the letter "g" with the letter "c" creates a minor misspelling of the Complainant's trademark. [WIPO Overview 3.0](#), section 1.9.

Based on the available record, the Panel finds the first element of the Policy has been established.

### B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the respondent may demonstrate rights or legitimate interests in a disputed domain name.

While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the Domain Name. The Respondent has not rebutted the Complainant's *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the Domain Name.

The Panel considers that the record of this case reflects that:

- Before any notice to the Respondent of the dispute, the Respondent did not use, nor has it made 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. Paragraph 4(c)(i) of the Policy, and [WIPO Overview 3.0](#), section 2.2.
- The Respondent (as an individual, business, or other organization) has not been commonly known by the Domain Name. Paragraph 4(c)(ii) of the Policy, and [WIPO Overview 3.0](#), section 2.3.
- The Respondent is not 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. Paragraph 4(c)(iii) of the Policy, and [WIPO Overview 3.0](#), section 2.4.
- The record contains no other factors demonstrating rights or legitimate interests of the Respondent in the Domain Name.

The Respondent's use of the Domain Name is in connection with a fraudulent scheme, namely for a website that reproduces the Complainant's mark and logo and purports to offer a cryptocurrency investment service but according to the Complainant (and uncontradicted by the Respondent) in fact merely encourages users to deposit money with the Respondent which they cannot later withdraw. The minor misspelling of the Domain Name replacing the letter "g" with "c" also seems intended to create Internet user confusion. Panels have held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

Based on the available record, the Panel finds the second element of the Policy has been established.

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

The Panel notes that for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular but without limitation, that if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

Panels have held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds the Respondent's registration and use of the Domain Name constitutes bad faith under the Policy. The Domain Name has been used for a website impersonating the Complainant from which the Respondent purports to provide cryptocurrency investment services, but actually commits a fraud on users by encouraging them to deposit money with it, which is not returned.

Based on the available record, the Panel finds the third element of the Policy has been established.

## **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 Domain Name, <xrtradinc.biz>, be transferred to the Complainant.

*/Nicholas Smith/*

**Nicholas Smith**

Sole Panelist

Date: November 24, 2023