Decision for dispute CAC-UDRP-106123

Case number	CAC-UDRP-106123
Time of filing	2024-01-02 11:09:40
Domain names	MOONEY-BANCA.COM

Case administrator

Name	Olga Slanařová (Case admin)

Complainant

Organization	Mooney S.p.A.

Complainant representative

Organization	Perani Pozzi Associati

Respondent

Name	Alex Bingo

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, inter alia, of the following registrations for the trademark “MOONEY”:

- International trademark registration no. 1547324 “MOONEY”, granted on June 18, 2020, in connection with classes 9, 36, 37, 38 and 42;

- EU trademark registration no. 018248141 “MOONEY”, filed on June 3, 2020, granted on September 16, 2020, in connection with classes 9, 36, 37 and 38;

- EU trademark registration no. 018656425 “MOONEY”, filed on February 15, 2022, granted on June 30, 2022, in connection with classes 12, 25 and 41;

- EU trademark registration no. 018656431 “MOONEY & device”, filed on February 15, 2022, granted on July 05, 2022, in connection with classes 12, 25, 36 and 41;

- EU trademark registration no. 018365022 “MOONEY”, filed on December 29, 2020, granted on June 03, 2021, in connection with classes 9, 16, 35, 36, 37, 41 and 42;

-Italian trademark registration no. 302020000038617 “MOONEY”, filed on May 20, 2020, granted on October 7, 2020, in connection

with classes 9, 36, 37, 38 and 42.

Moreover, Mooney S.p.A. is also the owner, among the others, of a number of domain names bearing the sign “MOONEY” including: MOONEY.IT, MOONEY.JP, MOONEY.AR, MOONEY.LU, MOONEY.CO.TH, MOONEYGO.NL, MOONEYGO.DE, MOONEYGO.FI and MOONEYGO.PL

FACTUAL BACKGROUND

The Complainant has offered payment services since 2019 via a network of over 45,000 points of sale - tobacconists, bars and newsstands and modern digital platforms in Italy.

On July 15, 2023, the Respondent registered the disputed domain name MOONEY-BANCA.COM and has used it for competing commercial pay per click links.

PARTIES CONTENTIONS

COMPLAINANT:

THE DISPUTED DOMAIN NAME IS IDENTICAL OR CONFUSINGLY SIMILAR TO A TRADEMARK OR SERVICE MARK IN WHICH THE COMPLAINANT HAS RIGHTS

The disputed domain name is confusingly similar, to the Complainant's trademark exactly reproducing “MOONEY”, with the mere addition of the Italian generic term “BANCA”, meaning “bank”, with obvious reference to the banking and financial business of the Complainant for which the Complainant's trademarks and domain names have been registered and are used.

THE RESPONDENT HAS NO RIGHTS OR LEGITIMATE INTERESTS IN RESPECT OF THE DISPUTED DOMAIN NAME

The Respondent has no rights in the disputed domain name. The Respondent has not been authorized or licensed by the above-mentioned Complainant to use the disputed domain name.

The disputed domain name does not correspond to the name of the Respondent and the Respondent is not commonly known as “MOONEY-BANCA”.

The disputed domain name is not used for any bona fide offerings.There are no fair or non-commercial uses of the disputed domain name.

THE DISPUTED DOMAIN NAME WAS REGISTERED AND IS USED IN BAD FAITH

The Complainant’s trademark “MOONEY” is distinctive. The fact that the Respondent has registered a domain name that is confusingly similar to it indicates that the Respondent had knowledge of the Complainant’s trademark at the time of registration of the disputed domain name. In addition, if the Respondent had carried even a basic Google search in respect of the wordings “MOONEY” and “MOONEY BANCA”, the same would have yielded obvious references to the Complainant. This raises a clear inference of knowledge of the Complainant’s trademark on the part of the Respondent. Therefore, it is more than likely that the domain name at issue would not have been registered if it were not for Complainant’s trademark. This is a clear evidence of registration of the domain name in bad faith. Likewise, it is not possible for the Panelist to “conceive a plausible situation in which the Respondent would have been unaware of this fact at the time of registration”. (Telstra Corporation Limited v. Nuclear Marshmallows - WIPO Case No. D2000-0003). On the contrary, the disputed domain name “is so obviously connected with such a well-known product that its very use by someone with no connection with the product suggests opportunistic bad faith” (Veuve Clicquot Pnsardin, Maison Fondée en 1772 v. The Polygenix Group Co. - WIPO Case No. D2000-0163). Besides, “It is not likely that any trader would choose a name including the trademark […] if not to create an impression of association with the Complainant” (Benetton Group S.p.A. v. Azra Khan - Case No. D2002-0810).

The disputed domain name is connected to a website bearing pay per click links for competing financial services. Consequently, Internet users, while searching for information on the Complainant’s services, are confusingly led to the websites of the Complainant’s competitors, sponsored on the websites connected to the disputed domain name. Therefore, the Respondent has registered and is using the disputed domain name in order to intentionally divert traffic away from the Complainant’s web site and to gain advantage from Complainant’s activity, investments and reputation. The Respondent’s commercial gain is evident, since it is obvious that the Respondent’s sponsoring activity is being remunerated.

By using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to his web site, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of his web site (par. 4(b)(iv) of the Policy).

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

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

The disputed domain name registered in 2023 is confusingly similar to the Complainant's trade mark (registered as an international trade mark for financial services since 2020) adding only a hyphen, the generic word 'banca' meaning bank in English and the gTLD .com none of which prevents said confusing similarity under the Policy.

The Respondent has not been authorised by the Complainant and is not commonly known by the disputed domain name.

The disputed domain name has been used for competing pay per click links relating to financial services which is confusing and is not a bona fide offering of goods or services. Since it is commercial it cannot be non commercial legitimate fair use.

This use for competing pay per click links is registration and use in bad faith, confusing Internet users for commercial gain and disrupting the business of a competitor.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **MOONEY-BANCA.COM**: Transferred

PANELLISTS

Name	**Dawn Osborne**

DATE OF PANEL DECISION 2024-01-25

Publish the Decision