

Decision for dispute CAC-UDRP-105292

Case number	CAC-UDRP-105292
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Domain names	MYDIGITALMOONEY.COM

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

Organization	Yang Zhi Chao
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OTHER LEGAL PROCEEDINGS

The Panel is unaware of any other pending or decided legal proceedings in respect of the domain name <mydigitalmooney.com> ('the disputed domain name').

IDENTIFICATION OF RIGHTS

The Complainant relies upon the following registered trade marks:

- International trade mark registration no. 1547324, registered on 18 June 2020, for the word mark MOONEY, in classes 9, 36, 37, 38 and 42 of the Nice Classification;
- EU trade mark registration no. 018248141, registered on 16 September 2020, for the word mark MOONEY, in classes 9, 36, 37 and 38 of the Nice Classification;
- EU trade mark registration no. 018365022, registered on 3 June 2021, for the figurative mark MOONEY, in classes 9, 16, 35, 36, 37, 41 and 42 of the Nice Classification; and
- Italian trade mark registration no. 302020000038617, registered on 7 October 2020, for the work mark MOONEY, in classes 9, 36, 37, 38 and 42 of the Nice Classification.

(Hereinafter, collectively or individually, 'the Complainant's trade mark' or 'the trade mark MOONEY' interchangeably).

The disputed domain name was registered on 27 June 2022 and, at present, resolves to a parked page comprising pay-per-click ('PPC') links ('the Respondent's website').

FACTUAL BACKGROUND

The Complainant's contentions can be summarised as follows:

A. Background history

The Complainant, Mooney S.p.A., is a company founded in December 2019, as a result of the collaboration between SisalPay and Banca 5 (Gruppo Intesa Sanpaolo). The Complainant is a market leader in payment, banking and mobility services. It has become the first proximity banking & payments company in Italy.

In addition to the trade marks mentioned under the above section 'Identification of Rights', and other trade marks in its portfolio, the Complainant owns numerous domain names which contain the term 'mooney', namely: <mooney.it>; <mooney.jp>; <mooney.ar>; <mooney.lu>; <mooney.co.th>; <mooneygo.nl>; <mooneygo.de>; <mooneygo.fi>; and <mooneygo.pl>.

The Complainant seeks to obtain the transfer of the disputed domain name <mydigitalmooney.com> on the grounds set out in section B below.

B.1 Preliminary Matter: Language of the Proceeding

On the matter of the language of the proceedings, the Complainant articulates as follows:

- The Complaint is written in English and the Complainant has made a pre-emptive request that English be the language of this UDRP proceeding;
- The registrar's verification response provided that the language of the registration agreement for the disputed domain name is Chinese;
- The Complainant's grounds for English to be the language of this UDRP proceeding can be summarised as follows: (i) the Complainant is an Italian company whereas the Respondent is a Chinese national residing in China. The Complaint was written in English, a third international language comprehensible to a wide range of Internet users worldwide, including those living in Italy and in China; and (ii) Paragraph 11 of the UDRP Rules is aimed at ensuring fairness in the selection of the language of the proceeding by giving full consideration to the parties' level of comfort with each language, and English seems to be the fair language in this UDRP proceeding.

B.2 Substantive grounds

I. The disputed domain name is identical or confusingly similar to a trade mark in which the Complainants have rights

The Complainant submits that the disputed domain name <mydigitalmooney.com> is identical, or at least confusingly similar, to the Complainant's trade mark, to the extent that the disputed domain name reproduces the trade mark MOONEY in its entirety. The additional of the expression 'my digital' in the disputed domain name string is merely descriptive.

II. The Respondent has no rights or legitimate interests in respect of the disputed domain name

The Complainant avers that the Respondent has no rights in the disputed domain name, and that any use of the trade mark MOONEY has to be authorised by the Complainant.

The Complainant further states that the Respondent has never been given any right or license to use the disputed domain name.

In addition, the disputed domain name does not correspond to the name of the Respondent, and the Respondent is not known by the disputed domain name; the Respondent is not making a bona fide offering of goods or services by means of the disputed domain name, nor is the Respondent using it for legitimate non-commercial or fair use.

In view of the above, the Complainant concludes that the Respondent has no rights or legitimate interests in the dispute domain name.

III. The Respondent registered and is using the disputed domain name in bad faith

Registration

The Complainant contends that the trade mark MOONEY is well-known and distinctive, such that it is reasonable to infer that the Respondent has registered the disputed domain name with full knowledge of the Complainant's trade mark.

Use

The Complainant avers that the Respondent's website contains PPC links sponsoring, amongst others, banking and financial services, and that the Respondent has intentionally used the disputed domain name to attract, for commercial gain, Internet users to the Respondent's website by creating a likelihood of confusion with the Complainant as to the source, sponsorship, affiliation, or endorsement of that website (paragraph 4(b)(iv) of the UDRP Policy).

The Complainant claims that the disputed domain name is not used for any bona fide offerings in so far as it resolves to a website which

contains links to the Complainant's competitors.

As additional indicia giving rise to a presumption of bad faith, the Complainant refers to the Respondent's failure to respond to the Complainant's cease-and-desist letter.

The Complainant therefore concludes that the Respondent has registered and is using the disputed domain name in bad faith.

PARTIES CONTENTIONS

Complainant's contentions are summarised above.

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 trade mark in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the UDRP 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 UDRP 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 UDRP Policy).

PROCEDURAL FACTORS

Complainant's Language Request

The Panel is given discretion under Rule 11 of the UDRP Rules to determine the appropriate language of UDRP proceedings. The Panel notes Rule 10 of the UDRP Rules, which vests the Panel with authority to conduct the proceedings in a manner it deems 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.

On this particular matter, the Panel takes the liberty to adopt the language of proceeding test applied in CAC Case no. 104144, *Writera Limited v. alexander ershov*, which helpfully sets out the following six guiding factors:

- (i) the language of the disputed domain name string: the Panel considers that English is the only identifiable language in the disputed domain name string;
- (ii) the content of the Respondent's website: this factor carries no weight in the Panel's determination of the language of this UDRP proceeding given that Respondent's website contains PPC links;
- (iii) the language(s) of the Parties: the Complainant is originally from Italy and the Respondent appears to a Chinese national residing in China. English would therefore be considered neutral for both Parties;
- (iv) the Respondent's behaviour (pre-dispute and in the course of the UDRP proceeding): the Panel notes that the Respondent has shown no inclination to participate in this UDRP administrative proceeding; the Respondent did not respond to the Complainant's cease-and-desist letter, nor did it submit a Response;
- (v) the Panel's overall concern with due process: the Panel has discharged its duty under Rule 10 (c) of the UDRP Rules; and
- (vi) the balance of convenience: while determining the language of UDRP proceedings, the Panel has a duty to consider who would suffer the greatest inconvenience as a result of the Panel's determination. On the one hand, the determination of English as the language of this UDRP proceeding – a widely spoken language – is unlikely to cause the Respondent any inconvenience, not least given the Respondent's default and overall disinterest pre- and throughout this UDRP proceeding. The determination of Chinese as the language of this UDRP proceeding, on the other hand, is very likely to cause the Complainant inconvenience, and

to interfere with the overall due expedition of the proceedings under the UDRP Rules.

In view of the above factors, the Panel has decided to accept the Complainant's language request, such that the decision in the present matter will be rendered in English.

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. UDRP Threshold

Pursuant to Rule 15 of the UDRP Rules, the Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the UDRP Policy, the UDRP Rules, and any rules and principles of law that the Panel deems applicable.

Paragraph 4(a) of the UDRP Policy sets out the following threshold for the Complainant to meet for the granting of the relief sought (transfer of the disputed domain name):

- (i) The disputed domain name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights;
- (ii) The Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) The disputed domain name has been registered and is being used in bad faith.

It is incumbent on the Complainant the onus of meeting the above threshold. The evidentiary standard under the UDRP proceedings is the balance of probabilities and, on that basis, the Panel will now proceed to determine each of the three UDRP Policy grounds in turn.

B. Identical or Confusingly Similar

The Panel is satisfied that the Complainant owns trade mark rights in 'MOONEY' since 2020.

The disputed domain name is <mydigitalmooney.com>, and the Complainant's trade mark is MOONEY.

The Panel notes that the Complainant's trade mark MOONEY is wholly incorporated into the disputed domain name, the only difference being the additional joint words 'mydigital' contiguous with the term 'mooney'. In the Panel's view, these adjoint words have no material bearing on the confusing similarity assessment, such that the disputed domain name clearly evokes the Complainant's trade mark MOONEY.

The Panel therefore finds that the Complainant has met the requirement under paragraph 4(a)(i) of the UDRP Policy.

C. Rights or Legitimate Interests

The Respondent has defaulted in this UDRP proceeding. Nevertheless, the Panel is empowered to draw adverse inferences from the Respondent's silence (Rule 14 (b) of the UDRP Rules).

The Panel notes that the Complainant denies any affiliation and/or association with, or authorisation for, the Respondent of any nature. Moreover, the Complainant argues that the Respondent is not known by the disputed domain name; and that the Respondent is not making a legitimate non-commercial or fair use of the disputed domain name.

The Panel has also taken stock of paragraph 2.9 of the WIPO Panel Views on Selected UDRP Questions, Third Edition ('WIPO Jurisprudential Overview 3.0'), according to which UDRP panels have found that the use of a domain name to host a parked page containing PPC links does not represent a bona fide offering where such links compete with, or capitalise on, the reputation and goodwill of the complainant's trade mark or otherwise mislead Internet users.

The Respondent has submitted no evidence to refute any of the Complainant's assertions. On balance, the Panel considers the available evidence to lend credence to the Complainant's case.

The Panel therefore finds that the Complainant has succeeded under paragraph 4(a)(ii) of the UDRP Policy.

D. Registered and Used in Bad Faith

Registration

The following facts are compelling evidence to this Panel that the disputed domain name was registered and is being used in bad faith:

- The Complainant has been using the trade mark MOONEY since at least 2020;
- The disputed domain name <mydigitalmooney.com> was registered on 27 June 2022;

- The Respondent's lack of participation in the course of this UDRP proceeding; and
- The lack of any credible evidence-backed rationale for the Respondent's choice of the disputed domain name.

Use

The Complainant alleges that the Respondent has engaged in the conduct described in paragraph 4(b)(iv) of the UDRP Policy, which provides as follows:

'(iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the respondent's website or location or of a product or service on the respondent's website or location'.

In addition, the Complainant alludes to the Respondent's failure to respond to the Complainant's cease-and-desist letter as additional evidence of bad faith use.

The Panel has further consulted paragraph 3.3 and paragraph 3.5 of the WIPO Overview 3.0 to determine whether or not there has been bad faith use of the disputed domain name.

Of particular note, UDRP panels have found that a respondent cannot disclaim responsibility for content appearing on the website to which the domain name resolves nor would such PPC links per se vest the respondent with rights or legitimate interest (paragraph 3.5 of the WIPO Jurisprudential Overview 3.0).

In the present matter, the Panel considers the most conducive factors to a finding in favour of the Complainant under this Policy ground to be (i) the degree of distinctiveness or reputation of the Complainant's trade mark; (ii) the Respondent's default; and (iii) the implausibility of any good faith use to which the disputed domain name may be put. The Respondent's conduct would therefore fall into the remit of paragraph 4(b)(iv) of the UDRP Policy.

In view of the above, the Panel finds that the Complainant has succeeded under paragraph 4(a)(iii) of the UDRP Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **MYDIGITALMOONEY.COM**: Transferred

PANELLISTS

Name	Yana Zhou
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DATE OF PANEL DECISION	2023-04-26
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Publish the Decision
