

Decision for dispute CAC-UDRP-104584

Case number CAC-UDRP-104584

Time of filing 2022-05-17 09:28:55

Domain names monext.org

Case administrator

Organization Denisa Bilík (CAC) (Case admin)

Complainant

Organization MONEXT

Complainant representative

Organization NAMESHIELD S.A.S.

Respondent

Name Martin BONFILS

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 large portfolio of prior trademarks including the wording "MONEXT", such as

- the French trademark MONEXT® n° 3599425 registered since September 18, 2008;
- the French trademark MONEXT® n° 3888657 registered since January 13, 2012; and
- the European trademark MONEXT® n° 007241219 registered since October 12, 2013.

FACTUAL BACKGROUND

The Complainant is an internationally recognised French company which provides electronic payment services, with or without a card, at the point of sale, on the Internet and on mobile devices. It develops end-to-end solutions for financial institutions and merchants. Its services are used every day by millions of people to pay for an hour of parking, take public transportation, fill up their gas tanks, shop in stores and online or block the use of their card. MONEXT supports more than 12,000 retailers and processes nearly 40% of e-commerce transactions in France. In 2020, Monext processed more than 5 billion transactions.

The disputed domain name <monext.org> was registered on September 23, 2019 and points to a login box asking for a

password where the Complainant's trademark is reproduced.

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). The disputed domain name <monext.org> is identical to its previous trademarks MONEXT®. Indeed, the disputed domain name <monext.org> contains the Complainant's registered trademark MONEXT® in its entirety, without any deletion of addition.

Moreover, the addition of the gTLD suffix ".ORG" does not change the overall impression of the designation as being connected to the trademark MONEXT®. It does not prevent the likelihood of confusion between the disputed domain name and the Complainant, its trademark and its domain names associated.

See WIPO Overview 3.0, section 1.11 ("The applicable Top Level Domain ("TLD") in a domain name (e.g., ".com", ".club", ".nyc") is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test.").

So, the disputed domain name <monext.org> is identical to Complainant's trademark MONEXT®.

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).

According to WIPO Case No. D2003-0455 Croatia Airlines d. d. v. Modern Empire Internet Ltd., the Complainant is required to make out a prima facie case that the Respondent lacks rights or legitimate interests. Once such prima facie case is made, the Respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(a) (ii) of the UDRP.

The Respondent is not known as the disputed domain name. Past panels have held that a Respondent was not commonly known by a disputed domain name if the Whois information was not similar to the disputed domain name. Thus, the Respondent is not known as the disputed domain name. For instance:

- Forum Case No. FA 1781783, Skechers U.S.A., Inc. and Skechers U.S.A., Inc. II v. Chad Moston / Elite Media Group <bobsfromsketchers.com> ("Here, the WHOIS information of record identifies Respondent as "Chad Moston / Elite Media Group." The Panel therefore finds under Policy paragraph 4(c)(ii) that Respondent is not commonly known by the disputed domain name under Policy paragraph 4(c)(ii).")

- Forum Case No. FA 699652, The Braun Corporation v. Wayne Loney.

The Respondent has no rights or legitimate interests in respect of the domain name <monext.org> and he is not related in any way with the Complainant. The Complainant does not carry out any activity for, nor has any business with the Respondent.

Neither license nor authorization has been granted to the Respondent to make any use of the Complainant's trademark MONEXT®, or apply for registration of the disputed domain name by the Complainant.

Moreover, the disputed domain name points to a login box asking for a password where the Complainant's trademark is reproduced. This page could be used in order to collect personal information of the Complainant's clients.

Thus, the Respondent's website cannot be considered as a bona fide offering of services or fair use, since the website can

mislead the consumers into believing that they are accessing the Complainant's website.

For instance Forum Case No. FA 156251, Am. Int'l Group, Inc. v. Busby (finding that the respondent attempts to pass itself off as the complainant online, which is blatant unauthorized use of the complainant's mark and is evidence that the respondent has no rights or legitimate interests in the disputed domain name).

Thus, in accordance with the foregoing, the Respondent has no right or legitimate interest in respect of the disputed domain name <monext.org>.

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).

The disputed domain name <monext.org> is identical to the Complainant's distinctive trademark MONEXT®.

The Respondent has registered the disputed domain name several years after the registration of the trademark MONEXT® by the Complainant, which has established a strong reputation while using this trademark. Besides, the term "MONEXT" does not have any signification, except in relation with the Complainant. Finally, the Complainant's trademark is reproduced in the trademark.

Therefore, the Respondent knew of should have known about the Complainant's rights, which evidences bad faith.

Moreover, the disputed domain name points to a login box asking for a password where the Complainant's trademark is reproduced. The website does not contain any information about the Respondent. Therefore, by using 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, affiliation, or endorsement of his websites (par. 4(b)(iv) of the Policy). Besides, the Respondent can collect personal information through this website, namely password.

Past panels have stated that the Respondent is acting in bad faith by using the domain names in such a way. For instance:

- Forum Case No. 1770729, UNFCU Financial Services, LLC d/b/a Industrial Coverage v. Clark Lienemann ("Use of a confusingly similar domain name to pass off as complainant to conduct a phishing scheme is evidence of bad faith under Policy");
- Forum Case No. 1760987, Ripple Labs Inc. v. Thomas Viva Vivas ("Use of a domain name to create confusion as to the source, sponsorship, affiliation, or endorsement of competing content therein can evidence bad faith under Policy paragraph 4(b)(iv).").

Thus, the Respondent has registered the disputed domain name <monext.org> and is using it in bad faith.

PROCEDURAL FACTORS

The Panel notes that:

- (a) the language of the registration agreement is French;
- (b) but the CAC has notified the Respondent of the proceeding solely in English;
- (c) the Respondent has been given the opportunity to present its case in this proceeding and to respond formally to the issue of the language of the proceeding.

Considering the above circumstances, the Panel finds that the choice of English as the language of the present proceeding is fair to both parties and is not prejudicial to either one of the parties in his or her ability to articulate the arguments for this case.

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 <monext.org> is identical to the Complainant's distinctive trademark MONEXT®.

The Respondent has registered the disputed domain name several years after the registration of the trademark MONEXT® by the Complainant, which has established a strong reputation while using this trademark.

Moreover, the disputed domain name points to a login box asking for a password where the Complainant's trademark is reproduced. The website does not contain any information about the Respondent. Therefore, by using 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, affiliation, or endorsement of his websites (par. 4(b)(iv) of the Policy). Besides, the Respondent can collect personal information through this website, namely password.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **MONEXT.ORG**: Transferred
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PANELLISTS

Name	Thomas Hoeren
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DATE OF PANEL DECISION 2022-06-07

Publish the Decision
