

Preliminary Judgement

A. FACTS.

(1) The token applying for a badge in this case is Spendcoin. Spendcoin is part of SPEND. SPEND wants to make off chain payments with crypto currencies attractive by providing its customer with special debit cards. These so called "spend cards" can be used to pay in any fiat currency because it is connected to a digital wallet containing the currencies. The currencies can be converted instantly using the "Spend Authorization Engine".

(2) Businesses can build applications to use the Spend infrastructure. This allows them to accept currencies as a payment.

(3) The "Spendchain" protocol that governs the network requires different types of nodes.

(4) Validator Nodes are the most powerful. They are the top 41 nodes of the network who govern the protocol and determine who can become a Merchant or Financial Node. Merchant and Financial nodes must perform KYC.

(5) Merchant nodes are those nodes that can process the proof-of-purchase transactions which are a key feature of the chain.

(6) Financial Nodes resemble banks in traditional economic systems. They perform the transactions of the merchants which means that they are responsible for converting currencies when doing a SPEND transaction.

(7) Client nodes can stake Spendcoin and send and receive transactions. They vote for the Validators. Votes are weighted according to the amount of SPND staked.

(8) In order to incentivise the use of the system customers get rewards when performing purchases from a fund of 1.25 million SPND.

(9) According to coinmarketcap 17 % of the SPND supply is circulating. The badge has been denied in previous cases because the submitter failed to show that more than 10 % of the supply is circulating.

B. CLAIMS.

(10) Challenger claims that the submission violates rule 1.1.2 for SPND generates a dividend or similar payment.

(11) According to the Challenger when trading SPND gives you a benefit from the fund this can be some kind of dividend. Submitter states that this would be a violation of the terms and conditions and could be sanctioned. Furthermore, the reward is not given when trading SPND.

(12) Challenger, furthermore, claims that the submission violates rule 1.1.5 for the issuer keeps effective control over the project.

(13) The reason is that the validators who can undo transactions have to undergo KYC and are determined by a small group of privileged nodes. This need for KYC makes centralisation a part of the protocol. Submitter responds that KYC can happen decentralised and that the team cannot influence who controls the protocol as this is determined in a decentralised way by the validators.

(14) Challenger, furthermore, claims that the submission violates rule 3.1 for there is no new technology and the business model is unsustainable.

(15) The reason for this allegation is that SPND relies on the reward system to create an incentive to use it. Once the reward pool is depleted there is no more reason to use SPND. Apart from that, Spend does not use any of the benefits blockchain provides. Submitter argues that SPND can also be used to acquire better products.

(16) Challenger, furthermore, claims that the submission violates rule 3.2 for there is no future utility.

(17) Once the reward pool is depleted SPND loses its purpose. The argumentation is similar to the one provided for the violation of 3.1. Submitter claims that in any event the token has utility today which suffices.

(18) Challenger, furthermore, claims a violation of rules 5.2 and 2.1 for artificially dumping tokens to meet the requirements.

(19) In previous disputes there were no more than 3 % of tokens circulating. After Submitter's badge was denied the top addresses started releasing SPND directly to Bitfinex. This is highly suspicious to the challenger. This would also be a breach of 2.1 as it shows that the Submitter is not a fit and proper person. Submitter argues that the transactions come from proof-of-purchase rewards which are transferred in chunks to Bitfinex.

C. PROCEDURE.

(20) All claims except for the rule 5.1, 2.1 claim have been made after the circulation issue has been discussed for some time. I have informed the parties that I do not see it a violation of due process to consider the arguments made as there has still been enough time to discuss the issues.

(21) Though, previously the badge was denied based on Rule 5.1 the court in this trial will apply full scrutiny and check every requirement for the submission again. Denying a badge for failure to comply with one rule does not imply that no other rules were not violated.

(22) As this is a first instance trial I made an effort to get all relevant facts on the record and gather as much information as I could. In general, it is the parties job to lead the trial and present evidence, as they are the ones who know the token best. However, in order to maintain an effective jurisprudence it is the first instance courts duty to point the parties towards issues that need attention so all relevant aspects can be considered in the judgement. Then the appellate court need not deal with new evidence. Instead in can focus on searching the judgement for wrong conclusions and a failure to apply the law correctly.

(23) For this reason, I also think, that as a general rule evidence that was not presented in this trial, even though it could have been, shall not be considered on appeal. This would allow the appealing party to impose additional fees on their opponents by holding back important evidence, losing the first trial and then win on appeal.

D. RULING.

(24) In determining whether there has been a violation I first determined whether the challenger has to prove a violation or whether the submitter has to prove compliance. As a general rule the party that makes a claim has to prove that all requirements for that claim are met. With Badge requests, however, it is not clear whether the dispute is about the submitter having a claim to get the badge or the challenger having a claim to have it removed.

(25) I don't think that there is just one answer to who is the "claimant" here. Instead, every alleged violation can put the burden of proof on a different party. When I determined who bears the burden of proof I therefore asked: "What distribution of the burden to proof certain facts would be fair?"

(26) One factor that is crucial for determining this burden of proof is subjectivity. Some listing criteria like "utility", as I will point out later, are rather subjective. In this case, the court should per default consider the requirement to be existent and just reject a submission if the challenger can clearly show that there is no circumstance in which the product meets the requirement. The reason is that I don't see why seven randomly selected people should make a decision on whether a product (let's stick to the relevant issue) provides utility on behalf of potentially thousands of users - some of whom might have a good reason to see utility.

(27) Another factor is availability. Sometimes there is evidence required that one of the parties cannot provide, but it can convincingly show that another party has the required prove. The situation described will often be a challenger creating reasonable doubt regarding the submitter's compliance. When in addition to that the challenger can show that the submitter is likely to have relevant evidence, in my opinion, it would be fair to ask the submitter to prove full compliance. This may, of course not allow for "fishing expeditions". The submitter has to make a prima facie case before the burden shifts.

I. Violation of Rule 1.1.2.

(28) Rule 1.1.2 prohibits paying dividends to the shareholders. The payment of dividend is an essential part of a protocol that is therefore likely to be pointed out in the whitepaper. This also means that it is reasonable to expect a challenger to show that no dividends are paid. It would also be unnecessary to ask a submitter to show the absence of dividends.

(29) The issue in this case is, whether the possibility to generate regular profits - be it by exploiting the product, or just because it is a planned feature - is a dividend with regard to Rule 1.1.2.

(30) Neither the challenger nor the submitter give a useful definition of a dividend. A dividend is a share in profits in exchange for an investment that shareholders receive as an incentive for them to risk their capital.

(31) Therefore, I do not consider the reward system in question to be a dividend.

II. Violation of Rules 3.1 and 3.2.

(32) Rule 3.1 demands “evidence of novel technology” enumerating what kind of evidence could be provided. The word “evidence” implies, in my opinion, that a doubt regarding a fact is to be resolved in favour of the challenger. In this case, however, the facts regarding novel technology are undisputed. The question is what can be considered to be “novel technology”.

(33) As the submitter has pointed out, “novel” cannot mean that there are no similar projects. This would kill competition. For this reason every project should be considered to contain “novel” technology that tries to solve an existing problem without blatantly copying an already existing project.

(34) Rule 3.2 is a subjective one, as I pointed out before. Therefore, the standard to apply should be a loose one. When there is a group of users who could benefit from the product and the token does somehow contribute to it it is compliant with rule 3.2. As the last sentence tells, the rule's purpose is to keep out mere fundraising projects.

(35) SPND allow to vote for validators who then oversee the network. This allows stakeholders to influence the project. This, in my opinion suffices for a Token to let it have “utility”.

III. Violation of Rules 5.1 and 2.1.

(36) A violation of Rule 2.1 is a serious allegation when it is justified by saying the issuer is lying. Therefore, the challenger has to prove a violation beyond a reasonable doubt. However, in this case, the issue is linked to a violation of Rule 5.1 and has not be decided on separately.

(37) The potential violation of Rule 5.1 is a key issue of this case. The facts are unclear. However, I tend to believe in the distribution of the token. What it comes down to here is who bears the burden of proof.

(38) I think that the number of tokens on trading platforms and the circulating supply by coinmarketcap are standard ways to prove how many tokens are circulating. A token being on an exchange platform complies with Rule 5.2 when strictly applying a definition that was used in the GRID+ badge trial: "Tokens circulating are tokens which can be bought/sold, they don't need to, it just need to be possible."

(39) The only way in which this definition could be wrong is when the submitter fraudulently dumps tokens to exchanges, as the challenger claims. This is, in fact, a 2.1 allegation and requires the challenger to prove the fraud beyond a reasonable doubt.

(40) Even when we assume that the arguments of the challenger cast a doubt on the honesty of the submitter we cannot put the burden of proof on the submitter. This shift would require evidence to be "available" to the submitter that could show they did not dump the token. Proving that something did not happen is quite hard. It can only be demanded under extraordinary circumstances which I do not see here.

(41) For this reason I think that Challenger has failed to make a Rules 2.1, 5.1 case and the badge cannot be denied on these grounds.

IV. Violation of Rule 1.1.5.

E. CONCLUSION.