

Decision for dispute CAC-UDRP-105334

Case number CAC-UDRP-105334

Time of filing 2023-04-12 09:55:55

Domain names paysend.website

Case administrator

Name Olga Dvořáková (Case admin)

Complainant

Organization PaySend Group Limited

Complainant representative

Organization Motsnyi Consulting (dba Motsnyi Legal)

Respondent

Name Maksim Andrei Gudvilovich

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 is the owner of the following trademark registrations for the sign "PAYSEND" (the "PAYSEND trademark"):

- the International trademark PAYSEND (word), with registration No. 1251936, registered on 10 April 2015 for services in International Class 36 in numerous jurisdictions, including Belarus, where the Respondent is located; and

- the International trademark PAYSEND (word + device) with registration No. 1284999, registered on 13 October 2015 for goods and services in International Classes 9 and 36 in numerous jurisdictions, including Belarus.

FACTUAL BACKGROUND

The Complainant is a global FinTech company established in 2017. It offers global money transfer services, currently serves over 6 million customers and operates in over 170 countries. The Complainant is the owner of the domain names <paysend.com> and <paysend.me>.

The disputed domain name <paysend.website> was registered on 22 January 2023. It currently resolves to a website that contains the following text in English:

“We are currently working on an awesome new site. Stay Tuned. Money transfers you can trust”.

The website includes the following text in Russian:

“Дешевый и быстрый способ отправить деньги за границу” (translated in English as: “Cheap and fast way to send money abroad”).

The website at the disputed domain name also contains several logos at the bottom of the webpage, the clicking of which redirects to another website which describes itself as a “New platform for selling and creating NFT”, and contains terms in English such as “Bitcoin” and “Crypto”.

PARTIES CONTENTIONS

COMPLAINANT:

The Complainant submits that the disputed domain name is identical to its PAYSEND trademark, as it incorporates the trademark entirely without any other elements.

According to the Complainant, the Respondent has no rights or legitimate interests in respect of the disputed domain name, because it is not commonly known by the disputed domain name and is not related to the Complainant or authorized by it to register and use a domain name that includes the Complainant’s PAYSEND trademark. The Complainant adds that the Respondent is not using the disputed domain name for any legitimate activity or for a bona fide offering of goods or services. The Complainant points out that the disputed domain name is used to publish information about future business related to “money transfers” that is exactly the main business activity of the Complainant protected under its PAYSEND trademark, and redirects to another website that contains information about a “new platform for selling and creating NFT”. According to the Complainant, this shows that the Respondent uses the disputed domain name to compete with the Complainant.

The Complainant states that the disputed domain name was registered and is being used in bad faith. It claims that its PAYSEND trademark was well-known in the area of online payments and online money transfers at the time of the registration of the disputed domain name in January 2023. The Complainant points out that the PAYSEND trademark is fully incorporated in the disputed domain name without any additions or alterations, and the disputed domain name was registered many years after registration of this trademark, including in Belarus – the location of the Respondent. The Complainant submits that the content of the website at the disputed domain name shows the Respondent’s knowledge of the Complainant and its trademarks and the Respondent’s intent to take unfair advantage of them by suggesting a false affiliation with the Complainant and its business. It adds that the website at the disputed domain name also offers financial services and transactions, thus competing with the services of the Complainant. According to the Complainant, the conclusion is that the Respondent has registered and is using the disputed domain name targeting the Complainant and its PAYSEND trademark in an attempt to receive financial gain by confusing and attracting Internet users to its website where services competing with the Complainant are offered, which also disrupts the Complainant’s business.

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

Language of the proceeding

The Complainant asks the Panel to conduct this proceeding in English, and maintains that the Respondent understands English very well, because the website at the disputed domain name contains information in English and redirects to another website that also contains information in English, which shows that the Respondent targets an English-speaking audience with its activities. The Complainant adds that the translation of all case materials into Russian would significantly delay the proceedings and would burden the Complainant.

According to the information provided by the Registrar, the language of the Registration Agreement for the disputed domain name is Russian. Under paragraph 11 of the Rules, 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 Respondent has not submitted any objections to the Complainant's request that the proceedings be held in English and has not brought to the attention of the Panel any reasons why the use of English in this proceeding would be unfair or inefficient. As submitted by the Complainant, the website at the disputed domain name indeed includes English language statements and redirects to another website that is also in English.

In light of the above, the Panel accepts as more likely that the Respondent understands English and would not be disadvantaged if this is the language of the proceeding, and considers that the use of English in this proceeding would be fair and efficient.

Therefore, in exercise of its powers under paragraph 11 of the Rules, the Panel decides that the language of this administrative proceeding be English.

Otherwise, the Panel is satisfied that all procedural requirements under the UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

Pursuant to the Policy, paragraph 4(a), a complainant must prove each of the following to justify the transfer of a domain name:

- (i) the domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights;
- (ii) the respondent has no rights or legitimate interests in respect of the domain name; and
- (iii) the domain name was registered and is being used in bad faith.

In this case, the Provider has employed the required measures to achieve actual notice of the Complaint to the Respondent, and the Respondent was given a fair opportunity to present its case.

By the Rules, paragraph 5(c)(i), it is expected of a respondent to: "[r]espond specifically to the statements and allegations contained in the complaint and include any and all bases for the Respondent (domain name holder) to retain registration and use of the disputed domain name ..."

In this proceeding, the Respondent has not used the opportunity provided to it under the Rules and has not submitted a substantive Response addressing the contentions of the Complainant and the evidence submitted by it.

Identical or confusingly similar

The Complainant has provided evidence and has thus established its rights in the PAYSEND trademark.

The Panel notes that a common practice has emerged under the Policy to disregard in appropriate circumstances the general Top-Level Domain ("gTLD") section of domain names for the purposes of the comparison under the Policy, paragraph 4(a)(i). The Panel sees no reason not to follow the same approach here, so it will disregard the ".website" gTLD section of the disputed domain name.

The disputed domain name reproduces the PAYSEND trademark entirely with the addition of no other elements. This makes them identical for the purposes of the Policy, so the Panel finds that the disputed domain name is identical to a trademark in which the Complainant has rights.

Rights and legitimate interests

While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often-impossible task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.

The Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name, because there is

no relationship between the Parties and the Respondent is not commonly known under the disputed domain name. The Complainant points out that the disputed domain name resolves to a website that advertises services competing with the Complainant's main activity and redirects to a third-party website offering similar services, all this not being authorized by the Complainant. Thus, the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name.

The Respondent has not submitted a Response and has not provided a plausible explanation for the registration and use of the disputed domain name.

The Panel considers that the circumstances of this case do not support a finding that the Respondent has rights or legitimate interests in the disputed domain name. It is well-established under the UDRP that the use of a disputed domain name to offer competing goods or services is not a bona fide offering of goods or services or a legitimate non-commercial or fair use of a domain name under the Policy. As stated in sections 2.5 and 2.5.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (the "WIPO Overview 3.0"), a respondent's use of a domain name will not be considered fair if it falsely suggests affiliation with the trademark owner; the correlation between a domain name and the complainant's mark is often central to this inquiry. Generally speaking, UDRP panels have found that domain names identical to a complainant's trademark carry a high risk of implied affiliation.

In the present case, the disputed domain name fully incorporates the Complainant's PAYSEND trademark and is identical with it, which creates a high risk of implied affiliation, more so taking into account its use for offering competing services and the fact that there is no disclaimer for the lack of relationship with the Complainant. Such use cannot create rights or legitimate interests of the Respondent in the disputed domain name.

On this basis, the Panel finds that the Respondent does not have rights or legitimate interests in the disputed domain name.

Bad faith

Paragraph 4(b) of the Policy lists four illustrative alternative circumstances that shall be evidence of the registration and use of a domain name in bad faith by a respondent, namely:

"(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or

(ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

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

The registration of the Complainant's PAYSEND trademark predates with eight years the registration of the disputed domain name, which reproduces this trademark entirely without any other elements, and the associated website offers services that compete with the Complainant's services protected by the PAYSEND trademark. The website includes no disclaimer for the lack of relationship between the Parties and does not identify the provider of the services offered. All this may mislead Internet users to believe that the disputed domain name and the website to which it resolves or redirects represent official or authorized online locations where the Complainant's services are legitimately offered. The Panel is therefore of the view that the Respondent is more likely to have registered and used the disputed domain name with knowledge of the Complainant's PAYSEND trademark and with the intention of taking advantage of its goodwill by impersonating the Complainant and diverting the Complainant's customers to its website to offer them services in competition with the Complainant for commercial gain.

This satisfies the Panel that the disputed domain name has been registered and used in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **paysend.website**: Transferred

PANELLISTS

Name	Assen Alexiev
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DATE OF PANEL DECISION 2023-05-10

Publish the Decision
