Decision for dispute CAC-UDRP-104796

Case number	CAC-UDRP-104796
Time of filing	2022-09-19 10:13:42
Domain names	paysedn.com, pyasend.com, ppaysend.com

Case administrator

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

Complainant

Organization	PaySend Group Limited

Complainant representative

Organization	Motsnyi Consulting (dba Motsnyi Legal)

Respondent

Name	Quan Zhongjun

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 names.

IDENTIFICATION OF RIGHTS

The Complainant, (hereinafter “Complainant” or “Paysend”) is a global FinTech company on a mission to change how money is moved around the world. Paysend was created with a vision to change the way people manage their everyday finances. Paysend started out as a team of experts from banking and payments who became frustrated by slow and complex traditional banking systems. Paysend was the first FinTech project to introduce international card-to-card transfers, allowing connections between 12 billion cards globally - Mastercard, Visa, China UnionPay and local card schemes.

Since the Complainant’s business started in 2017 it has launched a number of products, including “Paysend Global Transfers”, “Paysend Global Account”, “Paysend Link” and “Paysend Connect”.

Paysend currently serves over 7 MILLION customers and 17,000 SME’s and operates in more than 150 countries globally, while the receiving countries are over 110, is one of the leaders in the area of online money transfers and received various awards including “PayTech 2018” – “Best Consumer Payments” and “FinovateSpring 2018”- Leading FinTech Product.

The Complainant is the owner of inter alia the following trademarks incorporating the “Paysend” word element:

- “PAYSEND” (word + device) international trademark No. 1284999, registration date – October 13, 2015, protected inter alia in the following jurisdictions: United States, United Kingdom, China (protected for services in class 36), Spain, Poland, Portugal, Germany, Benelux, Switzerland, Sweden, France, Italy, Ukraine, Kazakhstan, Mexico, New Zealand, Zambia, Zimbabwe, African Intellectual Property Organization, Singapore in respect of some goods in class 09 and some services in class 36 including “financial affairs; monetary affairs; online banking”;
- “PAYSEND” (word), IR 1251936, registration date - April 10, 2015, subsequent designation in some jurisdictions on December 10, 2015, protected inter alia in the following jurisdictions: China, United States, Armenia, Bosnia and Herzegovina, Benelux, Ireland, Hungary, Switzerland, Colombia, Spain, Sweden, United Kingdom, Greece, France, India, Italy, Mexico, New Zealand, Poland, Singapore, Turkey, Kazakhstan, Ukraine, Mexico, New Zealand, African Intellectual Property Organization in respect of some services in class 36, including “financial affairs; monetary affairs”;
- “PAYSEND Money for the future” (word + device), IR 1539382, registration date – 30.05.2020, subsequent designation in some jurisdictions on December 16, 2021, protected inter alia in the following jurisdictions: United States, the UK, Turkey, Ukraine, Australia, Austria, Brazil, Benelux, Canada, Spain, Indonesia, Iceland, Switzerland, Republic of Korea, New Zealand, Japan, African Intellectual Property Organization (OA), the Philippines and protected for some goods in class 9 and services in class 36, including “financial affairs, including activity relating to the use of crypto- and digital money and crypto-currency; monetary affairs including operations with the use of crypto- and digital money and crypto-currency”.

“Paysend” business, products and services and awards are publicized via Complainant’s website www.paysend.com.

The Respondent has not submitted any material identifying its rights in this instance case.

FACTUAL BACKGROUND

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

The Complainant, (hereinafter “Complainant” or “Paysend”) is a global FinTech company on a mission to change how money is moved around the world. Paysend was created with a vision to change the way people manage their everyday finances. Paysend started out as a team of experts from banking and payments who became frustrated by slow and complex traditional banking systems. Paysend was the first FinTech project to introduce international card-to-card transfers, allowing connections between 12 billion cards globally - Mastercard, Visa, China UnionPay and local card schemes.

Since the Complainant’s business started in 2017 it has launched a number of products, including “Paysend Global Transfers”, “Paysend Global Account”, “Paysend Link” and “Paysend Connect”.

Paysend currently serves over 7 MILLION customers and 17,000 SME’s and operates in more than 150 countries globally, while the receiving countries are over 110, is one of the leaders in the area of online money transfers and received various awards including “PayTech 2018” – “Best Consumer Payments” and “FinovateSpring 2018”- Leading FinTech Product.

For more information about the Complainant, its “Paysend” business, products and services and awards via Complainant’s website www.paysend.com.

The Complainant and its business have been widely covered by various media.

The Complainant has strong social media presence and had already strong social media presence before the registration date of all the disputed domain names.

For more media coverage of the Complainant and its services also see the “Paysend and the media” section on the Complainant’s web site: https://paysend.com/en-rs/about.

The following media inter alia wrote about the Complainant and its “Paysend” business and trademarks: “Yahoo Finance”, “Techcrunch”, “UK Tech”, “Maximizing Money”, “Finextra”, “Fintech Futures”.

The Complainant also owns and operates various domain names (both gTLDS and ccTLDS) incorporating its “Paysend” trademark, most notably <paysend.com>, <paysend.io>, <paysend.us>, <paysend.me>.

The disputed domain names were registered on March 11, 2022 and on March 14, 2022.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain names are 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 names (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 names have been registered and are being used in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy).

PROCEDURAL FACTORS

1. Request for Change of Languages:

The Complainant requests that the language of this administrative proceeding be English in respect of the two disputed domain names <payysend.com> and <paysendd.com>, pursuant to UDRP Rule 11(a): Unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding. Complainant makes this request in light of the potential Chinese language Registration Agreement of the disputed domain names mentioned above.

Paragraph 10 of the UDRP Rules vests a Panel with authority to conduct the proceedings in a manner it considers appropriate while also ensuring both that the parties are treated with equality, and that each party is given a fair opportunity to present its case. UDRP panels have found that certain scenarios may warrant proceeding in a language other than that of the registration agreement. Such scenarios were summarized into WIPO Jurisprudential Overview 3.0, 4.5.1. In this particular instance, the Complainant tried to request change of languages of proceedings in light of Chinese language Registration Agreement by showing that 1) The translation of the Complaint would unfairly disadvantage and burden the Complainant and delay the proceedings and adjudication of this matter; 2) all 5 disputed domain names were initially registered with one single registrar - "Cosmotown, Inc." and the registration agreement for all 5 domains was in English; 3) in many previous UDRP decisions against the same Respondent UDRP panels accepted the English language as the language of the proceeding.

In light of the scenarios and equity, the Panel is of the view that conducting the proceeding in English is unlikely to heavily burden the Respondent, and it is likely that the Respondent can understand the English language based on a preponderance of evidence test. Without further objection from the Respondent on the issue, the Panel will proceed to issue the decision in English.

2. Consolidation:

The Complainant requests consolidation of this Complaint against two Respondents: “Quan Zhongjun” and “Quan Zhong

Jun". Paragraph 3(c) of the UDRP Rules provides that a Complaint may relate to more than one domain name, provided that the domain names are registered by the same domain name holder. Pursuant to question 4.11.2 of WIPO Panel Views on Selected UDRP Questions 3.0, "Where a complaint is filed against multiple respondents, panels look at whether (i) the domain names or corresponding websites are subject to common control, and (ii) the consolidation would be fair and equitable to all parties. Procedural efficiency would also underpin panel consideration of such a consolidation scenario."

In this case, two Respondents are identified by the respective Registrars as "Quan Zhongjun" (registrant of 3 disputed domain names) and "Quan Zhong Jun" (registrant of 2 disputed domain names), and these Respondents have 2 different e-mail addresses and different contact info. Nonetheless, a range of factors can be used to determine of multiple responses are "subject to common control" and whether the consolidation would be "fair and equitable". Applying to this particular case, these factors include but are not limited to: The disputed domain names were registered either on March 11, 2022 or March 14, 2022, the same dates within a short time period; The IP address for all the disputed domain names is the same; e-mail address of "Quan Zhongjun" disclosed by "Cosmotown, Inc" is also associated with "Quan Zhong Jun", etc.

In particular, as the Complainant brought to attention, when the Complainant sent a Cease-and-Desist letter to the abuse contact of the registrar "Cosmotown Inc." in respect of all 5 domain names, it received a response from the same Registrar and the Registrar did not claim that some of the disputed domain names were not registered with "Cosmotown Inc". However, when the verification request was sent, it took the Registrar many additional days to respond. This delay is likely caused by the registrant-Respondent to transfer 2 of the disputed domain names to the other registrar - "DNSPod, Inc" and caused further delay in this proceeding."

Therefore, it appears from the totality of circumstances that all 5 disputed domain names seem to be subject to common control and the consolidation in this proceeding would be fair and equitable to both Parties.

PRINCIPAL REASONS FOR THE DECISION

1. The disputed domain names are confusingly similar to a trademark in which the Complainants have rights within the meaning of paragraph 4(a)(i) of the Policy.

The Complainant contend that disputed domain names <paysedn.com>, <pyasend.com>, <ppaysend.com>, <payysend.com> and <paysendd.com> are confusingly similar to the Complaint's "Paysend" trademarks across various jurisdictions. Paysend is a global FinTech company on a mission to change how money is moved around the world. Paysend communicates with its business customers mainly via its website www.paysend.com.

The disputed domain names were registered on March 11, 2022 on March 14, 2022 respectively. All the disputed domain names represent some versions of typosquatting (misspelling) of the "Paysend" trademark. The Complainant's "Paysend" trademark is recognizable in all disputed domain names. Misspelling is represented by reversing the letters in <paysedn> and <pyasend>, and by adding an extra letter in <paysendd>, <payysend> and <ppaysend>. In all, the Complainant's "Paysend" mark has been incorporated in its entirety in the disputed domain names as the disputed domain names have no elements other than the misspelled "Paysend" mark.

As the disputed domain names differ from Complainant's trademark by just one letter, Respondent's domains are considered a prototypical example of typosquatting – which intentionally takes advantage of internet users that inadvertently type an incorrect address – often a misspelling of the complainant's trademark – when seeking to access the trademark owner's website. This means that a deliberate misspelling of a trademark registered as a domain name, which is intended to confuse internet users, must be confusingly similar by design. The addition of the gTLD ".com" does not add any distinctiveness to the disputed domain name.

The Panel therefore concludes that the disputed domain names are confusingly similar to a trademark in which the Complainants have rights within the meaning of paragraph 4(a)(i) of the Policy.

2. The Respondent does not have rights or legitimate interests in the disputed domain names within the meaning of

paragraph 4(a)(ii) of the Policy.

Although the Respondent did not file an administratively compliant (or any) response, the Complainant is still 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 Policy.

The Complainant in the present case has not licensed or authorized the Respondent to register or use the trademark or the disputed domain names. There is no evidence that the Respondent is known by the disputed domain names or owns any corresponding registered trademark Paysend.

The organization of the Respondent, “Quan Zhong Jun” or “Quan Zhongjun”, also has no connection with the Complainant’s brand. The Complainant did not grant any license or authorization to the Respondent to register or use the disputed domain names, nor the use of the Complainant’s trademark on pages of the disputed websites.

Furthermore, some of the disputed domain names have been used or are still used for hosting PPC links and some of such links resolve to Complainant’s competitors – other payment providers, see e.g. “Transfer Money Online”, “International Money Transfer” and “Payoneer” and “Wittix” - competitors of the Complainant. The Respondent registered the disputed domain names to direct internet users to websites featuring links to third-party websites, some of which directly compete with Complainant's business. By directing to competitors’ websites which presumably pays the registrant pay-per-click fees, the Respondent seems to be intentionally attempting to attract, for commercial gain, internet users to his websites, by creating a likelihood of confusion.

On the basis of preponderance of evidence, and in the absence of any evidence to the contrary or any administratively compliant response being put forward by the Respondent, the Panel finds that the Respondent does not have rights or legitimate interests in the disputed domain names within the meaning of paragraph 4(a)(ii) of the Policy.

3. Bad faith

By trying to establish the bad faith element of paragraph 4(a) of the Policy, the Complainant has primarily attempted to rely on paragraph 4(a)(iii) and 4(b)of the Policy.

Registration of the disputed domain names in bad faith – As far as registration goes, 3.0: Panels have moreover found the following types of evidence to support a finding that a respondent has registered a domain name to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the complainant’s mark: (i) actual confusion, (ii) seeking to cause confusion, (iii) the lack of a respondent’s own rights to or legitimate interests in a domain name, (iv) redirecting the domain name to the competitor’s website, and (v) absence of any conceivable good faith use. In this case, “Paysend” trademark is fully incorporated in the disputed domain names with obvious misspellings. The Respondent, by registering five disputed domain names that are obvious misspelling of Complainant’s mark years after the registration of Complainant’s marks and by using them for PPC links some of which compete with the Complainant, seems be aware of Complainant on the date the disputed domain names were registered.

Use of the disputed domain names in bad faith - Bad faith is found in cases when a respondent seeks to take unfair advantage of, abuse, or otherwise engage in behavior detrimental to the Complainant’s trademark (see WIPO Overview 3.0, par. 3.1). By directing to competitors’ websites which presumably pays the registrant pay-per-click fees, the Respondent seems to be intentionally attempting to attract, for commercial gain, internet users to his websites, by creating a likelihood of confusion. Therefore, the Respondent clearly registered the disputed domain names that contain misspellings of Complainant’s marks in the absence of any rights or legitimate interests with the sole intent to take advantage of Complainant’s marks and their reputation.

In addition to the disputed domain names, the Respondent currently holds registrations for several other domain names that

misappropriate the trademarks of well-known brands and businesses. This fact further demonstrates that the Respondent is engaging in a pattern of cybersquatting/typosquatting, which is evidence of bad faith registration and use of the disputed domain names.

Therefore, in the absence of any evidence to the contrary (or any administratively compliant response) being put forward by the Respondent, the Panel determines that the Complainant has provided sufficient evidence that disputed domain names were registered and are 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

Accepted

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

1. **PAYSEDN.COM**: Transferred
2. **PAYYSEND.COM**: Transferred
3. **PYASEND.COM**: Transferred
4. **PPAYSEND.COM**: Transferred
5. **PAYSENDD.COM**: Transferred

PANELLISTS

Name	**Carrie Shang**

DATE OF PANEL DECISION 2022-11-05

Publish the Decision