

Decision for dispute CAC-UDRP-104808

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| Case number | CAC-UDRP-104808 |
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| Time of filing | 2022-11-30 10:30:00 |
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| Domain names | oaysend.com, paaysend.com, paydend.com, paysebd.com, payseend.com, paysrnd.com, payswnd.com, patsend.com, payaend.com |
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Case administrator

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| Organization | Denisa Bilík (CAC) (Case admin) |
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Complainant

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| Organization | PaySend Group Limited |
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Complainant representative

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| Organization | Motsnyi Consulting (dba Motsnyi Legal) |
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RESPONDENTS

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| Name | Quan Zhongjun |
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| Name | Quan Zhong Jun |
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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 names.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of numerous trademarks worldwide, including but not limited to the following:

- United States Trademark Registration No. 4995580 for PAYSEND (device), registered on October 13, 2015;
- United States Trademark Registration No. 4911441 for PaySend, registered on April 10, 2015;
- International Registration No. 1539382 for PAYSEND Moent for the future, registered on May 30, 2020;
- International Trademark Registration No. 1251936 for PaySend, registered on April 10, 2015;
- International Trademark Registration No. 1284999 for "PAYSEND" word mark registered on October 13, 2015; and
- International Trademark Registration No. 1284999 for PAYSEND (device), registered on October 13, 2015.

FACTUAL BACKGROUND

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The Complainant, Paysend Group Limited, is a FinTech company which specialises in global money services. It states that it was the first FinTech project to introduce international card-to-card transfers, allowing connections between 12 billion credit cards globally and between credit cards from different companies. The Complainant's business was started in 2017 and is headquartered in London, the United Kingdom.

The Complainant states that it currently serves over 7 million customers and 17,000 SME's, and operates in more than 150 countries around the world. It has also won several awards and is recognised as one of the leading global non-bank money transfer services.

The Complainant states that it owns multiple domain names, consisting, *inter alia*, the PAYSEND mark, such as <paysend.com>, <paysend.io>, <paysend.me>. Its trademarks are also used in social media, for example <facebook.com/paysendcom>, <youtube.com/c/Paysend/featured>, <instagram.com/paysendglobal>.

The disputed domain names were registered by the Respondent on March 6, 2022 and March 11, 2022 and resolve to websites with Pay-Per-Click (PPC) links, some of which relate to the Complainant's competitors.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

PARTIES' CONTENTIONS: COMPLAINANT:

The Complainant contends that the disputed domain names are confusingly similar to the PAYSEND mark on the basis that the disputed domain names consist of misspelled mark and the top-level domain name suffix ("TLDs") ".com" and are insufficient to avoid the finding of confusingly similarity with its PAYSEND mark.

The Complainant also argues that the Respondent does not have any rights or legitimate interests in the disputed domain names. The Respondent has not acquired any rights in a trademark or trade name corresponding to the disputed domain names. In addition, the Respondent is not affiliated with the Complainant and the Complainant did not license or authorize the Respondent to use the PAYSEND mark.

The Complainant further asserts that the disputed domain names have been registered and are being used in bad faith as the Respondent should have known of the Complainant's PAYSEND mark at the time of registration of the disputed domain names. The Complainant also asserts that the Respondent has targeted the Complainant before (see CAC Case No. 104796) and that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to his websites, by creating a likelihood of confusion with the Complainant and its mark.

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

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.

A. Consolidation

Under paragraph. 10 (e) of the UDRP Rules a Panel shall decide a request by a Party to consolidate multiple domain name disputes in accordance with the Policy and these Rules.

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.”

The Complainant requests to consolidate the complaint in respect of all nine (9) disputed domain names against the Respondents based on the following reasons:

- all of the disputed domain names were registered within a short time frame: on March 6 2022 and March 11 2022;
- all 9 disputed domain names were initially registered via the same registrar “Cosmotown Inc.” and later 2 of the disputed domain names <patseend.com> and <payaend.com> were transferred to the second registrar “DNSPod Inc”;
- the names of the registrants are almost identical “Quan Zhongjun” and “Quan Zhong Jun” and it is likely, taking into account other factors of this case, that these are just aliases of the same person;
- the IP address of all the domain names is the same and all the domain names share the same IP location, Kansas City, Missouri, USA;
- the disputed domain names all resolve to websites with layouts that are similar to each other;
- In a previous case (CAC Case No. 104796) of the same Complainant against the same Respondent in virtually identical circumstances (5 domain names, all represent typosquatting, involving the same 2 Registrars, the same Respondent(s) and the same pattern of use) the Panel agreed and granted request for consolidation; and
- none of the persons named as registrants of the disputed domain names have appeared in this proceeding to contest consolidation.

Having considered the above factors, the Panel considers that, in the circumstances, the domain names are subject to common control and consolidation is fair and equitable to the parties, and also procedurally efficient.

B. Language of Proceedings

Paragraph 11 of the Rules provides that:

“(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.”

The language of the Registration Agreement for the disputed domain names is Chinese.

The Complainant requested that the language of the proceeding be English for the following reasons:

- the Complainant is not familiar with the Chinese language;
- all the disputed domain names represent an example of typosquatting or misspelling in the English language;
- All the disputed domain names resolve to websites with PPC links in English;
- requiring the Complainant to translate the Complaint and conduct the proceedings in the Chinese language, would unfairly disadvantage and burden the Complainant and delay the proceedings and adjudication of the matter.

The Respondent did not comment on the language of the proceeding.

The Panel cites the following with approval: “Thus, the general rule is that the parties may agree on the language of the administrative proceeding. In the absence of this agreement, the language of the Registration Agreement shall dictate the language of the proceeding. However, the Panel has the discretion to decide otherwise having regard to the circumstances of the case. The Panel’s discretion must be exercised judicially in the spirit of fairness and justice to both parties taking into consideration matters such as command of the language, time and costs. It is important that the language finally decided by the Panel for the proceeding is not prejudicial to either one of the parties in his or her abilities to articulate the arguments for the case.” (See *Groupe Auchan v. xmxzl*, WIPO Case No. DCC2006-0004).

Having considered the above factors, the Panel determines that English be the language of the proceeding. The Panel agrees that the Respondent appear to be familiar with the English language, taking into account the Respondent’s selection of the English-language domain names and use of the disputed domain names in connection with website in the English language. In the absence of an objection by the Respondent, the Panel does not find it procedurally efficient to have the Complainant translate the Complaint and evidence into Chinese.

PRINCIPAL REASONS FOR THE DECISION

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires a complainant to show that a domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights.

A registered trademark provides a clear indication that the rights in the mark shown on the trademark certificate belong to its respective owner. The Complainant has provided evidence that it owns trademark registrations of the PAYSEND mark.

It is well-established that a domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element (see WIPO Overview 3.0, section 1.9). The disputed domain names which incorporate the Complainant's marks in their entirety and contain a single letter typo or add a single letter typo to the Complainant mark are all clear misspelling of the Complainant's PAYSEND mark. They are all therefore typosquatting attempts by the Respondent which do not avoid confusingly similarity between the Complainant's mark and the disputed domain names.

Further, it is well established that the addition of a gTLD ".com" does not avoid confusing similarity between the Complainant's trademark and the disputed domain names (see WIPO Overview 3.0, section 1.11.1).

Consequently, the Panel finds that the Complainant has shown that the disputed domain names are confusingly similar to a trademark in which the Complainant has rights.

B. Rights or Legitimate Interests

Once the complainant establishes a *prima facie* case that the respondent lacks rights or legitimate interests in the disputed domain names, the burden of production shifts to the respondent to show that it has rights or legitimate interests in respect to the disputed domain names (see WIPO Overview 3.0, section 2.1).

In the present case, the Complainant has demonstrated *prima facie* that the Respondent lacks rights or legitimate interests in respect of the disputed domain names and the Respondent has failed to assert any such rights or legitimate interests.

The Complainant has provided evidence that it owns trademark registrations of the PAYSEND mark long before the date that the disputed domain names were registered and that it is not affiliated with nor has it licensed or otherwise permitted the Respondent to use the Complainant's trademark (see *LEGO Juris A/S v. DomainPark Ltd, David Smith, Above.com Domain Privacy, Transure Enterprise Ltd, Host master*, WIPO Case No. D2010-0138). The Complainant also provided evidence that the Respondent is not commonly known by any of the disputed domain names.

Further, the Respondent did not submit a Response in the present case and did not provide any explanation or evidence to show rights or legitimate interests in the disputed domain names which would be sufficient to rebut the Complainant's *prima facie* case.

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

C. Registered and Used in Bad Faith

The complainant must also show that the respondent registered and is using the disputed domain names in bad faith (see Policy, paragraph 4(a)(iii)). Paragraph 4(b) of the Policy provides circumstances that may evidence bad faith under paragraph 4(a)(iii) of the Policy.

The Respondent's websites under the disputed domain names resolve to webpages which use the Complainant's PAYSEND mark and display what appears to be pay-per-click links purporting to offer links to competing services to those of the Complainant's. It has been held by prior UDRP panels that the use of a domain name to host a parked page comprising PPC links does not represent a bona fide offering where such links compete with or capitalize on the reputation and goodwill of the complainant's mark or otherwise mislead Internet users. (See WIPO Overview 3.0, section 2.9).

Further, the disputed domain names incorporate typosquatting variations of the Complainant's PAYSEND mark which the Panel finds are attempts by the Respondent to confuse and/or mislead Internet users seeking or expecting the Complainant. These all involve a single letter typo or add a single letter typo in the Complainant's PAYSEND mark. Previous UDRP panels ruled that in such circumstances "a likelihood of confusion is presumed, and such confusion will inevitably result in the diversion of Internet traffic from the Complainant's site to the Respondent's site" (see *Edmunds.com, Inc v. Triple E Holdings Limited*, WIPO Case No. D2006-1095). To this end, prior UDRP panels have established that attracting Internet traffic by using a domain name that is identical or confusingly similar to create a likelihood of confusion with a registered trademark may be evidence of bad faith under paragraph 4(b)(iv) of the UDRP. Given the evidence presented to the Panel, the Panel finds that it is highly likely that the Respondent was aware of the Complainant and its PAYSEND trademark at the time of registering the disputed domain names and specifically targeted the Complainant and its goodwill.

In addition, the Respondent did not submit a Response in this proceeding. Under the circumstances of this case, this is an additional indication of the Respondent's bad faith, which was considered by the Panel.

Accordingly, given the particular circumstances of this case, the reputation of the Complainant's trademark, and based on the evidence presented to the Panel, including the registration of the disputed domain names long after the registration of the Complainant's trademark, the typosquatting nature of the disputed domain names and confusing similarity with the Complainant's trademark, the Respondent's use of the disputed domain names and the failure of the Respondent to submit a response, and the fact that there is no plausible good faith use the Respondent can put the disputed domain names to, the Panel draws the inference that the disputed domain names were registered and are being used in bad faith.

Accordingly, having regard to the circumstances of this particular case, the Panel finds that the Complainant has met its burden under 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. **oaysend.com**: Transferred
 2. **paaysend.com**: Transferred
 3. **paydend.com**: Transferred
 4. **paysebd.com**: Transferred
 5. **payseend.com**: Transferred
 6. **paysrnd.com**: Transferred
 7. **payswnd.com**: Transferred
 8. **patsend.com**: Transferred
 9. **payaend.com**: Transferred
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PANELLISTS

| | |
|------|-----------------------|
| Name | Jonathan Agmon |
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DATE OF PANEL DECISION 2023-01-31

Publish the Decision
