

Decision for dispute CAC-UDRP-104089

Case number	CAC-UDRP-104089
Time of filing	2021-11-08 12:57:17
Domain names	paysend.money

Case administrator

Organization	Iveta Špiclová (Czech Arbitration Court) (Case admin)
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Complainant

Organization	PaySend Group Limited
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Complainant representative

Organization	Motsnyi Consulting (dba Motsnyi Legal)
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Respondent

Name	Anatolii Lenchenko
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OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings which are pending or decided and which relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of a number of trade marks for PAYSEND including, by way of example only, International Registration, number 1251936 for PAYSEND, in class 36, registered on April 10, 2015.

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:

The Complainant is a large financial technology company with its headquarters in Fife, United Kingdom. The Complainant trades as PAYSEND and has launched a number of PAYSEND-branded financial services-related products including "Paysend Global Transfers", "Paysend Global Account" and Paysend Connect". It services over 4 million customers in more than 90 countries.

The disputed domain name was registered on October 7, 2020. As at late September 2021, it resolved to a website containing information in Russian script about how money could be moved between bank cards in various jurisdictions and purporting to offer services in that respect. Extracts from an English translation from the Respondent's website provided by the Complainant

include the following; “Paysend is a fast, inexpensive and convenient way to transfer money home online” and “Spring is coming and we at Paysend decided to offer you the new terms of money transfer from Poland to your home country”.

The Complainant’s advisors sent two cease and desist letters to the Respondent, via the Registrar of the disputed domain name, in July and August 2021. The disputed domain name now resolves to a landing page containing several pay-per-click (“PPC”) links, including to “Shopify Costs”, “USPS International Package” and “Package Delivery Tracking System”. The disputed domain name is confusingly similar to a trade mark in which the Complainant has rights. The disputed domain name fully incorporates the Complainant’s PAYSEND mark and includes the .money Top Level Domain (“TLD”, which is directly related to the Complainant’s main business activity and accordingly increases the likelihood of confusion. Where a domain name incorporates the entirety of a trade mark, it will normally be considered identical or confusingly similar to that mark for the purpose of the first element.

The Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent is an individual from the Ukraine. He is not known by the disputed domain name and is not using, and has never used it, for a bona fide offering of goods and services. The initial use of the disputed name to resolve to a website purporting to offer paycard services under a fictitious name cannot be bona fide. Nor does the current use of the disputed domain name to resolve to a landing page containing PPC links represent a bona fide offering, as such links compete with, or capitalise on, the Complainant’s reputation. The Respondent has not received the Complainant’s authorisation to register and use the disputed domain name, nor is he making a legitimate noncommercial or fair use of it, not least because domain names identical to a complainant’s trade mark carry a high risk of implied affiliation.

The Respondent has registered and is using the disputed domain name in bad faith. The mere registration of a domain name that is identical or confusingly similar to a famous or widely known entity can by itself create a presumption of bad faith. The Complainant’s PAYSEND trade mark, whilst relatively recent, is well-known in the area of online payments and online money transfers; the Complainant operates in over 90 countries and its PAYSEND mark is widely protected in multiple jurisdictions. The Respondent has registered a domain name identical to the Complainant’s mark and used a Top-Level Domain (“TLD”) which is directly related to the Complainant’s business activity. The current use of the disputed domain name to host PPC links is also in bad faith. The Respondent’s website initially contained direct references to the Complainant, used the Complainant’s corporate colours and logos and featured links to the Complainant’s own website and “YouTube” channel was clearly targeting the Complainant. With both uses of the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to his website by creating a likelihood of confusion with the Complainant’s mark as to the source, sponsorship or affiliation of its website. The fact that the Respondent sought to hide his identity behind a privacy service is, in the circumstances, of this Complaint, a further indicator of bad faith.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant has, to the satisfaction of the Panel, shown the Respondent to have no rights or legitimate interests in respect of the disputed domain name (within the meaning of paragraph 4(a)(ii) of the Policy).

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name has been registered and is being used in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy).

PROCEDURAL FACTORS

The Panel is satisfied that all procedural requirements under UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

Rights

So far as the first element is concerned, the Complainant's trade mark registrations for PAYSEND, including the trade mark in respect of which full details are provided above, establish its rights in PAYSEND.

For the purpose of comparing the disputed domain name with the Complainant's mark, it is established practice to disregard the TLD, that is ".money" in the case of the disputed domain name, as this is a technical requirement of registration. The remaining element of the disputed domain name comprises the Complainant's trade mark, in full and without alteration. The Panel accordingly finds that the disputed domain name is identical to a trade mark in which the Complainant has rights.

Rights and legitimate interests

Paragraph 4(c) of the Policy sets out circumstances, without limitation, by which a respondent might demonstrate that it has rights or a legitimate interest in a domain name. These are, summarised briefly: (i) if the respondent has been using the domain name in connection with a bona fide offering of goods and services; (ii) if the respondent has been commonly known by the domain name; or (iii) if the respondent has been making a legitimate noncommercial or fair use of the domain name.

The first known use of the disputed domain name featured a series of untrue claims that it was closely associated with the Complainant, or was the Complainant, in order to offer either genuine or fraudulent services related to money transfers. Masquerading as the Complainant in this manner cannot amount to a bona fide offering of goods and services. See in this respect section 2.13.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0"); "Panels have categorically 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". See also CAC Case No. 102388, BOURSORAMA SA v mustapha rojola. Nor does the current use of the disputed domain name to resolve to a webpage containing PPC links amount to a bona fide offering of goods and services; such use will not comprise a bona fide offering if the links capitalize on the reputation and goodwill of the complainant's mark; see CAC Case No. 102360, ARCELORMITTAL (SA) v Milton Liquors ILC. Irrespective of the fact that the links which presently feature on the Respondent's webpage do not directly relate to the Complainant's activities, it is the repute of the Complainant's mark and the perceived connection of the disputed domain name with the Complainant's activities which will attract Internet users to the Respondent's website.

There is no evidence that the Respondent has been commonly known by the disputed domain name, nor does the Respondent's current use of the domain name amount to making a legitimate noncommercial or fair use of it. Furthermore, as the disputed domain name, is identical to the Complainant's mark, it carries with it significant risk of implied affiliation with the Complainant, which prevents its use from being considered fair. The second and third circumstances set out at paragraph 4(c) of the Policy are therefore also inapplicable.

The Complainant having made out a prima facie case in relation to the second element, the burden of proof shifts to the Respondent to rebut it; see, for example, CAC Case No. 102333, Amedei S.r.l. v sun xin. In the absence of any response by it to the Complaint, the Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

Bad faith

Given the use to which the Respondent put the disputed domain name following registration, as described above, it is highly improbable that the Respondent registered the disputed domain name without an awareness of the Complainant and its trade mark rights.

So far as bad faith use is concerned, the initial use of the disputed domain name to resolve to a website which purported to be associated with the Complainant and to offer related financial services establishes that the Respondent was aware of the Complainant and its mark as at the date of registration of the disputed domain name and that it was registered by him to take unfair advantage of the Complainant's mark in some way. In these circumstances, the registration by the Respondent of the disputed domain names, leads to a presumption of bad faith; see, for example, CAC Case No. 101448, Severina Kojić v Orbis d.o.o. The Panel therefore finds that the disputed domain name was registered in bad faith.

The initial use of the disputed domain name to offer services purportedly connected with the Complainant (irrespective of whether the services themselves were actually provided or were, more likely, fraudulent) was intended to piggy-back off the Complainant's reputation in its PAYSEND mark by falsely claiming to be the Complainant, or closely associated with it, and thereby mislead Internet users into providing funds to it. The use by the Respondent of the ".money" TLD has plainly been intended to reinforce the perceived connection with the Complainant. Such use of the disputed domain name falls within the example of bad faith registration and use set out at paragraph 4(b)(iv) of the Policy namely that, by using the disputed domain name, the Respondent had intentionally attempted to attract, for commercial gain, Internet users to his website by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of his website.

The current use of the disputed domain name also exploits the Complainant's reputation in its PAYSEND mark. Whilst the use of a domain name to point to parking pages hosting PPC sponsored links is not inherently objectionable, the Respondent is seeking to gain income from Internet users who visit its website under the impression that the disputed domain name is owned and operated by, or with the authority of the Complainant. The fact that those Internet users will appreciate, on arriving at the Respondent's website, that it has no connection with the Complainant is immaterial because the Respondent will, by then, have had the opportunity to earn PCC income from Internet users who may click on one or more of the sponsored links on its website. See, for example, CAC Case No. 100717, CREDIT AGRICOLE SA v IVAN RIO. Accordingly, such use also falls within the example of bad faith registration and use set out at paragraph 4(b)(iv) of the Policy.

For these reasons the Panel finds that the disputed domain name was both registered and used in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

AND THE DISPUTED DOMAIN NAME(S) IS (ARE) TO BE

1. **PAYSEND.MONEY**: Transferred

PANELLISTS

Name	Antony Gold
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DATE OF PANEL DECISION 2021-12-15

Publish the Decision