Decision for dispute CAC-UDRP-106216

Case number	CAC-UDRP-106216
Time of filing	2024-02-02 09:03:01
Domain names	MOONEY-FINANZA.COM

Case administrator

Name	Olga Slanařová (Case admin)

Complainant

Organization	Mooney S.p.A.

Complainant representative

Organization	Perani Pozzi Associati

Respondent

Name	chantellesumam dame

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 registrant of some registered trademarks for the word “MOONEY”, including:

- the international trademark registration No. 1547324 “MOONEY”, registered on June 18, 2020, for goods and services in classes 9, 36, 37, 38 and 42;
- the EU trademark registration No. 018248141 “MOONEY”, registered on September 16, 2020, for goods and services in classes 9, 36, 37 and 38;
- the EU trademark registration No. 018656425 “MOONEY”, registered on June 30, 2022, for goods and services in classes 12, 25 and 41;
- the EU trademark registration No. 018365022 “MOONEY”, registered on June 03, 2021, for goods and services in classes 9, 16, 35, 36, 37, 41 and 42.

The disputed domain name was registered by the Respondent on December 19, 2023.

FACTUAL BACKGROUND

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

The Complainant submits that is a company that started its business in 2019 in the field of payment services. The Complainant points out that it operates with a network of over 45,000 points of sale and with digital platforms. The Complainant states that it has become the first proximity banking and payments company in Italy.

The Complainant submits that it is the owner of some trademarks for the word "MOONEY", as well as of some domain names which include the word "MOONEY", like for example "MOONEY.IT", "MOONEY.JP", "MOONEY.AR", "MOONEY.LU", "MOONEY.CO.TH", "MOONEYGO.NL", "MOONEYGO.DE", "MOONEYGO.FI", "MOONEYGO.PL".
The Complainant considers that the domain name at issue is identical, or at least confusingly similar to the Complainant's trademarks because it exactly reproduces the trademark "MOONEY", with the mere addition of the term "FINANZA", which means "FINANCE" in Italian.

The Complainant argues that the Respondent has no rights on the disputed domain name, and any use of the trademarks "MOONEY" has to be authorized by the Complainant.

The Complainant points out that nobody has been authorized or licensed to register or use the disputed domain name.

The Complainant underlines that the disputed domain name 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-FINANZA".

The Complainant adds that it does not find any fair or non-commercial uses of the disputed domain name.

The Complainant's submits that its trademark "MOONEY" is distinctive and well known all around the world and argues that the fact that the Respondent has registered and is using 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.

The Complainant observes that if the Respondent had carried out even a basic search on a search engine in respect of the wording "MOONEY", the same would have yielded obvious references to the Complainant, and considers that it is more than likely that the disputed domain name would not have been registered if it were not for Complainant's trademark.

The Complainant adds that the disputed domain name is not used for any bona fide offerings; on the contrary, 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.

The Complainant asserts that the disputed domain name is connected to a website sponsoring financial services and reproducing the layout, the colors and some images of the Complainant's official website.

The Complainant believes that Internet users, while searching for information on the Complainant's services, are confusingly led to the websites of the Respondent.

The Complainant deems that 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 the Complainant's activity, investments and reputation.

The Complainant argues that the current use of the disputed domain name causes great damages to the Complainant, due to the misleading of their present clients and to the loss of potential new ones.

PARTIES CONTENTIONS

Complainant´s contentions are summarised above.

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

In accordance with paragraph 4(a) of the Policy, in order to obtain the transfer of the disputed domain name, the Complainant has to demonstrate that:

(i) The disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and

(ii) The Respondent has no rights or legitimate interests in respect of the disputed domain name; and

(iii) The disputed domain name has been registered and is being used in bad faith.

IDENTICAL OR CONFUSINGLY SIMILAR

The first requirement that the Complainant must establish is that the disputed domain name is identical with, or confusingly similar to, the Complainant's trademark or service mark rights.

There are two elements of this test: the Complainant must demonstrate that it has rights in a trademark or service mark and, if so, the disputed domain name must be shown to be identical or confusingly similar to the trademark or service mark.

The Complainant has proven ownership, among others, of the registered trademark "MOONEY", identified in section "Identification of rights" above.

On the question of identity or confusing similarity, what is required is simply a comparison and assessment of the disputed domain name itself to the Complainant's trademark.

The disputed domain name differs from the Complainant's trademark "MOONEY" only by the addition of the hyphen and of the word "FINANZA" (which means "FINANCE" in Italian), and by the presence of the top-level domain ".COM".

It is well accepted that the hyphen is not relevant in the confusing similarity test (see, for example, WIPO case No. D2016-0676).

It is a common view that where a trademark is the distinctive part of a domain name, the domain name is considered to be confusingly similar to the trademark (see, for example, WIPO case No. D2017-1266).

In the present case, the addition of the word "FINANZA" has no impact on the distinctive part "MOONEY". It is well established that where the relevant trademark is recognizable within the domain name, the addition of other terms would not prevent a finding of confusing similarity.

It is also well established that the top-level domain may generally be disregarded in the confusing similarity test (see, for example, WIPO case No. D2016-2547).

Therefore, the Panel considers that the disputed domain name is confusingly similar to the Complainant's trademark "MOONEY".

Accordingly, the Panel finds that the Complainant has satisfied paragraph 4(a)(i) of the Policy.

RIGHTS OR LEGITIMATE INTERESTS

The second requirement that the Complainant must prove is that the Respondent has no rights or legitimate interests in the disputed domain name.

Paragraph 4(c) of the Policy provides that the following circumstances can be situations in which the Respondent has rights or legitimate interests in the disputed domain name:

(i) before any notice to [the Respondent] of the dispute, [the Respondent's] use of, or demonstrable preparations to use, the [disputed] 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 consumers or to tarnish the trademark or service mark at issue.

This is a non-exhaustive list of circumstances in which a respondent can show rights or legitimate interests in a domain name.

The onus of proving this requirement falls on the Complainant. UDRP panels have recognized that proving that a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of "proving a negative".

Accordingly, it is usually sufficient for a complainant to raise a prima facie case against the respondent and the burden of proof on this requirement shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in a domain name.

The Panel finds that the Complainant has made out a prima facie case that the Respondent does not have rights or legitimate interests in the disputed domain name.

In particular, the Complainant states that:

- nobody has been authorized or licensed to register or use the disputed domain name;

- the disputed domain name does not correspond to the name of the Respondent;

- the Respondent is not commonly known as "MOONEY-FINANZA";

- it does not find any fair or non-commercial uses of the disputed domain name.

In the absence of a Response, there is no indication in the present case that the Respondent is commonly known by the disputed domain name.

Furthermore, the Respondent has failed to demonstrate any of the other non-exclusive circumstances evidencing rights or legitimate interests under paragraph 4(c) of the Policy or other evidence of rights or legitimate interests in the disputed domain name.

The Respondent does not appear to make any legitimate non-commercial or fair use of the disputed domain name, nor any use in connection with a bona fide offering of goods or services. Indeed, the disputed domain name has been used for a website which offers services similar to the Complainant's services.

Taking into account that the Respondent is not identified as the disputed domain name, that the Respondent is not authorized or licensed by the Complainant in any way, that the disputed domain name is used in a website which offers services similar to the Complainant's services, the Panel cannot imagine any possible legitimate justification for this use, and the Respondent has not come forward with any explanation that demonstrates any rights or legitimate interests in the disputed domain name.

Accordingly, the Panel finds that the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

BAD FAITH

Under the third requirement of the Policy, the Complainant must establish that the disputed domain name has been both registered and used in bad faith by the Respondent.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, including:

(i) circumstances indicating that [the Respondent] [has] registered or [has] acquired the [disputed] domain name primarily for the purpose of selling, renting, or otherwise transferring the [disputed] 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 [the Respondent's] documented out-of-pocket costs directly related to the [disputed] domain name; or

(ii) [the Respondent] [has] registered the [disputed] 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 [the Respondent] [has] engaged in a pattern of such conduct; or

(iii) [the Respondent] [has] registered the [disputed] domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the [disputed] domain name, [the Respondent] [has] intentionally attempted to attract, for commercial gain, Internet users to [the Respondent's] web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of [the Respondent's] web site or location or of a product or service on [the Respondent's] web site or location.

The Panel, on the basis of the evidence presented, agrees with the Complainant's contentions that the disputed domain name was registered in bad faith and that it has been used in bad faith.

Other panels considered that knowledge of a corresponding mark at the time of the domain name's registration can suggest bad faith (see, for example, WIPO Case No. D2017-0100). In particular, another panel, in the light of the distinctiveness of the Complainant's trademark "MOONEY" and reputation in the Complainant's field, recently considered reasonable to infer that a registration of a domain name which included the trademark "MOONEY" was made with full knowledge of the Complainant's trademarks (Case CAC-UDRP-104988). The Panel considers that the same reasoning applies also at the present case.

The Panel considers that, on the balance of probability, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website within the terms of paragraph 4(b)(iv) of the Policy.

The Panel observes that if the Respondent had legitimate purposes in registering and using the disputed domain name it would have filed a Response in this proceeding.

The Panel, having taken into account the Respondent's knowledge of the distinctive trademark "MOONEY" trademark at the time of the disputed domain name's registration, that no response to the complaint has been filed and the use of the disputed domain name in a website which offers services similar to the Complainant's services, considers that the disputed domain name was registered and is being used in bad faith.

Accordingly, the Panel finds that the disputed domain name was registered and is being used in bad faith within the meaning of paragraph 4(b)(iv) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

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

PANELLISTS

Name	**Michele Antonini**

DATE OF PANEL DECISION 2024-03-03

Publish the Decision