

Decision for dispute CAC-UDRP-106014

Case number	CAC-UDRP-106014
Time of filing	2023-11-27 09:55:19
Domain names	MOONEYAREACLIENTI-IT.COM

Case administrator

Name	Olga Dvořáková (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

Name	ALAIN MASSONI
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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 name.

IDENTIFICATION OF RIGHTS

The Complainant submitted evidence that it is the owner of the following registered MOONEY trademarks (the "Trademarks").

- International trademark n. 1547324 "MOONEY", registered on June 18, 2020, for classes 9, 36, 37, 38 and 42;
- EU trademark n. 018248141 "MOONEY", filed on June 3, 2020, registered on September 16, 2020, for classes 9, 36, 37 and 38;
- EU trademark n. 018656425 "MOONEY", filed on February 15, 2022, registered on June 30, 2022, for classes 12, 25 and 41;
- EU trademark n. 018656431 "MOONEY" (combined word figurative trademark), filed on February 15, 2022, registered on July 05, 2022, for classes 12, 25, 36 and 41;
- EU trademark n. 018365022 "MOONEY" (combined word figurative trademark), filed on December 29, 2020, registered on June 03, 2021, for classes 9, 16, 35, 36, 37, 41 and 42;
- Italian trademark n. 302020000038617 "MOONEY", filed on May 20, 2020, registered on October 7, 2020, for classes 9, 36, 37, 38 and 42.

The Complainant also asserts to be the owner of several domain names bearing the sign "MOONEY" (MOONEY.IT, MOONEY.JP, MOONEY.AR, MOONEY.LU, MOONEY.CO.TH, MOONEYGO.NL, MOONEYGO.DE, MOONEYGO.FI, MOONEYGO.PL, etc.). Since the Complainant did not submit evidence of this claim, this will not be taken into consideration by the Panel.

FACTUAL BACKGROUND

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

The Complainant states that it is a company founded in December 2019 offering so called “excellence and security in payments services”. The Complainant claims that it makes payment services and transactional operations available thanks to a network of over 45,000 points of sale (such as tobacconists, bars, and newsstands) and modern digital platforms. According to the Complainant, it offers millions of people a so called “phygital” experience, with a wide range of services integrated between physical and digital channels. The Complainant claims to be the first “Proximity Banking & Payments” company in Italy.

The Complainant provided evidence that it is the owner of the Trademarks as referred to above.

When visiting the website available through the disputed domain name, the following security warning is displayed: “Misleading site detected - Cybercriminals on mooneyareaclienti-it.com may try to trick you into doing something dangerous, such as installing software or revealing your personal information (such as passwords, phone numbers or credit card details).” (English translation)

The disputed domain name <MOONEYAREACLIENTI-IT.COM> was registered on April 4, 2023.

PARTIES CONTENTIONS

The Complainant contends that the requirements of the Policy have been met and that the disputed domain name should be transferred to it.

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

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

1. Confusing similarity

The disputed domain name consists of the Complainant's trademarks “MOONEY”, with the addition of “AREACLIENTI-IT”.

The Panel notes that the disputed domain name incorporates the entirety of the Complainant's “MOONEY” Trademark(s), with the addition of the wording “AREACLIENTI-IT”. This addition may refer to “AREA CLIENTI” (“customer area” in Italian) or “ARE A CLIENT” plus “I”, with the further addition of a hyphen and the term “IT” (which may refer to “information technology” or to “Italy”, i.e., the

country where the Complainant is based). Either way, this addition is a mere descriptive addition that does not add distinctiveness to the disputed domain name.

The Panel remarks that Section 1.7 of WIPO Overview 3.0, clearly states that, "in cases where a domain name contains the whole of a trademark, or where at least one dominant feature of the relevant trademark is recognisable in the domain name, the domain name shall normally be considered confusingly similar to that trademark for the purposes of UDRP status".

The gTLD ".com" may be disregarded when considering whether a domain name is confusingly similar to a trademark in which the Complainant has rights. In this regard, section 1.11.1 of WIPO Overview 3.0 clearly states: "The applicable Top Level Domain ("TLD") in a domain name (e.g., ".com", ".club", ".nyc") is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test."

For these reasons, the Panel concludes that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights within the meaning of paragraph 4(a)(i) of the Policy.

2. Rights or legitimate interests

As regards paragraph 4(a)(ii) of the Policy, while the overall burden of proof rests with the Complainant, it is commonly accepted that this should not result in an often-impossible task of proving a negative. Therefore, numerous previous Panels have found that the Complainant is required to make out a prima facie case that the Respondent lacks rights or legitimate interests. Once such prima facie case is made, the burden of production shifts to the Respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the disputed domain name. If the Respondent fails to come forward with such appropriate allegations or evidence, the Complainant is generally deemed to have satisfied paragraph 4(a)(ii) of the Policy. If the Respondent does come forward with some allegations or evidence of relevant rights or legitimate interests, the panel then must weigh all the evidence, with the burden of proof always remaining on the Complainant.

The Complainant argues that:

- No license or authorisation was granted to the Respondent to make use of the Complainant's Trademark(s) or to apply for registration of the disputed domain name.
- There is no information indicating that the Respondent is known for or trades under a name corresponding to the disputed domain name.
- There is no fair or non-commercial use of the disputed domain name.

The Panel finds that the Respondent does not appear to have any rights or legitimate interests in respect of the disputed domain name from the following facts:

- The disputed domain name includes the entire Trademark of the Complainant. The addition of the extra wording "AREACLIENTI-IT" and the hyphen does not add any meaning to the Trademark(s) and does not create any rights or legitimate interests in the disputed domain name.
- There is no evidence that the Respondent is or has been commonly known, by the disputed domain name or by the terms "MOONEYAREACLIENTI-IT". The WHOIS information does not provide any information that might indicate any rights of the Respondent to use the terms "MOONEY" or "MOONEYAREACLIENTI-IT".
- The Complainant's Trademarks have been used well before the registration date of the disputed domain name. The disputed domain name was registered on April 4, 2023, whereas the Complainant's Trademarks were registered in the years 2020, 2021, and 2022.
- There is no evidence to show that the Respondent is making a legitimate non-commercial or fair use of the disputed domain name, without intent for commercial gain or to misleadingly divert consumers. On the contrary, it appears that the Respondent is taking advantage (or at least intends to take advantage) of the Complainant's name and registered Trademark to attract consumers by creating a likelihood of confusion.
- When visiting the website available through the disputed domain name, the following security warning is displayed: "Misleading site detected - Cybercriminals on mooneyareaclienti-it.com may try to trick you into doing something dangerous, such as

installing software or revealing your personal information (such as passwords, phone numbers or credit card details).” (English translation)

- The Respondent does not seem to have any consent or authorisation to use the Trademark or variations thereof and does not seem to be related in any way to the Complainant.
- The Respondent did not show to have any trademark rights or other rights regarding the term “MOONEY”.
- The Respondent did not file an administratively compliant (or any) response. The Respondent did not provide evidence that it has rights or legitimate interests in the disputed domain name (the Respondent could, inter alia, have provided evidence of the factors mentioned in paragraph 4(c) of the Policy, but failed to do so).

In sum, on the balance of probabilities, 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 Complainant has made a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name.

The Panel concludes that the Respondent does not have rights or legitimate interests in the disputed domain name.

3. Bad faith

The Complainant argues that the Respondent has registered the domain name with full knowledge of the Complainant and its Trademarks, given the fame and value of the Trademarks. The Complainant emphasises that the website available via the disputed domain name is currently blocked by Google Safe Browsing because of suspected phishing activity. The Complainant claims that the main purpose of the Respondent was to use the domain name for “phishing” financial information to fraud the Complainant’s customers.

The Panel weighs these arguments and facts as follows:

First, as mentioned already, the disputed domain name reproduces the Complainant’s trademark “MOONEY” entirely, with the mere addition of a hyphen and generic or descriptive wording. This likely creates confusion among the public and might mislead customers of the Complainant.

Second, the Complainant’s Trademarks predate the registration of the disputed domain name.

Third, several of the Complainant’s Trademarks are EU trademarks and cover the territory of France, i.e., the Respondent’s home country.

Fourth, the Complainant has submitted evidence of a Google search on its Trademark, which shows that the Respondent should have been aware of the existence of the Complainant and its Trademarks.

Fifth, the fact that the Complainant offers financial services, and that the website of the Respondent has been blocked or flagged by internet browsers for suspected fraudulent activities such as fishing heavily weighs against the Respondent.

Sixth, the Respondent did not contest any of the Complainant’s arguments and did not provide any explanation concerning its choice for registering and/or using a domain name that includes the Complainant’s registered Trademarks in combination with a hyphen and generic/descriptive wording, or concerning the suspected fraudulent activities on the website.

Given the above, the Panel finds that the disputed domain name is not being used for any bona fide offering of goods or services. The disputed domain name is rather used to mislead internet users who were looking for the Complainant. The Panel is convinced that the Respondent had the Trademark(s) of the Complainant in mind when registering and subsequently using the disputed domain name. The Panel concludes that the disputed domain name is being used for the purpose of misleading Internet users. There is no evidence whatsoever of any bona fide offering of goods.

For all the reasons set out above, the Panel concludes that the disputed domain name was registered and is 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. MOONEYAREACLIENTI-IT.COM: Transferred

PANELLISTS

Name **Bart Van Besien**

DATE OF PANEL DECISION **2023-12-21**

Publish the Decision
