

Decision for dispute CAC-UDRP-104331

Case number **CAC-UDRP-104331**

Time of filing **2022-02-07 09:17:34**

Domain names **paysend.pro**

Case administrator

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

Complainant

Organization **PaySend Group Limited**

Complainant representative

Organization **Motsnyi Consulting (dba Motsnyi Legal)**

Respondent

Name **Aleksey V Miloserdov**

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

In these proceedings, the Complainant relies on its following trademarks:

- International trademark registration no. 1251936 "PaySend", registered as of April 10, 2015, in Class 36, also covering the Russian Federation (basic registration), where Respondent is located;
- International trademark registration no. 1284999 "PAYSEND" (stylized script), registered as of October 13, 2015, in Classes 9 and 36, also covering the Russian Federation (basic registration), where Respondent is located;
- Russian trademark registration no. 573364 "PaySend", registered as of March 31, 2015, in Class 36;
- Russian trademark registration no. 601343 "PAYSEND" (stylized script), registered as of September 11, 2015, in Classes 9 and 36.

It is worth noting that, the Complainant also owns a few other registrations for the same trademarks in some other countries around the world, which have not been cited in these proceedings.

Further, the Complainant is apparently also the owner, among others, of the following domain names bearing its trademark "PAYSEND": <paysend.com>, <paysend.io>, <paysend.us>, <paysend.me>, and <paysend.ru>.

FACTUAL BACKGROUND

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

The Complainant is an innovative global FinTech company, which deals with card-to-card money transfers around the world, aiming to facilitate such transactions by bypassing the traditional banking procedures.

According to the evidence filed by the Complainant and not disputed by the Respondent, the Complainant serves over 4 million customers globally. Despite its relatively young age, it is ranked among the top global money transfer services and is therefore well-known in this field. The Complainant is also quite active and popular on social media.

The Complainant owns a fair-sized portfolio of trademarks including the wording "PAYSEND", among which notably two international and two Russian registrations, all dating back to 2015. It also owns a multitude of related domain names, like <paysend.com>, since May 25, 2004.

The disputed domain name <PAYSEND.PRO> was registered on March 28, 2019 by the Respondent.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant contends that the disputed domain name is confusingly similar to its "PAYSEND" trademarks; that the Respondent lacks rights or legitimate interests in the disputed domain name, and; that the Respondent registered and used the disputed domain name in bad faith.

RESPONDENT:

The Respondent contends that, although the Complainant's claims are "fully understandable", these are not due to bad faith on its part, but to a "lack of experience with trademarks". Besides, they have been "eliminated". The Respondent also attempts to present a different image of things, according to which the disputed website allegedly serves to refer customers to the Complainant.

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).

More precisely, the disputed domain name <PAYSEND.PRO> wholly incorporates the Complainant's International and Russian Trademark Registrations for "PAYSEND" to which it is identical, as well as to its domain name <paysend.com>.

As far as the gTLD ".pro" is concerned, it is generally recognized that top level domains do not have any bearing in the assessment of identity or confusing similarity, according to paragraph 4(a)(i) of the Policy.

Hence, the Panel is satisfied that the first requirement under the Policy is met.

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).

Since proving a negative fact is almost impossible, panelists in UDRP proceedings have generally agreed that it is sufficient for the Complainant to establish a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name to shift the burden of proof to the Respondent.

In the case at issue, the Complainant argued that it had never authorised the Respondent to register the PAYSEND trademark in a domain name, and that it had never licensed its trademark to the Respondent, who is not affiliated or doing any business with the Complainant.

Furthermore, and finally, there is neither any evidence in the case file that could demonstrate that the Respondent has been commonly known by the disputed domain name, nor is there any non-commercial or fair use of the disputed domain name by the Respondent.

In view of the foregoing, the Panel is satisfied that the Complainant has established a prima facie case that the Respondent lacks rights and legitimate interests in the disputed domain name. In order to rebut the Complainant's arguments, the Respondent had the possibility to make his own defense. However, the simple response filed by the Respondent has not changed in essence any of the above conclusions.

Therefore, the Panel is satisfied that also the second requirement under the Policy is met.

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).

As far as registration in bad faith is concerned, given the reputation of the Complainant's trademark in the field of money transfer services, also in Russia where the Respondent is based, and the fact that the disputed domain name fully incorporates the said trademark, it is rather clear to this Panel that, at the time of the registration of the disputed domain name, the Respondent was well aware of the Complainant's trademark. The registration as domain name of a third party's well-known trademark with full knowledge of the fact that the rights over this trademark belong to a third-party amounts to registration in bad faith.

With respect to use in bad faith, it is rather obvious to the Panel that the Respondent by using the disputed domain name, has intentionally attempted to attract, for commercial gain, Internet users to its website, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the respondent's website or location of a product or service on the Respondent's website or location. The fact that the Respondent has modified -after the present Complaint was filed - the header and the footer of the disputed website, to state that it is not affiliated to the Complainant is not sufficient to escape the situation described above. Further, the alleged by the Respondent lack of trademark experience is not a valid defense here.

The Panel agrees with the Complainant that the choice of the gTLD ".pro" has provided an additional layer of bad faith in the present case, as ".pro" is usually chosen to show a higher degree of professionalism and credibility of a company. The Respondent has apparently used this element, too, in bad faith.

In general, the Complainant has convinced the Panel of the Respondent's bad faith by successfully proving such bad faith on the basis of important factors, such as the nature of the domain name; the chosen top-level domain; the content of any website to which the domain name directs; the timing and circumstances of the registration; other indicia generally suggesting that the Respondent had somehow targeted the Complainant and; a clear absence of rights or legitimate interests of the Respondent.

The only element that has troubled the Panel - although it has not been brought up by the Respondent - is the fact that it took almost three years for the Complainant to file a UDRP case. However, it is widely accepted by Panels (see e.g. WIPO Case

D2002-0616, The Hebrew University of Jerusalem v Alberta Hot Rods) that there is no limitation period in the Policy. Hence, the Panel would consider unjust to bar the Complainant from filing its case and claiming its rights, just because of this “delay”.

Therefore, the Panel finds it clear that the disputed domain name was used in bad faith. Given what precedes, the Panel does not consider necessary to analyse in detail all the submissions of the Complainant.

For all circumstances mentioned above, the Panel is satisfied that also the third requirement under the Policy is satisfied.

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

The disputed domain name wholly incorporates the Complainant's trademark. The disputed domain name is therefore confusingly similar to the Complainant's trademark.

The Respondent was not authorised to include the Complainant's trademark in the disputed domain name, and the Complainant never licensed its trademarks to the Respondent. The Respondent is not using the disputed domain name in connection with a bona fide offering of goods or services, or a legitimate non-commercial or fair use.

The Respondent registered the disputed domain name with full knowledge of the Complainant's well-known trademark. His use of the disputed domain name is in bad faith, as there is no conceivable use of the disputed domain name that could amount to a legitimate use.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **PAYSEND.PRO**: Transferred

PANELLISTS

Name	Sozos-Christos Theodoulou
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DATE OF PANEL DECISION	2022-03-15
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Publish the Decision