

Decision for dispute CAC-UDRP-104685

Case number	CAC-UDRP-104685
Time of filing	2022-06-29 00:00:00
Domain names	XMOONEYTOKEN.COM

Case administrator

Organization	Denisa Bilík (CAC) (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	Jose Risi
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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 owns

- International trademark "MOONEY" with registration number 1547324 of June 18, 2020 for goods and services in classes 9, 36, 37, 38 and 42;
- EU trademark "MOONEY" with registration number. 018248141, filed on June 3, 2020 and registered on September 16, 2020 for goods and services in classes 9, 36, 37 and 38; and
- Italian trademark "MOONEY" with registration number 302020000038617, filed on May 20, 2020, registered on October 7, 2020 for goods and services in classes 9, 36, 37, 38 and 42.

FACTUAL BACKGROUND

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

The Complainant is an Italian payment services provider which was established in December 2019 by SisalPay and Banca 5, which belongs to the Intesa Sanpaolo Group. The Complainant operates a website under the domain name <mooney.it>. The Panel found that the other domain names which the Complainant registered do not resolve to active websites.

The Respondent registered the disputed domain name on September 6, 2021. The disputed domain name resolves to a website which sponsors financial activity through the use of tokens and cryptocurrency.

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 Panel does not need to address this requirement in view of its finding that the Complainant did not prove the third element of paragraph 4(a) of the Policy.

BAD FAITH

The Complainant failed to show that 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

1. The disputed domain name includes the MOONEY trademarks in its entirety, preceded by the letter "X" and with the addition of the generic term "token". Although the Panel does not agree with the Complainant's allegation that the use of the letter "X" in the disputed domain name is a clear example of typosquatting, the Panel finds that the addition of the letter "X" and the term "token" do not take away the similarity between the disputed domain name and the Complainant's MOONEY trademark, because of the fact that the Complainant's trademark is included in the disputed domain name in its entirety and as such identifiable. The Panel therefore finds that the disputed domain is confusingly similar to the Complainant's MOONEY trademarks.
2. Paragraph 4(a) of the Policy lists the three elements, each of which the Complainant must prove to be present in the pending matter. As the Panel finds that the Complainant failed to prove that the disputed domain name has been registered and is being used in bad faith, it did not succeed in proving the third element of paragraph 4(a) of the Policy. Consequently, the Panel does not need to discuss the second element.
3. The Complainant alleges that the disputed domain name was registered in bad faith because the registration of a domain name which is confusingly similar to the Complainant's trademark "indicates that the Respondent had knowledge of the Complainant's trademark at the time of registration of the disputed domain name", while the Complainant's "Mooney" website and MOONEY trademark should have appeared in a basic Google search on the Internet. The Complainant infers therefrom that "it is more than likely that the domain name at issue would not have been registered if it were not for Complainant's trademark. This is clear evidence of registration of the domain name in bad faith." Also, the Complainant alleges that the disputed domain name "is not used for any bone fide offerings", because "the Respondent has intentionally attempted to attract, for commercial gain, Internet users to his web site, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of his web site", more particularly because the disputed domain name resolves to a website "sponsoring financial activity through the use of tokens and cryptocurrencies, with obvious references to [the Complainant's] activity, based on payment services and all transactional operations". The Complainant also alleges that "[t]he current use of the disputed domain name, which allows accessing to a web site that resembles Complainant's, using the Complainant's trademark, causes, as well, great damages to the latter, due to the misleading of their present clients and to the

loss of potential new ones”. The Respondent has not replied to such allegations, and therefore not rebutted them. However, the Respondent’s lack of Response, does not take away the Complainant’s burden of proof and “a respondent’s default is not necessarily an admission that the complainant’s claims are true” (WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“WIPO Jurisprudential Overview 3.0”), section 4.3). It has also has been generally accepted that a panel may undertake limited factual research into matters of public record if it would consider such information useful to assessing the case merits and reaching a decision (WIPO Overview 3.0, section 4.8).

The fact that the disputed domain name is confusingly similar to the Complainant’s trademark as meant in paragraph 4(a)(i) of the Policy does not per se result into a finding the registration of the disputed domain name in bad faith. The disputed domain name resolves to a website which is dedicated to a cryptocurrency named “xMooney” (the “Respondent’s website”). The Respondent’s website publishes a white paper of the Respondent explaining that the “xMooney” currency was created on June 12, 2021 and is a token which uses the Ethereum blockchain. “A ‘token’ often refers to any cryptocurrency besides Bitcoin and Ethereum” (<https://www.coinbase.com>). Accordingly, the Panel finds it likely that the disputed domain name exclusively refers to the cryptocurrency, “the “XMooney token”, which is subject of the Respondent’s website. The Panel compared the website of the Complainant with the Respondent’s website, and concludes that the latter is exclusively dedicated to a specific cryptocurrency token and does not have “obvious references to [the Complainant’s] activity”, and does not “resemble Complainant’s [website]”. The Panel finds that there is no evidence of likelihood that the Respondent had the Complainant’s MOONEY trademark in mind when it registered the disputed domain name. Further, the Complainant has not demonstrated that Internet users visiting the Respondent’s website are actually mislead into believing that the Respondent’s website is in any way related to the Complainant’s MOONEY trademark, and the Panel finds the activities on the Respondent’s website constituting a bona fide use of the disputed domain name. Consequently, the Complainant failed to show that 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.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Rejected

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

- 1. **XMOONEYTOKEN.COM**: Remaining with the Respondent

PANELLISTS

Name	Alfred Meijboom
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DATE OF PANEL DECISION 2022-08-04

Publish the Decision