

Decision for dispute CAC-UDRP-104988

Case number CAC-UDRP-104988

Time of filing 2022-11-15 09:35:23

Domain names MOONEYSERVICE.COM

Case administrator

Organization Denisa Bilík (CAC) (Case admin)

Complainant

Organization Mooney S.p.A.

Complainant representative

Organization Perani Pozzi Associati

Respondent

Organization Privacy service provided by Withheld for Privacy ehf

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 has proven to be the owner of the MOONEY mark.

The Complainant is, inter alia, the owner of the following trademarks:

- International trademark registration n. 1547324 "MOONEY", registered on June 18, 2020;
 - EU trademark registration n. 018248141 "MOONEY", registered on September 16, 2020;
 - EU trademark registration n. 018656425 "MOONEY", registered on June 30, 2022;
 - EU trademark registration n. 018656431 "MOONEY & device", registered on July 5, 2022;
 - EU trademark registration n. 018365022 "MOONEY" device, registered on June 3, 2021; and
 - Italian trademark registration n. 30202000038617 "MOONEY", registered on October 7, 2020.
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FACTUAL BACKGROUND

The Complainant is an Italian company incorporated in December 2019.

The Complainant offers excellence and security in handling payments. In particular, the Complainant ensures payment services and all transactional operations are always available thanks to a network of over 45,000 points of sale – at tobacconists, bars and newsstands – and by leveraging the most modern digital platforms.

The disputed domain name was registered on July 3, 2022.

PARTIES CONTENTIONS

COMPLAINANT:

1. The disputed domain name is confusingly similar to the Complainant's trademark

The Complainant contends that the disputed domain name <mooneyservice.com > is confusingly similar to its trademark MOONEY.

The Complainant further affirms that the disputed domain name exactly reproduces the "MOONEY" trademark with the mere addition of the generic term "service", and that this combination strengthens confusion by suggesting to consumers that the disputed domain name and corresponding web site might be operated by the Complainant or with the Complainant's authorization.

2. The Respondent does not have any rights or legitimate interest in the disputed domain name

The Complainant contends that the Respondent is not commonly known by the disputed domain name and that the Respondent is not affiliated with or authorized by the Complainant in any way. The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name, and is not related to the Complainant's business in any way. The Complainant does not carry out any activity for, nor has any business dealings with, the Respondent. The Complainant further contends that the disputed domain name is connected to a website offering banking and financial services using the "MOONEY Service" trademark, and that this is not a bona fide use.

3. The disputed domain name has been registered and is being used in bad faith

The Complainant contends that owing to the renown of the Complainant's trademarks, it is presumable that the Respondent had actual knowledge of the Complainant's distinctive trademarks.

The Complainant further contends that, since the "MOONEY" trademark is distinctive and known in Europe, it is therefore unlikely that the disputed domain name, including that word, was chosen by the Respondent without having the trademark of the Complainant in mind. Rather, this distinctive trademark, together with the generic term "service", creates a domain name that is confusingly similar to the Complainant's trademarks and it is the Complainant's contention that the Respondent has exploited this similarity for its own commercial gain or for the purposes of phishing.

In addition, the disputed domain name redirects to a website promoting banking and financial services using the "MOONEY Service" trademark, and thus is clearly confusingly similar to the Complainant's "MOONEY" trademark.

RESPONDENT:

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 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).

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).

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

A) Confusing similarity

The Panel finds that the addition of the generic term, "service", does not prevent the disputed domain name from being confusingly similar to the Complainant's trademarks.

B) Lack of legitimate rights or interests

The disputed domain name is a distinctive name. It is unlikely that the Respondent registered the disputed domain name without having the Complainant in mind. The Complainant's assertions that the Respondent is not commonly known by the disputed domain name and is not affiliated with nor authorized by the Complainant are sufficient to constitute a prima facie demonstration of absence of rights or legitimate interest in the disputed domain name on the part of the Respondent. The burden of evidence therefore shifts to the Respondent to show, using tangible evidence, that it does have rights or legitimate interests in the disputed domain name. The Respondent has made no attempt to do so.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.

C) Registered or Used in Bad Faith

The Complainant gives sound bases for its contention that the disputed domain name was registered and has been used in bad faith.

Firstly, owing to the distinctiveness of the Complainant's trademarks and reputation in the Complainant's field, it is reasonable to infer that the Respondent registered the disputed domain name with full knowledge of the Complainant's trademarks, and so the Panel finds on the balance of probabilities that the Respondent was aware of the Complainant's trademarks when registering the disputed domain name.

Secondly, the Panel accepts the Complainant's unchallenged assertion that the Respondent registered the disputed domain name with the aim of creating a likelihood of confusion with the Complainant's trademark.

Thirdly, it appears that the Respondent is redirecting the disputed domain name to a website promoting banking and financial services and exploiting the Complainant's trademarks in order to pass itself off as the Complainant or a branch of the Complainant.

Fourthly, the Respondent has not responded to nor denied any of the assertions made by the Complainant in this proceeding.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **MOONEYSERVICE.COM**: Transferred

PANELLISTS

Name **Fabrizio Bedarida**

DATE OF PANEL DECISION **2022-12-16**

Publish the Decision
