

Decision for dispute CAC-UDRP-104538

Case number	CAC-UDRP-104538
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Time of filing	2022-05-18 09:22:54
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Domain names	MOONEYVR46.COM
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Case administrator

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

Organization	Mooney S.p.A.
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Name	Valentino Rossi
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Complainant representative

Organization	Perani Pozzi Associati
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Respondent

Organization	Pedro Queiroga
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OTHER LEGAL PROCEEDINGS

The Panel is unaware of any other pending or decided legal proceedings in respect of the domain name <mooneyvr46.com> (“the disputed domain name”).

IDENTIFICATION OF RIGHTS

The Complainants rely upon the following registered trade marks, amongst others:

A. First Complainant

- International trade mark registration no. 1547324, registered on 18 June 2020, for the word mark MOONEY, in classes 9, 36, 37, 38 and 42 of the Nice Classification;
- EU trade mark registration no. 018248141, registered on 16 September 2020, for the word mark MOONEY, in classes 9, 36, 37 and 38 of the Nice Classification;
- Italian trade mark registration no. 302020000038617, registered on 7 October 2020, for the word mark MOONEY, in classes 9, 36, 37, 38 and 42 of the Nice Classification.

(hereinafter, collectively or individually, “the First Complainant’s trade mark”; “the First Complainant’s trade mark MOONEY”; or “the trade mark MOONEY” interchangeably).

B. Second Complainant

- International trade mark registration no. 1224878, registered on 24 June 2014, for the figurative mark VR46, in classes 9, 18 and 25 of the Nice Classification;
- International trade mark registration n. 1252300, registered on 11 May 2015, for the figurative mark VR46, in class 32 of the Nice Classification;
- EU trade mark registration n. 009974999, registered on 27 November 2012, for the figurative mark VR46, in classes 3, 4, 5, 8, 9, 11, 12, 14, 16, 18, 20, 21, 24, 25, 26, 27, 28, 29, 30, 32, 33, 34, 35, 38, 39, 41, 42, 43 and 44 of the Nice Classification;
- EU trade mark registration n. 004583084, registered on 2 August 2006, for the word figurative VR46, in classes 18, 35 and 38 of the Nice Classification;
- EU trade mark registration n. 018211223, registered on 4 July 2020, for the word mark VR46 SPORT, in classes 9, 18 and 25 of the Nice Classification; and
- EU trade mark registration n. 018226297, registered on 5 August 2020, for the figurative mark VR46 SPORT, in classes 9, 18 and 25 of the Nice Classification.

(hereinafter, collectively or individually, “the Second Complainant’s trade mark”; “the Second Complainant’s trade mark VR46”; or “the trade mark VR46” interchangeably).

FACTUAL BACKGROUND

The Complainants’ contentions can be summarised as follows:

A. Background history

The First Complainant, Mooney S.p.A., is a company founded in December 2019 as a result of the collaboration between SisalPay and Banca 5 (Gruppo Intesa Sanpaolo). The First Complainant develops and manages prepaid cards, banking, top-ups, applications, and other payment solutions. It has become the first proximity banking & payments company in Italy.

The First Complainant is title sponsor of the VR46 Racing Team of Mr Valentino Rossi (the Second Respondent), who is engaged in the MotoGP and Moto2 World Championship.

The Complainants have been in collaboration with each other by way of joint initiatives in commercial, marketing and communications areas, with the First Complainant’s participation in the offering of fintech and payment services. The collaboration has come to fruition with the development and launch of the Mooney VR46 Racing Team prepaid card, which has added value to the existing VR46’s loyalty card program.

In addition to the trade marks mentioned under the above section “Identification of rights”, and other trade marks in its portfolio, the Complainants inform that the First Complainant is also the owner of numerous domain names which contain the term “MOONEY”, namely: <mooney.jp>; <mooney.ar>; <mooney.lu>; <mooney.co.th>; <mooneygo.nl>; <mooneygo.de>; <mooneygo.fi>; and <mooneygo.pl>.

The Complainants seek the transfer of the disputed domain name <mooneyvr46.com> to the First Complainant on the grounds set out in section B below.

B. Legal grounds

I. The disputed domain name is identical or confusingly similar to a trade mark in which the Complainants have rights

The Complainants submit that the disputed domain name <mooneyvr46.com> is identical, or at least confusingly similar, to the Complainants' trade marks, to the extent that the disputed domain name reproduces the trade marks MOONEY and VR46 in their entirety.

II. The Respondent has no rights or legitimate interests in respect of the disputed domain name

The Complainants state that the Respondent has no rights in the disputed domain name, and that any use of the trade marks MOONEY and VR46 has to be authorised by the Complainants.

The Complainants further state that the Respondent has never been given any right or license to use the disputed domain name.

In addition, the disputed domain name does not correspond to the name of the Respondent, and the Respondent is not known by the disputed domain name; the Respondent is not making a bona fide offering of goods or services by means of the disputed domain name, nor is the Respondent using it for legitimate non-commercial or fair use.

The Complainants argue, instead, that the disputed domain name redirects Internet users to a parking page on which the disputed domain name is being offered for sale.

In view of the above, the Complainants conclude that the Respondent has no rights or legitimate interests in the dispute domain name.

III. The Respondent registered and is using the disputed domain name in bad faith

Registration

The Complainants assert that the trade marks MOONEY and VR46 are well-known and distinctive, such that it is reasonable to infer that the Respondent has registered the disputed domain name with full knowledge of the Complainants' trade marks.

Use

The Complainants assert that the Respondent uses the disputed domain name in bad faith, in so far as the Respondent offers the disputed domain name for sale in excess of the initial registration costs, which is evidence of bad faith under the UDRP Policy (paragraph 4(b)(i) of the UDRP Policy).

The Complainants therefore conclude that the Respondent has registered and is using the disputed domain name in bad faith.

PARTIES CONTENTIONS

No administratively compliant Response has been filed.

RIGHTS

The Complainants have, to the satisfaction of the Panel, shown that the disputed domain name is identical or confusingly similar to trade marks in which the Complainants have rights (within the meaning of paragraph 4(a)(i) of the UDRP Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainants have, 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 UDRP Policy).

BAD FAITH

The Complainants have, 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 UDRP 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

Pursuant to Rule 15 of the UDRP Rules, the Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the UDRP Policy, the UDRP Rules, and any rules and principles of law that the Panel deems applicable.

Paragraph 4(a) of the UDRP Policy provides the following threshold for the Complainants to meet in order to divest the Respondent of the disputed domain name:

- i. The disputed domain name is identical or confusingly similar to trade marks or service marks in which the Complainants have rights;
- ii. The Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- iii. The disputed domain name has been registered and is being used in bad faith.

It is therefore incumbent on the Complainants the onus of meeting the above threshold. The evidentiary standard under the UDRP proceedings is the balance of probabilities, which lays down the foundations for panels to determine each of the three Policy grounds.

I. Identical or Confusingly Similar

The UDRP test under the first element provides for a juxtaposing approach, according to which the textual components of the disputed domain name and the Complainants' trade marks are to be compared side by side.

In order to succeed under the first ground of the Policy, the Complainants must provide evidence that they have rights in a trade mark or service mark, following which the Panel shall assess whether or not the disputed domain name is identical or confusingly similar to the Complainants' trade mark.

The Panel is satisfied that the First Complainant owns trade mark rights in "MOONEY" since 2020, and that the Second Complainant owns trade mark rights in "VR46" since 2006.

The disputed domain name is <mooneyvr46.com>, and the Complainants' trade marks are MOONEY and VR46.

The Panel has no difficulty in recognising the Complainants' trade marks MOONEY and VR46 within the disputed domain name, the result of which being that the Complainants have prevailed under this Policy ground.

The Panel therefore finds that the Complainants have met the requirement under paragraph 4(a)(i) of the UDRP Policy.

II. Rights or Legitimate Interests

The Respondent has not participated in these UDRP proceedings. The Panel is however empowered to draw adverse inferences from the Respondent's disinclination to participate (Rule 14 (b) of the UDRP Rules).

The Panel notes that the Complainants deny any affiliation and/or association with, or authorisation for, the Respondent of any nature. The Complainants further argue that the Respondent is not known by the disputed domain name; and that the Respondent is not making a legitimate non-commercial or fair use of the disputed domain name.

Moreover, the Complainants assert that the Respondent redirects Internet users to a website on which the disputed domain name is offered for sale. To this end, the Complainants have provided a screenshot of the Respondent's website, according to which the disputed domain name was available for purchase on 29 April 2022 for the sum of EUR 9,200.

At the time of writing, the Respondent's website appears to host a parked page comprising PPC links.

Notwithstanding the above, the Respondent has submitted no evidence to refute any of the Complainants' assertions. On balance, the Panel considers the available evidence to lend credence to the Complainants' contentions.

The Panel therefore finds that the Complainants have succeeded under paragraph 4(a)(ii) of the UDRP Policy.

III. Registered and Used in Bad Faith

In order to meet the third requirement under the Policy, the Complainants must provide evidence that the disputed domain name was registered and is being used in bad faith.

The Policy enumerates non-exhaustive circumstances which would evidence bad faith registration and use of a domain name, as follows:

- i. circumstances indicating that the respondent has registered or has acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or
- ii. the respondent has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or
- iii. the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- iv. by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to your web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location.

The Panel has considered the evidence put forward by the Complainants. In the Panel's view, the case circumstances warrant a concurrent assessment of bad faith registration and use, as follows:

- The disputed domain name <mooneyr46.com> wholly incorporates the Complainants' trade marks MOONEY and VR46;
- There is no credible explanation for the Respondent's choice of the disputed domain name, which was registered in 2022 and

- consists of two made-up terms/words, namely "mooney" and "vr46". Therefore, the Panel does not look favourably on the Respondent, and finds it that the Respondent was well aware of the Complainants' trade marks at the time of registering the disputed domain name;
- The Respondent has not provided a Response within the time prescribed under the UDRP Rules, or at all, and has thus failed to offer any explanation of justification to the matters raised by the Complainants in the context of these proceedings. The Panel is empowered to draw adverse inferences by such failure (Rule 14 (b) of the UDRP Rules);
 - There is nothing on the record suggesting that the Respondent is affiliated or otherwise connected with the Complainants, and the Complainants vehemently deny any association;
 - At the time of writing, the disputed domain name appears to host a parked page comprising PPC links. Nonetheless, the Complainants have provided evidence that the Respondent has been offered for sale for EUR 9,200, such consideration being in excess of the documented out-of-pocket costs directly related to the disputed domain name. In the Panel's assessment, the conduct engaged by the Respondent would appear to fall squarely within the remit of paragraph 4(b)(i) of the UDRP Policy;
 - The Respondent's failure to provide any evidence of actual or contemplated good faith use of the disputed domain name; and
 - Taken the above together, the overall unlikelihood of any good faith use of the disputed domain name.

The Panel has looked at the overall composite picture of events and finds it, collectively, to be sufficient to justify a finding that the Respondent has registered and is using the disputed domain name in bad faith under the Policy.

Accordingly, the Complainants have made a prima facie showing that the Respondent has registered and is using the disputed domain name in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **MOONEYVR46.COM**: Transferred

PANELLISTS

Name	Dr Gustavo Moser
DATE OF PANEL DECISION	2022-06-12
Publish the Decision	