

Decision for dispute CAC-UDRP-106015

Case number	CAC-UDRP-106015
Time of filing	2023-11-27 09:55:27
Domain names	MOONEY-ITALIA.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	Aaron Sam
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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

- International trademark Reg. No. 1547324 "MOONEY", registered on June 18, 2020;
- EU trademark Reg. No. 018248141 "MOONEY", registered on September 16, 2020;
- Italian trademark Reg. No. 30202000038617 "MOONEY", registered on October 7, 2020;
- EU trademark Reg. No. 018656425 "MOONEY", registered on June 30, 2022;
- EU trademark Reg. No. 018656431 "MOONEY & device", registered on July 05, 2022;
- EU trademark Reg. No. 018365022 "MOONEY", registered on June 03, 2021.

FACTUAL BACKGROUND

The Complainant, Mooney S.p.A., based in Milan, Italy, says it is a company born in December 2019 that offers excellence and security in payments. In particular, it makes payment services and all transactional operations always available thanks to a network of over 45,000 points of sale - tobacconists, bars and newsstands - and the most modern digital platforms. The aim of the Complainant is to

make people's relationship with banking and payments more accessible and familiar, promoting a new simple and fast lifestyle. Thanks to continuous investments in technology and innovation, it offers millions of people a phygital experience, with the widest range of services perfectly integrated between physical and digital channels. In this way the Complainant has become the first Proximity Banking & Payments company in Italy.

The Complainant has numerous registrations for the trademark MOONEY, dating from 2020.

The disputed domain name <mooney-italia.com> was registered by the Respondent on April 4, 2023. It is currently inactive.

PARTIES CONTENTIONS

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

Paragraph 15(a) of the Rules instructs this Panel to "decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable."

Paragraph 4(a) of the Policy requires that the Complainant must prove each of the following three elements to obtain an order that a domain name should be cancelled or transferred:

- (1) the disputed domain name registered by the Respondent is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (2) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (3) the disputed domain name has been registered and is being used in bad faith.

In view of the Respondent's failure to submit a response, the Panel shall decide this administrative proceeding on the basis of Complainant's undisputed representations pursuant to paragraphs 5(f), 14(a) and 15(a) of the Rules and draw such inferences as it considers appropriate pursuant to paragraph 14(b) of the Rules. The Panel is entitled to accept all reasonable allegations set forth in a complaint; however, the Panel may deny relief where a complaint contains mere conclusory or unsubstantiated arguments. See WIPO Jurisprudential Overview 3.0 at paragraph 4.3; see also eGalaxy Multimedia Inc. v. ON HOLD By Owner Ready To Expire, FA 157287

(Forum June 26, 2003) (“Because Complainant did not produce clear evidence to support its subjective allegations [. . .] the Panel finds it appropriate to dismiss the Complaint”).

As to the first element, the Complainant has shown that it has rights in the MOONEY mark through several registrations, including International trademark Reg. No. 1547324, registered on June 18, 2020. The Panel finds the disputed domain name <mooney-italia.com> to be confusingly similar to the Complainant’s MOONEY trademark because it incorporates the mark in its entirety and merely adds a hyphen and the geographic word “Italia”, which do nothing to distinguish the domain name from the mark, together with the inconsequential top-level domain “.com”, which may be ignored.

The Complainant has established this element.

As to the second element, paragraph 4(c) of the Policy sets out three illustrative circumstances as examples which, if established by the Respondent, shall demonstrate rights to or legitimate interests in a disputed domain name for the purposes of paragraph 4(a)(ii) of the Policy, i.e.

- (i) before any notice to the Respondent of the dispute, the use by the Respondent of, or demonstrable preparations to use, the domain name or a name corresponding to the disputed domain name in connection with a bona fide offering of goods or services; or
- (ii) the Respondent (as an individual, business or other organization) has been commonly known by the disputed domain name, even if the Respondent has acquired no trademark or service mark rights; or
- (iii) the Respondent is making a legitimate non-commercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert customers or to tarnish the trademark or service mark at issue.

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the <mooney-italia.com> domain name and any use of the trademark MOONEY has to be authorized by the Complainant. Nobody has been authorized or licensed by the Complainant to use the disputed domain name, which does not correspond to the name of the Respondent and, to the best of the Complainant’s knowledge, the Respondent is not commonly known as “MOONEY-ITALIA”. Lastly, the Complainant does not find any fair or non-commercial uses of the disputed domain name.

The Panel notes that the disputed domain name <mooney-italia.com> was registered by the Respondent on April 4, 2023, almost 3 years after the Complainant first registered its MOONEY mark. It does not resolve to an active website. However, the juxtaposition of the words “Mooney” and “Italia” (meaning “Italy”, the country in which the Complainant is based) convey the impression that the domain name belongs to the Complainant.

These circumstances, together with the Complainant’s assertions, are sufficient to constitute a prima facie showing of absence of rights or legitimate interests in respect of the disputed domain name on the part of the Respondent. The evidentiary burden therefore shifts to the Respondent to show that it does have rights or legitimate interests in the <mooney-italia.com> domain name. See *JUUL Labs, Inc. v. Dryx Emerson / KMF Events LTD*, FA1906001849706 (Forum July 17, 2019). The Respondent has made no attempt to do so.

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

The Complainant has established this element.

As to the third element, Paragraph 4(b) of the Policy sets out some circumstances which shall be evidence of the registration and use of a domain name in bad faith for the purposes of paragraph 4(a)(iii) of the Policy. As noted in the WIPO Jurisprudential Overview 3.0, Section 3.1, those circumstances are not exclusive and a complainant may demonstrate bad faith under paragraph 4(a)(iii) by showing that a respondent seeks to take unfair advantage of, abuse, or otherwise engage in behaviour detrimental to the complainant’s trademark.

In the absence of any Response, the circumstances set out above in relation to the second element satisfy the Panel that the Respondent was fully aware of the Complainant’s MOONEY mark when the Respondent registered the <mooney-italia.com> domain name and that the Respondent did so in bad faith with intent to take unfair advantage of the Complainant’s mark.

Although the <mooney-italia.com> domain name does not resolve to an active website, as in the leading case of *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. D2000-0003, there is no conceivable active use that could be made of the domain name that would not amount to an infringement of the Complainant’s rights in its MOONEY mark. Accordingly, the Panel finds that the Respondent’s passive use of the disputed domain name demonstrates registration and use in bad faith.

The Complainant has established this element.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **MOONEY-ITALIA.COM**: Transferred
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PANELLISTS

Name	Alan Limbury
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DATE OF PANEL DECISION 2023-12-24

Publish the Decision
