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2. The onus of checking the legitimacy is on the users of the certificate.
3. In case of any discrepancy please inform the Competent Authority.

.IN REGISTRY
(NATIONAL INTERNET EXCHANGE OF INDIA)
.IN Domain Name Dispute Resolution Policy (INDRP)

Disputed Domain Name: www.fxcm.in

Dated: 23rd February, 2021

IN THE MATTER OF:

FXCM Global Services, LLC
55 Water Street
Floor 50, New York, NY 10041
United States

..... Complainant

Vs.

Ziming Wu
Huliqu, Youjia #58
Xia Men, Fujian 361019,
China

..... Respondent

1. Parties

- 1.1 The Complainant in this arbitration proceeding is FXCM Global Services, having address at 55 Water Street, Floor 50, New York, NY 10041, United States.
- 1.2 The Respondent in this arbitration proceeding as per 'Whois' record is Ziming Wu and upon enquiry from NIXI, the complete details of Respondent were found having address at Ziming Wu, Huliqu, Youjia #58, Xia Men, Fujian 361019, China (as per



Annexure 2 of the complaint). The Respondent's email address is domain2buy@foxmail.com.

2. **The Dispute-** The domain name in dispute is "www.fxcm.in." According to the .IN 'Whois' search, the Registrar of the disputed domain name is Dynadot LLC.


3. **Important Dates**

S. No	Particulars	Date (All communications in electronic mode)
1.	Date on which NIXI's email was received for appointment as Arbitrator	Jan 6, 2021
2.	Date on which consent was given to act as an Arbitrator in the case	Jan 6, 2021
3.	Date of appointment as Arbitrator	Jan 6, 2021
4.	Soft copy of complaint and annexures were received from NIXI through email	Jan 6, 2021
5.	Date on which notice was issued to the Respondent	7 th Jan 2021, 13 th Jan 2021
6.	Date on which Award passed	February 23 rd , 2021

4. **Procedural History**


- 4.1 This is a mandatory arbitration proceeding in accordance with the .IN Domain Name Dispute Resolution Policy (INDRP) adopted by the National Internet Exchange of India (NIXI). The INDRP Rules of Procedure (the Rules) were approved by NIXI on 28th June, 2005 in accordance with the Indian Arbitration and Conciliation

Act, 1996. The updated rules are available on <https://www.registry.in/INDRP%20Rules%20of%20Procedure>. By registering the disputed domain name accredited Registrar of NIXI, the Respondent agreed to the resolution of the disputes pursuant to the .IN Dispute Resolution Policy and Rules framed thereunder.

- 4.2 In accordance with the Rules 2(a) and 4(a) of INDRP Rules, NIXI formally notified the Respondent of the complaint and appointed Dr. Karnika Seth as the sole Arbitrator for adjudicating upon the dispute in accordance with the Arbitration and Conciliation Act, 1996 and the rules framed thereunder. The Arbitrator submitted the Statement of Acceptance and Declaration of impartiality and independence, as required by NIXI.
- 4.3 The Complaint was filed in accordance with the requirements of the .IN Domain Name Dispute Resolution Policy.
- 4.4 The Arbitrator issued notice to the Respondent on 7th Jan 2021 at domains2buy@foxmail.com. As mail bounced back, the complainant clarified the registered address of Respondent is domain2buy@foxmail.com. Therefore, notice was again served electronically on Respondent on 13th Jan, 2021 at email address domain2buy@foxmail.com calling upon the Respondent to submit his reply to the Complaint within fifteen (15) days of receipt of the Arbitrator's email. However, the Respondent failed to submit any response. The Complainant sought exemption from serving hard copy of complaint on Respondent due to Corona pandemic, which is hereby granted in view of fact that lockdown still operates in U.K. The notice of arbitration was issued to the Respondent electronically and copy of the complaint and its annexures have also been served by Complainant electronically at the registered email address set out in annexure 2 of the complaint.
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- 4.5 Despite notice, the Respondent failed to file any reply. Therefore, in accordance with the Rule 12 of INDRP Rules, the Arbitration proceedings were conducted ex-parte and the Award is passed which is binding on both parties herein.

5. Factual Background

- 5.1 The Complainant trading as FXCM Global Services, LLP is one of the largest leading retail broker in the foreign exchange (Forex) market headquartered in London. Founded in 1999, the Complainant provides online forex trading, CFD trading related services. The Complainant also offers educational courses on Forex trading.
- 5.2 The Complainant through its trademark FXCM has been providing foreign exchange services and provides global traders with innovative trading tools and high quality training educators including tools like mobile trading, one-click order execution and trading from real-time charts. (as per **Annexure 7** of the complaint showing screenshots of complainant's official website). The Complainant through its services offers clients enhanced packages like FXCM Pro which provides access to wholesale execution and liquidity to retail brokers, small hedge funds and emerging market banks.
- 5.3 The Complainant has been advertising and marketing its services and products using its trademark 'FXCM' since 1999, including through its website at www.fxcm.com through its various international offices (**Annexure 4** of the Complaint mentions its international offices). The Complainant markets its service extensively in China and is also widely known in India and its services are widely recognized worldwide. The Complainant owns
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the trademark 'FXCM' and submits that by virtue of its long and continuous use, it has earned significant goodwill and international recognition. (**Annexure 3** of complaint mentions Awards received by Complainant)

- 5.4 The Complainant owns numerous trademark registrations and exclusive rights in the 'FXCM' trademark in many jurisdictions throughout the world including United States, European Union, Australia and an international application. Copies of registration certificates for the mark FXCM from various jurisdictions in which the mark is registered are filed by the Complainant. (as per **Annexure 11** of the Complaint)
- 5.5 The Respondent in this administrative proceeding, as per WHOIS database is Ziming Wu and upon enquiry from NIXI made by the Complainant, the complete details of Respondent were found having address at Ziming Wu, Huliqu, Youjia #58, Xia Men, Fujian 361019, China. The Respondent's email address is domain2buy@foxmail.com.

6. Parties Contentions

6.1 Complainant's submissions-

- 6.1.1 The Complainant operating as FXCM is a leading retail broker in foreign exchange based in London and in relation to its business adopted the trading name FXCM which is not having any generic meaning or can be commonly understood by any other meanings and have acquired substantial international reputation and goodwill. The Complainant has spent a substantial amount of time, money and effort in marketing, promoting and using the 'FXCM' trademark.



- 6.1.2 The Complainant states that it has received many awards for its provision of brokerage and trade related services. (as per **Annexure 3** of the complaint). The Complainant also states that it markets its services in China extensively and it gathered over 470,000 visits from China on its website www.fxcm.com through 20th anniversary campaign between January and March 2020. (as per **Annexure 6** of the complaint). Results of search for FXCM on google (as per **Annexure 15** of the complaint) and public trademark database (as per **Annexure 14** of the complaint) were also filed by the Complainant.
- 6.1.3 The Complainant submits that it has been providing services through its website www.fxcm.com in several languages like English, Chinese, German, French and Italian and through its internationally based offices in Germany, Australia, France, Hong Kong and south Africa (as per **Annexure 4** of the complaint). The Complainant states that it has been advertising and marketing FXCM services through continuous use of its trademark which has gained huge popularity worldwide. The Complainant through its trademark offers customers to trade currencies all across the globe including the Indian Rupee (INR) (as per **Annexure 9** of the Complaint).
- 6.1.4 The Complainant has also submitted that FXCM mobile app is also available as a mobile app on popular app stores like Google play and Apple store (as per **Annexure 8** of the Complaint). The Complainant has further submitted that it had over 1 million users from India visit its website over a period of 7 months. The Complainant states that third party Indian site of <in.tradingview.com> shows Complainant's services which has over 17,000 followers. The Complainant provides traffic statistics

for its brand presence in India (as per **Annexure 10** of the complaint).

- 6.1.5 The Complainant states it is the owner and proprietor of various domain names worldwide incorporating 'FXCM' and operates these registered websites in different gTLD extensions and ccTLDs. The Complainant has provided a list of such registered domain names in the complaint. The Complainant states that it has also made considerable efforts in establishing strong social media presence to promote its services on different social media forums such as Twitter, Facebook, LinkedIn (as per **Annexure 12** of the complaint).
- 6.1.6 The Complainant submits that purchase and use of the disputed domain name by the Respondent is clearly subsequent to the use and registration of the Complainant's trademark FXCM (disputed domain name was registered on 11th May, 2020). The disputed domain name is identical to and is a clear imitation of the 'FXCM' trademark and has been used with an intention to pass off as its own. The Complainant has relied on *Zippo Manufacturing Company inc v Zhaxia Case No.INDRP/840* in support of its submissions.
- 6.1.7 The Respondent has no legitimate interest in the domain name or the mark except to mislead consumers and thereby infringe the 'FXCM' trademark and deceive consumers as to affiliation, connection or association of the disputed domain name with the Complainant, which is incorrect and injures the Complainant's interests. The said disputed domain name is also parked at a page www.sedo.com available for sale at a price of USD 3,800 (as per **Annexure 13** of the complaint).

6.1.8 In addition, the Complainant submits that the Respondent has a pattern of bad faith conduct and has presently as also previously indulged in domain name squatting by registering in bad faith many third-party domain names. This is evidenced by the list of such names in the complaint and the Complainant has also provided a list with large portfolio (as per **Annexure 16** of the complaint). Complainant relies on *Laterooms Limited v Lin Yanxiao Case No. INDRP/818* to prove cybersquatting by Respondent.

6.2 Respondent's Defence

6.2.1 Despite the service of notice by email, the Respondent failed to reply to the notice within the stipulated time.

6.2.2 The INDRP Rules of Procedure require under Rule 8(b) that the arbitrator must ensure that each party is given a fair opportunity to present the case. Rule 8(b) reads as follows:

"The Arbitrator shall at all times treat the parties with equality and provide each one of them with a fair opportunity to present their case."

6.2.3 Further the INDRP Rules of Procedure empowers the Arbitrator to proceed with arbitration proceedings ex parte and decide the arbitration in case any party does not comply with the stipulated time limit to file its response. Rule 12 reads as follows:

"In the event any party breaches the provisions of INDRP rules and/or directions of the arbitrator, the matter can be decided ex-parte by the Arbitrator and such arbitral award shall be binding in accordance to law."

6.2.4 In present arbitration, the Respondent has failed to file any reply to the Complaint and has not sought any further time to answer the

Complainant's assertions, contentions or evidences in any manner. The Arbitrator thus finds that the Respondent has been given a fair chance to present its case. Since the Respondent has failed to reply to Notice to submit its response, Arbitration has been conducted ex-parte in accordance with Rule 12 of the INDRP rules and decided on merits ex-parte.

7. Discussion & Findings

7.1 The .IN Domain Name Dispute Resolution Policy (".IN Policy"), in para 4 requires Complainant, to establish the following three requisite conditions –

- (a) The disputed domain name is identical or confusingly similar to the trademark in which Complainant has rights,
- (b) The Respondent has no rights or legitimate interest in the domain name and
- (c) The Respondent's domain name has been registered or is being used in bad faith.

7.2 The Registrant's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights (Paragraph 4(a))

The Complainant has submitted that it owns numerous trademark registrations for 'FXCM' in many jurisdictions throughout the world, including an international application. The Complainant has filed supporting proof of registration of trademark in various countries (as per **Annexure 11** of the complaint). The Complainant has submitted that 'FXCM' is a trademark that is widely recognized amongst the public worldwide, including in India and is extensively used with regard to online forex trading, CFD trading

and related services. It offers customers the opportunity to trade currencies including the Indian Rupee (as per **Annexure 9** of complaint). The Complainant's "FXCM" mark, company name and website at www.fxcm.com are globally famous and has worldwide reputation and have provided traffic statistics showing its Indian userbase too (as per **Annexure 10** of complaint). The Arbitrator finds that the disputed name www.fxcm.in, is clearly identical and deceptively similar to the Complainant's trademark in which the Complainant has exclusive trademark rights. As per WIPO Synopsis 3.0, while each case is judged on its own merits, in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to the mark for purposes of UDRP standing.

The disputed domain name consists of "FXCM", the Complainant's trademark in entirety and the ccTLD ".in" which is likely to deceive and confuse consumers. It is well recognized that incorporating a trademark in its entirety, particularly if the mark is an internationally well-known mark, is sufficient to establish that the domain name is identical or confusingly similar to the Complainant's registered mark. (*LEGO Juris A/S v. Robert Martin*, INDRP/125 (2010); *Viacom International Inc. v. MTV ALBUMS-Mega Top Video Albums Peter Miadshi*. WIPO Case No. D2002-0196; *Wal Mart Stores Inc v. Kuchora, Kal*, WIPO no. D2006-0033).

Also, as per WIPO Synopsis 3.0, the panels under Section 1.1 have held that the term “trademark or service mark” as used in UDRP encompasses both registered and unregistered (sometimes referred to as common law) marks. Further, it is stated that a Complainant can succeed without having trademark registrations in India when the trademark at issue is used in India and is globally well known and registered in many jurisdictions, such as Complainant’s trademark “FXCM”. (*My Space Inc v. Joe Joe*, INDRP/091, *Urban Machang INDRP/601*, *Facebook Inc v Zhou Lu INDRP/930 <fbpasswordhacker.in>*).

As the Respondent’s disputed domain name is exactly same as Complainant’s registered trademark and the Respondent failed to file any reply to rebut the contentions of the Complainant, the Arbitrator finds that the Respondent’s domain name is identical to Complainant’s registered trademark and is likely to deceive the customers.

7.3 The Registrant has no rights or legitimate interests in respect of the domain name (Paragraph 4(b))

Under paragraph 6 of the policy, a Respondent or a Registrant can prove rights or legitimate interest in the domain name. The Complainant has filed sufficient evidence to prove disputed domain name is identical to the ‘FXCM’ trademark, in which Complainant enjoys substantial reputation and goodwill including web shots of its website (annexed as **Annexure 7** to complaint) and registration of trademark in several jurisdictions (annexed as **Annexure 11** to complaint). The Respondent has failed to submit its reply to prove any rights or legitimate interests in the disputed

domain name/trademark 'FXCM.' Thus, Respondent has failed to establish legitimate interest and/or rights in the disputed domain name. The same is also identical to the Complainant's prior registered trademark, 'FXCM' and domain name www.fxcm.com. Complainant has also submitted that it has not authorized Respondent to use its FXCM mark and Respondent has failed to rebut the same. The burden of proof thus shifts to Respondent to demonstrate the rights or legitimate interests it holds in the mark as per WIPO Overview 3.0, section 2.1. Despite notice, the Respondent has not rebutted the contentions of the Complainant and has not produced any documents or submissions to show its interest or right in the disputed domain name.

The Complainant has submitted that the Respondent is engaging in unfair commercial use of the disputed mark and disputed domain name as it is used by the Respondent to advertise its availability for sale at an exorbitant price of USD 3,800 at the www.sedo.com with the message "the domain is available for sale". (annexed as **Annexure 13** of the complaint). This further establishes that the Respondent does not have any rights or legitimate interest in the domain name and it intends to make unjust commercial profits. The Complainant further claims that the Respondent exemplifies a habitual cyber squatter engaged in pattern and practice of registering and using domain names in bad faith. (annexed as **Annexure 16** of the complaint). Further, the panels under WIPO Overview 3.0, Section 2.5.3 have held that such an offer to sell the disputed domain name does not constitute legitimate non-commercial or fair use of the disputed domain name and any use of the disputed domain name would result in deception and diversion

of users or potential users of the Complainant. (*Government Employees Insurance Company v ICS, INC*, case no. D2019-1923)

Further, the Complainant submitted that the Respondent has no rights or legitimate interests in the disputed domain name and merely registering a domain name is not sufficient to establish rights or legitimate interests. Complainant relies on *Vestel Eleckronik Sanayi v Ticaret AS v Kahveci WIPO Case No. D2000-1244* and *Mozilla Foundation v Lina / Doublefist limited Case No. INDRP / 934* to support its submissions. Complainant contends that Respondent has registered the domain name only to take unfair advantage of Complainant's global reputation and goodwill. The fact that the disputed domain name has not been put to legitimate non-commercial fair use or commercial/business use shows Respondent holds no legitimate rights or interest in the disputed domain name pursuant to ICANN Policy 4(b).

It is the Respondent's responsibility to determine whether the Respondent's domain name registration infringes or violates someone else's rights. Since the Complainant's said website and trademarks were in existence and extensively used when disputed domain was registered by the Respondent (registered on 11.05.2020), the Respondent has to prove whether he discharged this responsibility at the time of purchase of disputed domain name. However, despite notice Respondent failed to reply and also failed to discharge this onus.

The Respondent also failed to file any reply to show that he is making any legitimate, non-commercial or fair use of domain name

without intent for commercial gains nor is likely to divert consumers or tarnish trademark by registering the disputed domain name. The Arbitrator finds that the Respondent has no rights and/or legitimate interests in the disputed domain name.

7.4 The Registrant's domain name has been registered or is being used in bad faith (Paragraph 4 (c))

For the purposes of Paragraph 4 (c) of .IN Policy, under paragraph 7 of the policy, the Complainant is required to establish that the domain name was registered or is being used in bad faith.

The Complainant has submitted in this regard that "FXCM" trademark is famous and recognized worldwide and has acquired considerable goodwill and reputation, including in India and China in respect of online forex trading and related services. The Respondent has produced no evidence or justification for registering the disputed name. Infact, Complainant has filed evidence to show bad faith registration by filing screen shot of the web page of disputed domain showing its unfair use by Respondent which he intends to hoard and use it for purposes of selling it at an exorbitant price to its competitors. This is evident from (**Annexure 13** of complaint) where disputed domain name is put up for sale for exorbitant price of USD 3,800 at the www.sedo.com with the message "the domain is available for sale". The Arbitrator in the present case finds bad faith in the registration and use of the disputed domain name. (Ref. *Virgin Enterprises Limited v. Syed Hussain*, WIPO Case No. D2012-2395 and *Carige Vita Nuova S.P.A. v. Vita Nuova Public Organization, Domain Management / Whois Privacy Services by Domain Protect LLC*, WIPO Case No.

D2010-1912, *Burberry Limited v. Ruo Chang*, WIPO Case No. D2010-1304).

The Complainant submitted that the Respondent is not authorized by it to use the disputed domain name in the absence of any license or agreement from Complainant to use or apply its trademark. Complainant provided sufficient evidence showing widespread use, goodwill and trademark registrations of the 'FXCM' mark in various countries which long predates Respondent's registration of the disputed domain name which incorporates completely the registered trademark FXCM of the Complainant. (WIPO overview 3.0 notes in section 3.14 "*Panels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith*". The same principle is relied on in *Adobe Inc. v. Amin Mohammadsalehi, Uranos*, case No. DIR2020-0006 wherein bad faith registration was also found.

The Complainant has further submitted that it would be inconceivable for the Respondent to argue that he did not have the knowledge of the Complainant's FXCM trademark at the time of registration of the domain name in 2020, particularly as the Complainant's trademark rights predate registration of the domain name by many years. The Complainant has also submitted its social media presence which has acquired significant goodwill worldwide with alone 1 million Indian users visit the FXCM website and over 17,000 followers covering the Complainant's

services and brand on third party websites specialised in forex trading.

The Arbitrator finds that the Respondent has registered the disputed domain name to prevent Complainant from registering or using the mark. It is evident from the aforesaid facts that Respondent has no connection with trademark "FXCM" and his sole aim was to sell it at a higher price to Complainant or its competitors which amounts to bad faith registration under .IN policy.

The Complainant has been using its domain name www.fxcm.com since 1999. The disputed domain name www.fxcm.in was registered by Respondent on 11th May, 2020. Thus, Complainant's rights in the FXCM mark pre-dated Respondent's registration of the disputed domain name. The Respondent is also currently not using the disputed domain name in any manner and preventing its bonafide registration and use by Complainant, particularly when he has not been able to show any legitimate interest or connection for registering www.fxcm.in in India.

Moreover, it is settled law that the incorporation of a well-known trademark into a domain name by a registrant having no plausible explanation for doing so may be, in and of itself, an indication of bad faith. (*Microsoft Corporation vs. Montrose Corporation*, WIPO Case No. D2000-1568). In present case, the Respondent failed to file any response to the contentions and submissions of the Complainant.



For the aforesaid reasons, the Arbitrator finds the disputed domain name has been registered and used in bad faith under the .IN Policy

8. Decision

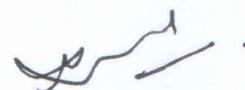
On the basis of the abovesaid findings the Sole Arbitrator finds that:

- (a) The Complainant has successfully established three grounds required under the policy to succeed in these proceedings.
- (b) Respondent has failed to rebut averments, contentions and submissions of the Complainant.

The Arbitrator directs the .IN Registry of NIXI to transfer the domain name “www.fxcm.in” to the Complainant.

The Award is passed on this 23rd February, 2021

Place: Noida



Dr. Karnika Seth
Sole Arbitrator