

Decision for dispute CAC-UDRP-105716

Case number **CAC-UDRP-105716**

Time of filing **2023-08-24 10:28:47**

Domain names **paysendapp.com**

Case administrator

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

Complainant

Organization **PaySend Group Limited**

Complainant representative

Organization **Igor Motsnyi (Motsnyi Consulting (dba Motsnyi Legal))**

Respondent

Organization **Anthony John Soffe (PrivacyGuardian.org llc)**

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings which are pending or decided and relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant relies on the following trademarks, for which it has adduced proof:

- PAYSEND (word and figurative elements) international trademark No. 1284999 registered on 13 October 2015;
- PAYSEND (word) international trademark No. 1251936 registered on 10 April 2015;
- PAYSEND Money for the future (word and figurative elements) international trademark No. 1539382 registered on 30 May 2020;
- PAYSEND LIBRE (word) UK trademark No. UK00003849968 registered on 3 February 2023;
- PAYSEND LIBRE (word) international trademark No. 1735950 registered on 23 February 2023.

The Nice Classification List class to which all the above trademarks correspond is Class 36, which includes financial affairs and monetary affairs and which extends also to operations using digital money. Four of the trademarks (Nos. 1284999, 1539382, UK00003849968 and 1735950) are also taken out in Class 9, which includes payment terminals and applications software.

The Complainant has further adduced some evidence that it is the registrant of paysend.com, and it claims to be the registrant of others.

The Respondent registered the disputed domain name <paysendapp.com> on 20 May 2023.

FACTUAL BACKGROUND

The Complainant, PaySend, is a global FinTech company incorporated in 2017 in Edinburgh, United Kingdom, which provides card-to-card transfers internationally and operates in 170 countries. It serves 6 million customers with products and solutions that include “Paysend Global Transfers”, “Paysend Global Account”, “Paysend Link”, “Paysend Connect”, “Paysend Business”, “Paysend Enterprise” and “Paysend Libre”. The company has won various awards for its online money transfer services and innovation, and has attracted prominence in the media. It also has a social media presence.

At filing of the Complaint, the Respondent's website resolves to a “404” error message page.

The CAC Case Administrator has confirmed that e-mail delivery concerning the present proceeding was delivered to the Respondent including at the disputed domain name postmaster address. As to physical delivery by post, there was no indication of either delivery or non-delivery. The Panel in the exercise of its general powers under the Rules performed a routine online check of the postal address; this appears to be credible, despite a minor discrepancy in the postal code given at registration of the disputed domain name.

PARTIES CONTENTIONS

COMPLAINANT:

The Complainant contends that the disputed domain name has been used for fraudulent and phishing purposes by sending e-mails from the e-mail address incorporating the disputed domain name. These thereby impersonate the Complainant. The Complainant supports this allegation with screenshot records of e-mails that appear to emanate from a support e-mail address under the disputed domain name.

Fulfilment of UDRP criteria

1. Confusing similarity. According to the usual test of a side-by-side comparison of the domain name and the textual components of the relevant trademark, the Complainant's trademark is recognizable within the disputed domain name and thus gives rise to confusing similarity with it. Indeed, the Complainant's PAYSEND mark is incorporated in its entirety in the disputed domain name and is dominant in it. Furthermore, the Complainant's trademarks are also protected for software applications and the term “app” in the disputed domain name is a descriptive term that refers to the Complainant's goods and services. Domain zones do not play a significant part in assessing the first UDRP element and in this case the domain zone <.com> does not affect analysis of confusing similarity.
2. Absence of the Respondent's rights or legitimate interest. Because the disputed domain name <paysendapp.com> contains the Complainant's PAYSEND trademark plus the descriptive term “app”, this illegitimately creates an impression of implied affiliation with the Complainant and its payment application that is downloadable from Google Play. The Respondent is not and has not been known by the disputed domain name. Nor is the Respondent related to or authorized by the Complainant. As recognized by previous Panels, the fraudulent use of a mark cannot confer a right or legitimate interest. The Complainant invokes the evidence of phishing it has offered and the absence of an effective active website in support of its contentions under this criterion.
3. Bad faith registration and use. The Complainant contends that its PAYSEND trademarks can be considered well-known in the area of online payments and online money transfers and notes that they enjoyed recognition prior to the registration of the disputed domain name. The Complainant contends that the Respondent intended to take unfair advantage of the Complainant's PAYSEND marks by registering and using the disputed domain name for fraudulent and phishing purposes as contended above. And it is inconceivable that the Respondent registered the disputed domain name without having the Complainant and its Paysend brand in mind. Rather, the disputed domain name is designed to sow confusion in internet users' minds, to the illegitimate advantage of the Respondent and in a similar fashion to many cases in which previous Panels have decided against phishers who impersonate financial services providers. Any good faith use by the Respondent is implausible in the circumstances and any use of the disputed domain name would inevitably create a false association with the Complainant, its products and services and would cause confusion.

RESPONDENT:

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown that the disputed domain name is identical or confusingly similar to trademarks 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 that 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 the UDRP were met and that there is no other reason why it would be inappropriate to provide a decision.

The Panel notes that its résumé of the Parties' contentions includes for the Complainant only its arguments pertinent to reaching a decision in this proceeding; it omits in particular numerous references to past ADR Panels' Decisions. The Panel equally finds it unnecessary to consider a contention based on Decisions of some previous Panels regarding prima facie proof since this contention does not affect evaluation of the evidence that the Panel has before it in this proceeding.

PRINCIPAL REASONS FOR THE DECISION

With reference to the UDRP three-part cumulative test, there is no doubt in this case that the Complainant has demonstrated its ownership of the trademark PAYSEND that is incorporated in the disputed domain name and forms its dominant element. Nor does the subsidiary element in the disputed domain name <app> reduce the potential for confusing similarity with the Complainant's protected brand; rather, its addition increases the likelihood of confusion among actual or potential customers of the Complainant by emphasizing a channel for delivery of the Complainant's services -- i.e. a smartphone app. The Complainant has hence met the first criterion in the UDRP test.

The Respondent has no relation to the Complainant and there is no indication in the Case File that the Respondent has any right or legitimate interest in the disputed domain name. To the contrary, the disputed domain name seems designed solely to masquerade as a manifestation of the Complainant's brand in order to lure unwitting customers or other internet users into communication with the Respondent. The Complainant thereby satisfies the second UDRP criterion.

The Complainant then contends, in order to demonstrate negation of any legitimate interest and to substantiate the third UDRP criterion of bad faith registration and use, that the purpose of inducing such communication is fraudulent.

It relies here especially on evidence consisting of screenshots of e-mails employing the disputed domain name which seek to persuade their recipients that they are from the Complainant's customer support services and that a specific transfer made by each recipient can now be re-sent, thanks to an alleged technical problem being resolved.

The Panel finds the quality of this evidence to be poor. Too little supporting information is provided for the Panel to be confident as to the origin and probative credibility of the screenshots. Were such information provided, this evidence would be conclusive as to illegitimate conduct and bad faith; as it is, only little weight can be accorded to it. The same applies, if taken alone, to the Complainant's contention that lack of an active web site demonstrates bad faith.

The Panel none the less takes due note of the exposure of online-transaction-based financial service providers to abusive imitation.

In this context, the disputed domain name's design and activation of the MX facility associated with it (cf. CAC confirmation of e-mail delivery to the disputed domain name postmaster address) do point towards e-mail phishing as a likely purpose, which might also explain the lack of an active website since one is otiose for this kind of scam. And the danger to the public that abuse is or will be perpetrated by the Respondent, thanks to being armed with the disputed domain name, is considerable. Considering these factors together, the Panel has no difficulty in finding that the last UDRP criterion of bad faith is met in the circumstances presented in this proceeding.

The Panel therefore finds for the Complainant and orders transfer of the disputed domain name to it.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **paysendapp.com**: Transferred

PANELLISTS

Name **Kevin Madders**

DATE OF PANEL DECISION 2023-10-04

Publish the Decision
