

Decision for dispute CAC-UDRP-104683

Case number	CAC-UDRP-104683
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Time of filing	2022-06-29 15:58:56
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Domain names	MOONEY.FINANCE
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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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Complainant representative

Organization	Perani Pozzi Associati
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Respondent

Name	Walter Dane
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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 Domain Name.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of the following registered trade marks:

- Italian trade mark registration no. 302020000038617 for the word "MOONEY" filed on 20 May 2020, granted on 7 October 2020, in connection with classes 9, 36, 37, 38 and 42;
- EU trade mark registration no. 018248141 for the word "MOONEY", filed on 3 June 2020 and granted on 16 September 2020, in connection with classes 9, 36, 37 and 38; and
- International trade mark registration no. 1547324 for "MOONEY" as standard characters, granted on 18 June 2020, in connection with classes 9, 36, 37, 38 and 42, based upon the above Italian trade mark. This international mark has subsequently proceeded to registration in a number of different territories.

FACTUAL BACKGROUND

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

The Complainant, Mooney S.p.A. is a company that was "born" in December 2019, as a result of an agreement between SisalPay and Banca 5 (Intesa Sanpaolo Group). Mooney S.p.A. makes payment services and all transactional operations always available thanks to a network of over 45,000 points of sale - tobacconists, bars and newsstands - and modern digital platforms. It offers millions of people a "phygital" experience, with the widest range of services perfectly integrated between physical and digital channels. In this way Mooney S.p.A. has become the "first Proximity Banking & Payments company in Italy".

In addition to various trade marks, Mooney S.p.A. is also the owner, among others, of the following domain names <MOONEY.IT, <MOONEY.JP>, <MOONEY.AR>, <MOONEY.LU>, <MOONEY.CO.TH>, <MOONEYGO.NL>, <MOONEYGO.DE>, <MOONEYGO.FI>, <MOONEYGO.PL>.

On 21 April 2021, the Respondent registered the domain name <MOONEY.FINANCE> (the "Domain Name"). The Domain Name is connected to a website that, at least at first sight, appears to be sponsoring blockchain technology and promoting investments in NFT and cryptocurrencies.

On 22 April 2022 the Complainant's attorneys sent to the Respondent a cease-and-desist letter asking for the voluntary transfer of the Domain Name. The Respondent did not comply with that request.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the 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 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 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

The Panel is satisfied that the Complainant is the owner of a number of registered trade mark rights for the term MOONEY.

In order to satisfy the first element of the Policy it is usually sufficient for a complainant to show that the relevant mark is "recognizable within the disputed domain name"; see section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (the "WIPO Overview 3.0"). The Domain Name takes the form "mooney" in combination with the ".finance" new generic Top-Level Domain ("new gTLD") . The mark relied upon by the Complainant is, therefore, clearly recognisable in the Domain Name.

The Complainant has, therefore, satisfied the Panel that the Domain Name is confusingly similar to trade marks in which it has rights and has thereby made out the requirements of paragraph 4(a)(i) of the Policy.

The Panel also accepts the Complainant's contention that it is more likely than not that the Domain Name was registered with

knowledge of, and with the intention of taking some form of advantage of the Complainant's mark. The reasons for this are as follows:

- (i) The Complainant has satisfied the Panel that its "Mooney" branded business is a substantial one, which has operated for a number of years in the financial services sector. The primary focus of the Complainant's business under that name appears to be Italy, but the Complainant asserts (and it is not disputed) that the reputation of its mark extends to elsewhere in the world;
- (ii) The Domain Name incorporates the ".finance" new gTLD and thereby inherently signals, and would be known by any registrant to signal, to internet users some connection with the financial services industry; and
- (iii) It would appear from a screenshot provided by the Complainant of the website operating from the Domain Name, that this website has been used to promote some form of financial services business related to "Yield Farming" or "NFTs".

The Panel is not persuaded by the Complainant's claim that the website operating from the Domain Name resembles the website of the Complainant. They appear to be very different in style. Indeed, one reading of the text and imagery on the website operating from the Domain Name is that it involves a series of puns based on the words "moon", "money" and "moony" or "moonie", and it may be that there is no real or series business actually being promoted from that site.

Nevertheless, in circumstances where the Complainant has put forward a credible prima facie case that (regardless of whether the Respondent's website relates to a real or serious business) the Respondent is likely to have been aware of the Complainant and the date the Domain Name was registered, and that the Domain Name is intended to take advantage of the reputation of the Complainant's mark in the financial services sector, the Panel accepts on the balance of probabilities that the Complainant's contentions in this respect are correct. This is particularly so where claims to this effect have been advanced not just in this Complaint but in a cease-and-desist letter prior to the Complaint, and the Respondent has not sought to dispute the same.

The Complainant contends that the Respondent seeks to take advantage of confusion arising between the Domain Name and the Complainant's mark for financial gain, which falls within the scope of the example of circumstances indicating bad faith set out in paragraph 4(b)(iv) of the Policy. That might well be correct, but even if the Respondent's use of the Domain Name does not strictly fall within the scope of paragraph 4(b)(iv), the Panel is persuaded on the evidence before it and in the absence of any contrary explanation or evidence from the Respondent, that some form of unfair advantage was and is intended. That is sufficient for a finding of bad faith registration and use (see section 3.1 of the WIPO Overview).

There is also no right or legitimate interest in holding a domain name for such a purpose and such a finding also provides positive evidence that no such right or interest exists (see section 2.15 of the WIPO Overview).

A further factor here is that the Domain Name takes the form <[trade mark].[gTLD]> where there is nothing in the Domain Name that immediately signals to the internet user a lack of connection with the trade mark owner. The Domain Name thereby inherently impersonates the Complainant (see section 2.5.1 of the WIPO Overview).

The Complainant has, therefore, also made out the requirements of paragraphs 4(a)(ii) and (iii) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **MOONEY.FINANCE**: Transferred

PANELLISTS

Name	Matthew Harris
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DATE OF PANEL DECISION 2022-08-01

Publish the Decision