

Domain Name Dispute Resolution Center (DNDRC)

Arbitration and Mediation Center

COMPLAINT PANEL DECISION

Case No. C2024-0001

Also in PDF C2024-0001

1. The Parties

The Complainant is Exness Holdings CY Limited [“Exness”], having its office at 1 Siafi Street, Porto Bello, Office 401, 3042 Limassol, Cyprus. The Complainant has initiated the Complaint vide their authorized representative, Robert Eder having his office at 28 Athanasiou Christopolou, 4002 Limassol, Cyprus.

The Respondent’s name is Khizer Muhammad with his address at A-13 block-P North Nazimabad, Karachi, Pakistan.

2. The Domain Names and Registrar

The domain name in dispute is <exness.pk>, hereinafter referred to as the Disputed Domain Name [“the DDN”]. Vide email dated Thursday 10 August 2023, PKNIC has informed DNDRC that the Disputed Domain Name was registered by Khizer Muhammad with his address at A-13 block-P North Nazimabad, Karachi, Pakistan.

3. Procedural History

DNDRC was informed of the Complaint against the Respondent as per PKNIC - Internet Domain Registration Policy, by notification from the Complainant on 1 June 2023.

The Respondent was issued a notification of the dispute along with a copy of the Complaint and a Response Form on 10 August 2023 informing the Respondent that if a Response was not received 10 days from the notification, the dispute would be proceeded ex parte. The Respondent was also issued numerous reminder notifications. The Respondent filed a response on 18 August 2023.

Applying Paragraph 4(a) of the Rules for Uniform Domain Name Dispute Resolution Policy (the Rules), DNDRC appointed Mr. Sunain Qazi as the sole Arbitrator who has verified that the Complaint satisfies the formal requirements of the Policy and the Rules.

Factual Background

The domain name upon which the Complaint is based is <exness.pk>.

PKNIC has confirmed via their email dated 10 August 2023 that the DDN was registered by the Respondent above-named and that the email address provided at the time of registration is forexkhi@gmail.com.

4. Parties Contentions

A. Complainant

The Complainant's brief contentions are reproduced below:

The Respondent uses the Complainant's trademark to provide financial advice related to Islamic views on forex trading in Pakistan. The Respondent furthermore, claims that the Complainant is a fraudulent broker and operates a website for damaging the Complainant's and its trademarks' reputation under the domain name <exness.pk> that incorporates identical elements to the Complainant's trademarks and other TLD domain names. Please see attached an example for the Respondent's activity via the Complainant's trademark (Annex 1).

*For your easy reference you may reach the website via the following URL:
<https://exness.pk/>*



The Complainant uses the word mark EXNESS, and device marks incorporating the same (the "EXNESS Trademarks") in connection with financial services globally. The EXNESS Trademarks have been registered under the Madrid System for the international registration of marks and enjoys protection in more than 100 countries, including, inter alia, the USA to Pakistan, through Africa and the European Union.

The EXNESS Trademarks designating (amongst others) Pakistan for more information:

- 1) EXNESS international registration No. 1133115 (class 36)
- 2) EXNESS international registration No. 1119502 (class 36)
- 3) EXNESS international registration No. 1432258 (class 36)
- 4) EXNESS Pakistani national registration no. 367547 (class 36)

(Please see attached the registration certificates in Annex 2)

It is apparent from the above, that the domain name <exness.pk> incorporates all referred trademarks of the Complainant, consequently they are identical. The list of goods and services protected by the EXNESS Trademarks are all financial and monetary services. The giving advices about online foreign exchange trading, (as claimed on the Website) are services in class 36; therefore, it can be established that the scope of activity provided under the contested domain name falls within the scope of protection enjoyed by the EXNESS Trademarks.

It has been established by the internationally recognized leading dispute resolution policy for challenges related to the abusive registration and use of Internet domain names, i.e. the Uniform Domain Name Dispute Resolution Policy (“UDRP”) that “domain names identical to a complainant’s trademark carry a high risk of implied affiliation and it cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner.” This is especially the case as the Respondent provides financial advice online under the disputed domain name, which confusingly resemble to the services covered by the EXNESS Trademarks.

We would like to add that on the landing page of the disputed domain name the Respondent indicates the following sentence: “We are here to help you to know about online forex trading, why its Haram, why its prohibited in Islam.” In a subsequent section it goes beyond and claims that “Trading at Exness is gambling which is Haram in Islam. – EXNESS FRAUD” The Respondent does that under the EXNESS name, so that consumers might think that the owner of the EXNESS brand, i.e. the Complainant instructs its clients to not trade with EXNESS in Islamic countries.

Such activity falls under the services covered by the Exness Trademarks, namely financial consultancy; financial exchange; financial forecasting; financial information; financial information and evaluations providing investors with financial information; providing stock market information; therefore, it also constitutes the infringement of the Complainant’s trademarks. This fact demonstrates that the Respondent seeks to take unfair

advantage of, abuse, or otherwise engage in behavior detrimental to the Complainant's trademarks.

Such way of using the EXNESS Trademarks goes beyond the limits of fair use and prevents the Complainant from exercising its rights to the EXNESS Trademark and so managing its presence on the Internet.

The Respondent lacks the legitimate interest to register the disputed domain name; consequently, it is to be established that this creates an impermissible risk of user confusion through impersonation.

Furthermore, Complainant has a web presence under www.exness.com. Complainant also controls 750+ domain names containing the word EXNESS including, but not limited to the following domain names: exness.uk, exness.eu, exness.de.com, exness.asia, exness.global, exness.broker, exness.trade, exness.direct, exness.market, exness.expert, exness.pro (see Annex 3). Additionally, Complainant continuously acquires newly become available domain names that incorporate the EXNESS Trademarks, in order to enhance its online brand protection and online consumer trust.

It is clear that the acquisition and use of the domain name <exness.pk> by the Respondent was intended to and actually does confuse and misdirect consumers seeking Complainant's official "EXNESS" website. The Respondent's activities are unlawful and constitute unfair competition via deceiving consumers, intentional trademark infringement, trademark dilution, false designation of origin and cybersquatting.

*We would like to highlight some **additional bad faith consideration factors generally taken into consideration** by UDRP panels:*

- **The domain name incorporates the Complainant's trademark** plus the chosen second-level domain, i.e. ".pk" is merely a descriptive or geographic term. Furthermore, Complainant has a strong market position in Pakistan, where the Respondent provides its services through the website associated with the domain name.*
- It is clearly apparent, that the Respondent's pattern is to promote itself in a market where Complainant is well established, i.e. in Pakistan and to appear as the Complainant via incorporating the Exness Trademark in the disputed domain name.*

- *There is a clear absence of the Respondent's own rights or legitimate interests in the domain name, and the Complainant's mark is completely incorporated in the domain name.*
- *The content of the website to which the domain name points presents financial advising under the business name and trademark of the Complainant.*
- *The Respondent uses a WHOIS masking to hide the registrant's identity, making it much more difficult for the Complainant to enforce its intellectual property rights. It is known to block or intentionally delay disclosure of the identity of the actual underlying registrant, whose contact information cannot be reached neither from the registrar's WHOIS data, nor from the website associated with the domain name; this supports an inference of bad faith.*
- *It is apparent that the Respondent knew or should have known that the registration of the domain name establishes the infringement of the Complainant's intellectual property rights.*
- *This is reinforced by the fact that the Complainant has a strong market position in Pakistan and that the Respondent promotes financial advising on online foreign exchange trading on behalf of the Complainant on the website associated with the domain name.*
- *In addition to that, the Complainant's trademark is highly specific and the Respondent cannot credibly claim to have been unaware of the mark. Especially after considering the fact that the Complainant has over 750 domain names globally which include the Complainant's inherently distinctive trademark; there is no chance the Respondent created it on its own. This is further reinforced by the fact that the Respondent refers to the Complainant in connection with its main business activity, namely online forex trading.*

Therefore, the Complainant seeks the following remedy:

- Transfer the domain name registration <exness.pk> to the Complainant.

B. Respondent

The Respondent has taken the position that the factual and legal grounds on which the Complaint is based are unfounded. The Respondent has summarized its position as follows:

I am writing in response to the complaint received regarding my domain name "exness.pk." I greatly appreciate your attention to this matter and would like to address the issues raised in the complaint comprehensively.

To begin, I would like to confirm that I am fully aware of the complaint and the trademarks listed in the complaint, which are as follows:

- 1) International trademark no. 1133115 "EXNESS" (word), priority: 12.09.2012.
- 2) International trademark no. 1119502 "ex EXNESS" (figurative), priority: 19.01.2012.
- 3) International trademark no. 1432258 "exness" (figurative), priority: 03.12.2021.
- 4) Trade Marks Registry, Karachi Govt. Of Pakistan no. 367547 "exness" Dated 10 Nov 2017.

I would like to provide a detailed response addressing the concerns raised in the complaint:

1. Domain Registration and Trademark: It's important to note that my domain registration for "exness.pk" predates the priority dates of the international trademarks listed in the complaint. My domain was registered on October 29, 2011, while the priority dates of the trademarks are subsequent to this date.

2. Nature of Domain Usage: My domain "exness.pk" serves an educational purpose, aiming to raise awareness among fellow Pakistanis about the legal implications of online forex trading. I have been actively engaged in disseminating information regarding the illegality of offshore forex trading platforms, websites, and mobile apps. I am committed to sharing valuable insights about the risks associated with such platforms, as emphasized by the State Bank of Pakistan (SBP).

3. SBP's Position on Offshore Forex Trading: The SBP, in its official statement published in The Express Tribune on May 19th, 2022, explicitly clarified that buying products/services from offshore foreign exchange trading platforms is prohibited and against the laws of the land. The statement clearly mentions that these trading platforms, including "OctaFx," "Easy Forex," and others, are not authorized by the SBP or the Securities and Exchange Commission of Pakistan (SECP). As per the SBP, any person in Pakistan engaging in such transactions is liable to be proceeded against for violation of the provisions of the Foreign Exchange Regulation Act 1947 (FERA).

Here is the relevant excerpt from the SBP's statement:

"Any person in Pakistan buying products or services of such offshore platforms and remitting foreign exchange directly or indirectly to them through any payment channel is

making himself/herself liable to be proceeded against for violation of provisions of the Foreign Exchange Regulation Act 1947 (FERA)."

This authoritative statement from the SBP underscores the illegal nature of offshore forex trading and its implications under FERA.

4. Our Mission and Activities: *Our efforts at "exness.pk" align with the SBP's stance and aim to protect Pakistani citizens from the risks associated with illegal online forex trading. We have been actively involved in creating awareness about the illegal status of such platforms and the potential financial losses they pose to individuals. Our work in this domain dates back to 2011, demonstrating our longstanding commitment to promoting financial literacy and safeguarding the interests of our fellow Pakistanis.*

5. Distinct from Complainant's Category: *I would like to emphasize that our activities are distinct from the classifications registered by the complainant. The complainant is registered under classification Number 36, which pertains to "Financial, monetary and banking services; insurance services; real estate affairs." Our focus is on education and awareness, and we are not associated with the activities mentioned in this classification.*

In light of the aforementioned points, I firmly assert that my domain registration and usage do not infringe upon the listed trademarks or engage in activities covered by the complainant's classification. My domain "exness.pk" serves a purpose that aligns with the SBP's stance on offshore forex trading and contributes to the betterment of our society.

In light of the comprehensive explanations provided above, I firmly deny all points raised by the complainant.

I extend my gratitude for your consideration of this matter and your dedication to ensuring equitable resolutions. If you require any additional information or documentation to further assess the validity of this complaint, please do not hesitate to reach out.

5. Jurisdiction

The Panel's jurisdiction over this dispute between the Complainant and the Respondent is established by virtue of the Internet Domain Registration Policy version 4.4 (2019-08-19) and the Rules.

The Respondent applied for and was granted registration of the DDN on the basis of these regulations, and has submitted to, the PKNIC - Internet Domain Registration Policy version 4.4 (2019-08-19) and the Rules and correspondingly to the arbitral jurisdiction of the DNDRC and its arbitration decisions.

6. Discussion and Findings

In the landmark case of *Standard Chartered PLC v. Hosting Campus Domain* (case no. C2007-0001) available on the DNDRC website (http://www.dndrc.com/cases_resolved/pdf/c2007-0001.pdf), the Panel laid down the following four heads under which to analyze cases, under the Internet Domain Registration Policy version 4.4 (2019-08-19) and the UDRP:

1. *Illegality, unlawfulness or otherwise invalidity of the Application & Registration (a criteria in terms of the PKNIC - Internet Domain Registration Policy June 20, 2006 version 4.1 in addition to the criteria of the UDRP)*
2. *Identical or confusing similarity to a trademark or service mark in which the Complainant has rights (a UDRP criteria)*
3. *Legitimate interest in Domain Name (a UDRP criteria)*
4. *Registration and use in bad faith (a UDRP criteria)*

The decision of the dispute shall be addressed with respect to the following aspects:

- i. *Illegality, unlawfulness or otherwise invalidity with respect to the Application & Registration (a PKNIC - Internet Domain Registration Policy version 4.4 (2019-08-19) criteria).*
- ii. *Identical or confusing similarity with a trademark or service in which the Complainant has rights (a UDRP criteria).*
- iii. *Legitimate interest in the domain name (a UDRP criteria).*
- iv. *Registration and use of the domain name in bad faith (a UDRP criteria).*

I. Illegality, unlawfulness or otherwise invalidity of the Application & Registration

The PKNIC - Internet Domain Registration Policy version 4.4 (2019-08-19) states that it creates an exception for, and thus excludes the registration of a domain name that:

- a. *infringes upon a registered tradename,*

- b. *is not bona fide as recognized by international best practice,*
- c. *in the opinion of PKNIC, a contravention of the latest version of the Pakistan Penal Code Act, 1860 (including offences of defamation & blasphemy)/ Anti-Terrorism Act, 1997/any applicable criminal law,*
- d. *has been declared by a Criminal Court of appropriate jurisdiction to have contravened the latest version of Pakistan Penal Code Act, 1860 (including offences of defamation & blasphemy)/Anti-Terrorism Act, 1997/any applicable criminal law), or*
- e. *in the opinion of PKNIC is not appropriate for registration.*

As per the PKNIC - Internet Domain Registration Policy version 4.4 (2019-08-19),

If a party claims that a domain name already registered with PKNIC violates their registered tradename, an obvious derivation of their registered company name is not bona fide as recognized by international best practice, and is a contravention in the opinion of PKNIC to be a contravention of the latest version of the Pakistan Penal Code Act, 1860 (including offences of defamation & blasphemy)/ Anti-Terrorism Act, 1997/any applicable criminal law, PKNIC reserves the right to cancel, or transfer the domain to the claiming party as per the ICANN's Uniform Domain Name Dispute Resolution Policy [UDRP] (with PKNIC amendments) or as per the orders of a court judgment in Pakistan.

Therefore, for the purpose of assessing illegality, unlawfulness or otherwise invalidity of the Application & Registration of the Disputed Domain Name, the application and registration of the DDN shall be assessed in consideration of the following criteria:

- i. Whether the DDN infringes upon a registered trade name / trade mark?
- ii. Whether the application and/or registration of the DDN is bona fide?
- iii. Whether the application and/or registration of the DDN contravenes the Pakistan Penal Code, 1860 (the "Penal Code") or any applicable criminal law?

The Complainant has stated:

The Respondent uses the Complainant's trademark to provide financial advice related to Islamic views on forex trading in Pakistan. The Respondent furthermore, claims that the Complainant is a fraudulent broker and operates a website for damaging the Complainant's and its trademarks' reputation under the domain name <exness.pk> that incorporates identical elements to the Complainant's trademarks and other TLD domain

names. Please see attached an example for the Respondent's activity via the Complainant's trademark (Annex 1).

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The EXNESS Trademarks designating (amongst others) Pakistan for more information:

- 1) EXNESS international registration No. 1133115 (class 36)*
- 2) EXNESS international registration No. 1119502 (class 36)*
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- 4) EXNESS Pakistani national registration no. 367547 (class 36)*

(Please see attached the registration certificates in Annex 2)

It is apparent from the above, that the domain name <exness.pk> incorporates all referred trademarks of the Complainant, consequently they are identical. The list of goods and services protected by the EXNESS Trademarks are all financial and monetary services. The giving advices about online foreign exchange trading, (as claimed on the Website) are services in class 36; therefore, it can be established that the scope of activity provided under the contested domain name falls within the scope of protection enjoyed by the EXNESS Trademarks.

...

- It is apparent that **the Respondent knew or should have known that the registration of the domain name establishes the infringement of the Complainant's intellectual property rights.***

The Respondent has stated:

To begin, I would like to confirm that I am fully aware of the complaint and the trademarks listed in the complaint, which are as follows:

- 1) International trademark no. 1133115 "EXNESS" (word), priority: 12.09.2012.
- 2) International trademark no. 1119502 "ex EXNESS" (figurative), priority: 19.01.2012.
- 3) International trademark no. 1432258 "exness" (figurative), priority: 03.12.2021.
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I would like to provide a detailed response addressing the concerns raised in the complaint:

1. Domain Registration and Trademark: It's important to note that my domain registration for "exness.pk" predates the priority dates of the international trademarks listed in the complaint. My domain was registered on October 29, 2011, while the priority dates of the trademarks are subsequent to this date.

2. Nature of Domain Usage: My domain "exness.pk" serves an educational purpose, aiming to raise awareness among fellow Pakistanis about the legal implications of online forex trading. I have been actively engaged in disseminating information regarding the illegality of offshore forex trading platforms, websites, and mobile apps. I am committed to sharing valuable insights about the risks associated with such platforms, as emphasized by the State Bank of Pakistan (SBP).

3. SBP's Position on Offshore Forex Trading: The SBP, in its official statement published in The Express Tribune on May 19th, 2022, explicitly clarified that buying products/services from offshore foreign exchange trading platforms is prohibited and against the laws of the land. The statement clearly mentions that these trading platforms, including "OctaFx," "Easy Forex," and others, are not authorized by the SBP or the Securities and Exchange Commission of Pakistan (SECP). As per the SBP, any person in Pakistan engaging in such transactions is liable to be proceeded against for violation of the provisions of the Foreign Exchange Regulation Act 1947 (FERA).

Here is the relevant excerpt from the SBP's statement:

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making himself/herself liable to be proceeded against for violation of provisions of the Foreign Exchange Regulation Act 1947 (FERA)."

This authoritative statement from the SBP underscores the illegal nature of offshore forex trading and its implications under FERA.

4. Our Mission and Activities: *Our efforts at "exness.pk" align with the SBP's stance and aim to protect Pakistani citizens from the risks associated with illegal online forex trading. We have been actively involved in creating awareness about the illegal status of such platforms and the potential financial losses they pose to individuals. Our work in this domain dates back to 2011, demonstrating our longstanding commitment to promoting financial literacy and safeguarding the interests of our fellow Pakistanis.*

5. Distinct from Complainant's Category: *I would like to emphasize that our activities are distinct from the classifications registered by the complainant. The complainant is registered under classification Number 36, which pertains to "Financial, monetary and banking services; insurance services; real estate affairs." Our focus is on education and awareness, and we are not associated with the activities mentioned in this classification.*

In light of the aforementioned points, I firmly assert that my domain registration and usage do not infringe upon the listed trademarks or engage in activities covered by the complainant's classification. My domain "exness.pk" serves a purpose that aligns with the SBP's stance on offshore forex trading and contributes to the betterment of our society.

...

7. No Intention of Infringement: *Our use of the domain name "exness.pk" is not intended to infringe upon the Complainant's trademarks. Instead, it reflects our commitment to promoting awareness and education regarding online forex trading's legal and ethical aspects.*

The Complainant has provided copies of certificate of registration (**Annex 2**) issued by the Government of Pakistan indicating that it has registered the word mark "Exness" in one class in Pakistan. The Panel finds that the Complainant has submitted sufficient evidence that it has trademark rights in the word "Exness". The DDN does prima facie incorporate in its entirety the registered trademark of the Complainant. In the view of the Panel, the DDN therefore infringes upon the trademark of the Complainant.

Respondent in its response has noted that it is aware of the Complainant's trademarks including the Complainant's trademark in Pakistan. On 28 August 2023 the Respondent provided the Panel with a trademark application filed with Intellectual Property Organisation Trade Marks Registry for the mark "EXNESS.PK AWARENESS BLOG" in class 41. The Panel notes that the date of trademark application is after the date on which DNDRC sent the notice of complaint to the Respondent and incorporates the Complainant's mark "Exness".

The Respondent has failed to satisfy the Panel that it has not infringed the registered trademark of the Complainant in the DDN and has rights to the term "Exness" that would indicate that the registration of the DDN by the Respondent was bona fide.

In view of the findings of the Panel that the DDN, which incorporates a registered trademark of the Complainant in its entirety, constitutes an infringement of the trademark of the Complainant in its entirety, the Panel, relying on the findings in *Standard Chartered PLC v. Hosting Campus Domain (case no. C2007-0001)*, also finds that the registration will contravene relevant provisions of the Pakistan Penal Code.

The Panel therefore finds that the registration of the Disputed Domain Name is unlawful. The Panel may decide this Complaint on this basis alone. However, for the sake of completeness and procedural fairness, but not to create a binding precedent, this Panel shall also assess the Complaint in terms of the ICANN UDRP as amended by the PKNIC - Internet Domain Registration Policy version 4.4 (2019-08-19).

II. Identical or confusing similarity to a trademark or service mark in which the Complainant has rights

The Complainant has contended the following:

The Complainant uses the word mark EXNESS, and device marks  and  incorporating the same (the "EXNESS Trademarks") in connection with financial services globally. The EXNESS Trademarks have been registered under the Madrid System for the international registration of marks and enjoys protection in more than 100 countries, including, inter alia, the USA to Pakistan, through Africa and the European Union.

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It has been established by the internationally recognized leading dispute resolution policy for challenges related to the abusive registration and use of Internet domain names, i.e. the Uniform Domain Name Dispute Resolution Policy (“UDRP”) that “domain names identical to a complainant’s trademark carry a high risk of implied affiliation and it cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner.” This is especially the case as the Respondent provides financial advice online under the disputed domain name, which confusingly resemble to the services covered by the EXNESS Trademarks.

...

Furthermore, Complainant has a web presence under www.exness.com. Complainant also controls 750+ domain names containing the word EXNESS including, but not limited to the following domain names: exness.uk, exness.eu, exness.de.com, exness.asia, exness.global, exness.broker, exness.trade, exness.direct, exness.market, exness.expert, exness.pro (see Annex 3). Additionally, Complainant continuously acquires newly become available domain names that incorporate the EXNESS Trademarks, in order to enhance its online brand protection and online consumer trust.

It is clear that the acquisition and use of the domain name <exness.pk> by the Respondent was intended to and actually does confuse and misdirect consumers seeking Complainant’s official “EXNESS” website.

....

- *The domain name incorporates the Complainant's trademark plus the chosen second-level domain, i.e. ".pk" is merely a descriptive or geographic term. Furthermore, Complainant has a strong market position in Pakistan, where the Respondent provides its services through the website associated with the domain name.*
- *It is clearly apparent, that the Respondent's pattern is to promote itself in a market where Complainant is well established, i.e. in Pakistan and to appear as the Complainant via incorporating the Exness Trademark in the disputed domain name.*

...

- *In addition to that, the Complainant's trademark is highly specific and the Respondent cannot credibly claim to have been unaware of the mark. Especially after considering the fact that we Complainant has over 750 domain names globally which include the Complainant's inherently distinctive trademark; there is no chance the Respondent created it on its own. This is further reinforced by the fact that the Respondent refers to the Complainant in connection with its main business activity, namely online forex trading.*

On the other hand, the Respondent has submitted:

To begin, I would like to confirm that I am fully aware of the complaint and the trademarks listed in the complaint, which are as follows:

- 1) International trademark no. 1133115 "EXNESS" (word), priority: 12.09.2012.*
- 2) International trademark no. 1119502 "ex EXNESS" (figurative), priority: 19.01.2012.*
- 3) International trademark no. 1432258 "exness" (figurative), priority: 03.12.2021.*
- 4) Trade Marks Registry, Karachi Govt. Of Pakistan no. 367547 "exness" Dated 10 Nov 2017.*

I would like to provide a detailed response addressing the concerns raised in the complaint:

1. Domain Registration and Trademark: *It's important to note that my domain registration for "exness.pk" predates the priority dates of the international trademarks listed in the complaint. My domain was registered on October 29, 2011, while the priority dates of the trademarks are subsequent to this date.*

...

3. Domain Incorporating Identical Elements: *While it is true that the domain "exness.pk" shares elements with the Complainant's trademarks, the purpose and content of our website differ significantly from that of the Complainant. Our website is aimed at promoting awareness and education, not promoting financial services or engaging in any business activity that would infringe upon the Complainant's rights.*

...

5. Impersonation and Fair Use: *The content on our website does not impersonate or suggest sponsorship or endorsement by the trademark owner. Our intention is to provide information and engage in discussions related to online forex trading's compatibility with Islamic principles and SBP's stance on offshore forex trading. We believe our use of the domain name falls within the realm of fair use and freedom of expression.*

It is an established principle that the incorporation of a Complainant's trademark in full within a disputed domain name may be sufficient to establish confusing similarity between the mark and the disputed domain name as established in *Compagnie Générale des Etablissements Michelin v. World Industrial, LNQ*, WIPO Case No. D2019-0553.

The Complainant has provided sufficient information, including annexing evidence of the same (**Annex 3**), that the Complainant has rights in the trademark "Exness" in Pakistan. The addition of the ccTLD ".pk" would also not prevent the finding of confusing similarity as found in *L'Oréal v Tina Smith*, WIPO Case No. D2013-0820.

The Respondent has failed to provide the panel with any valid explanation of how the DDN is not confusingly similar to the trademark of the Complainant. The Respondent has also not provided any evidence that it has a valid trademark incorporating the word "Exness". The Panel finds confusing similarity between the DDN and the Complainant's trademark under paragraph 4(a)(i) of the Policy.

III. Legitimate interests in a domain name

As per paragraph 4(c), the UDRP requires the Respondent's claim to be of legitimate interest and shall be:

“proved based on all evidence presented” that “shall demonstrate” the Respondent’s “rights or legitimate interests to the domain name for purposes of [Paragraph 4\(a\)\(ii\)](#). ”

Paragraph 4(a)(ii) states that:

“(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.”

The Complainant has contended:

We would like to add that on the landing page of the disputed domain name the Respondent indicates the following sentence: “We are here to help you to know about online forex trading, why its Haram, why its prohibited in Islam.” In a subsequent section it goes beyond and claims that “Trading at Exness is gambling which is Haram in Islam. – EXNESS FRAUD” The Respondent does that under the EXNESS name, so that consumers might think that the owner of the EXNESS brand, i.e. the Complainant instructs its clients to not trade with EXNESS in Islamic countries.

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Such way of using the EXNESS Trademarks goes beyond the limits of fair use and prevents the Complainant from exercising its rights to the EXNESS Trademark and so managing its presence on the Internet.

The Respondent lacks the legitimate interest to register the disputed domain name; consequently, it is to be established that this creates an impermissible risk of user confusion through impersonation.

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- It is clearly apparent, that the Respondent's pattern is to promote itself in a market where Complainant is well established, i.e. in Pakistan and to appear as the Complainant via incorporating the Exness Trademark in the disputed domain name.*
- There is a **clear absence of the Respondent's own rights or legitimate interests in the domain name**, and the Complainant's mark is completely incorporated in the domain name.*
- The content of the website to which the domain name points presents financial advising under the business name and trademark of the Complainant.*

The Respondent has contended:

1. Use of Trademark for Financial Advice: *It is important to clarify that the domain "exness.pk" is not being used to provide financial advice related to the Complainant's trademark. Instead, our focus is on raising awareness about the legality and potential risks associated with online forex trading, specifically in the context of Islamic views and SBP's stance on offshore forex trading. Our intention is to educate and inform, rather than engage in any activity that would imply affiliation or endorsement.*

...

5. Impersonation and Fair Use: *The content on our website does not impersonate or suggest sponsorship or endorsement by the trademark owner. Our intention is to provide information and engage in discussions related to online forex trading's compatibility with Islamic principles and SBP's stance on offshore forex trading. We believe our use of the domain name falls within the realm of fair use and freedom of expression.*

6. Educational and Informative Content: *The statements on our landing page and subsequent sections are meant to provide information and raise awareness about the potential implications of online forex trading from an Islamic perspective and SBP's stance on offshore forex trading. Our goal is to facilitate informed decisionmaking and foster a deeper understanding of the subject matter.*

...

Precedents Supporting Our Position:

"WallStreet.com" Case (1998):

A precedent that underscores the importance of prior usage in domain disputes is the "WallStreet.com" case. The domain was registered before the trademark for "Wall Street" was established. The domain owner's legitimate usage of the domain for financial news and information was recognized, establishing the principle that prior usage can influence domain ownership rights.

"Mattel v. Greiner" (2000):

Another relevant case is "Mattel v. Greiner." Here, a fan site owner retained the domain "barbie-club.com" despite Mattel's claim. The court ruled in favor of the domain owner, considering the domain's registration before the "Barbie" trademark and the non-commercial nature of its use.

In conclusion, our activities and intentions with the domain "exness.pk" are focused on providing valuable information to the public, especially within the context of Islamic views and SBP notifications and regulations on online forex trading. We firmly believe that our efforts align with educational and informative purposes, rather than infringing upon any rights associated with the Complainant's trademarks.

As has been previously adopted by the discussions and findings in WIPO authorities, it is for the Respondent to rebut the allegations put forth by the Complainant after the Complainant establishes a prima facie case about the lack of legitimate interest in a disputed domain name. Also, with respect to proving rights or legitimate interests in the disputed domain name(s), it is for the Respondent to submit evidence pertaining to the same as it would be extremely difficult, if not impossible, for the Complainant to prove a negative assertion. As such, in order to satisfy the Panel

that it has rights or legitimate interests to the DDN, the onus was on the Respondent submit evidence with respect to the same.

The Complainant has indicated that it is in use of the name “Exness” and has registered trademarks (**Annex 2**) demonstrating a prima facie case of legitimate interest in the DDN as has previously been decided in LEGO Juris A/S v. DomainPark Ltd, David Smith, Above.com Domain Privacy, Transure Enterprise Ltd, Host master, WIPO Case No. D2010-0138.

The Respondent has not presented any satisfactory evidence that could prove their rights or legitimate interest in the disputed domain names, as specified in paragraph 4(c) of the Policy. This is similar to the ruling in the case Ahead Software AG. v. Leduc Jean, WIPO Case No. D2004-032, where the respondent's failure to respond was enough to determine that they had no legitimate interest or right to the domain names.

The Panels notes that the material published on the website of the disputed domain name criticizing the Complainant’s business as evidenced by the Complainant (Annex A). Such material, whether justified or not, is likely to lead to the loss of reputation of the Complainant’s name and trademark as well as a loss on business in the territory of Pakistan.

As seen in Vector Limited v. Vince and Jane Siemer WIPO Case No. D2008-0925, it was the Panel’s view that a right to criticize a mark holder on the Internet does not necessarily extend to the unauthorized incorporation of a mark in its entirety in a domain name; nor does it necessarily extend to a right to create Internet user confusion as to the source of published critical material.

In the present case, the Respondent has registered a domain name that is confusingly similar to the Complainant’s trademark, and the Respondent admittedly uses the domain name to post information critical of the Complainant’s business which is apparent on entry to the website.

In the case of Monty and Pat Roberts, Inc. v. J. Bartell, WIPO Case No. D2000-0300 the Panel noted that while a respondent has a right to express its views concerning a complainant on the Internet, “the right to express one’s views is not the same as the right to use another’s name to identify one’s self as the source of those views.”

The Panel finds that the Respondent has failed to rebut the Complainant’s *prima facie* case does not have a legitimate interest in the DDN pursuant to paragraph 4(a)(ii) of the Policy.

IV. Registration and use in bad faith

The Complainant has made the following submission:

We would like to add that on the landing page of the disputed domain name the Respondent indicates the following sentence: “We are here to help you to know about online forex trading, why its Haram, why its prohibited in Islam.” In a subsequent section it goes beyond and claims that “Trading at Exness is gambling which is Haram in Islam. – EXNESS FRAUD” The Respondent does that under the EXNESS name, so that consumers might think that the owner of the EXNESS brand, i.e. the Complainant instructs its clients to not trade with EXNESS in Islamic countries.

Such activity falls under the services covered by the Exness Trademarks, namely financial consultancy; financial exchange; financial forecasting; financial information; financial information and evaluations providing investors with financial information; providing stock market information; therefore, it also constitutes the infringement of the Complainant’s trademarks. This fact demonstrates that the Respondent seeks to take unfair advantage of, abuse, or otherwise engage in behavior detrimental to the Complainant’s trademarks.

Such way of using the EXNESS Trademarks goes beyond the limits of fair use and prevents the Complainant from exercising its rights to the EXNESS Trademark and so managing its presence on the Internet.

...

*We would like to highlight some **additional bad faith consideration factors generally taken into consideration** by UDRP panels:*

- The **domain name incorporates the Complainant’s trademark** plus the chosen second-level domain, i.e. “.pk” is merely a descriptive or geographic term. Furthermore, Complainant has a strong market position in Pakistan, where the Respondent provides its services through the website associated with the domain name.*
- It is clearly apparent, that the Respondent’s pattern is to promote itself in a market where Complainant is well established, i.e. in Pakistan and to appear as the Complainant via incorporating the Exness Trademark in the disputed domain name.*

- *There is a clear absence of the Respondent's own rights or legitimate interests in the domain name, and the Complainant's mark is completely incorporated in the domain name.*
- *The content of the website to which the domain name points presents financial advising under the business name and trademark of the Complainant.*
- *The Respondent uses a WHOIS masking to hide the registrant's identity, making it much more difficult for the Complainant to enforce its intellectual property rights. It is known to block or intentionally delay disclosure of the identity of the actual underlying registrant, whose contact information cannot be reached neither from the registrar's WHOIS data, nor from the website associated with the domain name; this supports an inference of bad faith.*
- *It is apparent that the Respondent knew or should have known that the registration of the domain name establishes the infringement of the Complainant's intellectual property rights.*
- *This is reinforced by the fact that the Complainant has a strong market position in Pakistan and that the Respondent promotes financial advising on online foreign exchange trading on behalf of the Complainant on the website associated with the domain name.*
- *In addition to that, the Complainant's trademark is highly specific and the Respondent cannot credibly claim to have been unaware of the mark. Especially after considering the fact that the Complainant has over 750 domain names globally which include the Complainant's inherently distinctive trademark; there is no chance the Respondent created it on its own. This is further reinforced by the fact that the Respondent refers to the Complainant in connection with its main business activity, namely online forex trading.*

The Respondent has contented:

4. Our Mission and Activities: Our efforts at "exness.pk" align with the SBP's stance and aim to protect Pakistani citizens from the risks associated with illegal online forex trading. We have been actively involved in creating awareness about the illegal status of such platforms and the potential financial losses they pose to individuals. Our work in this domain dates back to 2011, demonstrating our longstanding commitment to promoting financial literacy and safeguarding the interests of our fellow Pakistanis.

...

1. Use of Trademark for Financial Advice: It is important to clarify that the domain "exness.pk" is not being used to provide financial advice related to the Complainant's

trademark. Instead, our focus is on raising awareness about the legality and potential risks associated with online forex trading, specifically in the context of Islamic views and SBP's stance on offshore forex trading. Our intention is to educate and inform, rather than engage in any activity that would imply affiliation or endorsement.

2. Claims of Fraudulent Activity: *The claim that the Complainant is a fraudulent broker is not our intention nor part of our activities. We seek to highlight the concerns regarding online forex trading and its potential implications, particularly within the framework of Islamic law and SBP's stance on offshore forex trading. Our primary goal is to ensure that individuals are well-informed and make educated decisions.*

3. Domain Incorporating Identical Elements: *While it is true that the domain "exness.pk" shares elements with the Complainant's trademarks, the purpose and content of our website differ significantly from that of the Complainant. Our website is aimed at promoting awareness and education, not promoting financial services or engaging in any business activity that would infringe upon the Complainant's rights.*

5. Impersonation and Fair Use: *The content on our website does not impersonate or suggest sponsorship or endorsement by the trademark owner. Our intention is to provide information and engage in discussions related to online forex trading's compatibility with Islamic principles and SBP's stance on offshore forex trading. We believe our use of the domain name falls within the realm of fair use and freedom of expression.*

6. Educational and Informative Content: *The statements on our landing page and subsequent sections are meant to provide information and raise awareness about the potential implications of online forex trading from an Islamic perspective and SBP's stance on offshore forex trading. Our goal is to facilitate informed decisionmaking and foster a deeper understanding of the subject matter.*

7. No Intention of Infringement: *Our use of the domain name "exness.pk" is not intended to infringe upon the Complainant's trademarks. Instead, it reflects our commitment to promoting awareness and education regarding online forex trading's legal and ethical aspects.*

The Complainant and its trademark "Exness" have been well-known, and the Respondent may have known about them when registering the DDN, *LEGO Juris A/S v. store24hour*, WIPO Case No. D2013-0091. The Complainant has submitted that the DDN is being used in bad faith. On the

other hand, the Respondent has failed to provide any satisfactory information to rebut the contention of the Complainant.

The Complainant submits that it is well-settled that bad faith can be found where a domain name is so obviously connected with a well-known trademark that its very use by someone with no connection to the trademark suggests opportunistic bad faith. The Panel endorses that view. Given the reputation of the “Exness” trademark, registration in bad faith can be inferred as seen in *Charles Jourdan Holding AG v. AAIM*, WIPO Case No. D2000-0403.

In view of the Respondent’s submission, the Panel establishes that, by using the DDN, the Respondent has intentionally attempted to attract Internet users to its website, by creating a likelihood of confusion with the Complainant’s mark and to divert potential customers of the Complainant by warning them against utilizing the services provided by the Complainant which may result in loss of business for the Complainant. This, in the view of the Panel, constitutes use in bad faith.

The Panel, therefore, finds that the DDN was registered and is being used in bad faith by the Respondent.

7. Decision

Analyzing the details provided by the Complainant, the Panel perceives that the “Exness” mark has been registered by the Complainant, hence the Complainant reserves crucial interest in such mark. Usage of these marks by the Respondent could endanger the reputation that the Complainant has worked hard at building and maintaining and result in confusion as to the registrant of the DDN.

Taking all the discussion above into consideration, the Panel concludes and decides that:

1. The Respondent’s registration of the DDN is contrary to the PKNIC - Internet Domain Registration Policy version 4.4 (2019-08-19)
2. The Respondent has no legitimate interest in the DDN.
3. The DDN is identical to the Complainant’s trademark/names and registered domain names.
4. The DDN was registered and being used in bad faith.

Pursuant to Section 4 of the Policy, the Panel, therefore, recommends that PKNIC transfer the registration of the domain name in dispute <exness.pk> to the Complainant, as prayed, within 48

hours of receipt of this decision either by email or through the website where it will be uploaded, www.dndrc.com/cases_resolved/, whichever is earlier. The Complainant shall also be at liberty to contact PKNIC for implementation of this decision.

Arbitrator: Sunain Qazi

Sole Panelist

Date: 1 January 2024