Decision for dispute CAC-UDRP-106558

Case number	**CAC-UDRP-106558**
Time of filing	**2024-05-27 09:25:46**
Domain names	**paysend.cc**

Case administrator

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

Complainant

Organization	**PaySend Group Limited**

Complainant representative

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

Respondent

Organization	**Tronx Ltd**

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 PaySend Group Limited is the owner of various trademark registrations and in particular:

- International TM registration No.1284999 **"PAYSEND"** (word + device), registration date – October 13, 2015, protected inter alia in the following jurisdictions: the United States, the UK, Turkey, Spain, Poland, Portugal, Germany, Benelux, Switzerland, Sweden, France, Italy, Ukraine, Kazakhstan, Mexico, New Zealand, Zambia, Zimbabwe, the African Intellectual Property Organization, Singapore in respect of some goods in class 09 and some services in class 36 including "financial affairs; monetary affairs; online banking";
- International TM registration No.1251936 "PAYSEND" (word), registration date - April 10, 2015, subsequent designation in some jurisdictions - December 10, 2015, protected inter alia in the following jurisdictions: the UK, the United States, Armenia, Belarus, Bosnia and Herzegovina, Benelux, Ireland, Hungary, Switzerland, China, Colombia, Spain, Sweden, Greece, France, India, Italy, Mexico, New Zealand, Poland, Singapore, Turkey, Kazakhstan, Ukraine, Mexico, New Zealand, the African Intellectual Property Organization in respect of some services in class 36, including "financial affairs; monetary affairs";

- International TM registration No. 1539382 "PAYSEND Money for the future" (word + device), registration date - May 30, 2020, subsequent designation in some jurisdictions on December 16, 2021, protected inter alia in the following jurisdictions: the United States, the UK, Turkey, Ukraine, Australia, Austria, Brazil, Benelux, Belarus, Canada, Spain, Indonesia, Iceland, Switzerland, Republic of Korea, New Zealand, Japan, the African Intellectual Property Organization (OA), and protected for some goods in class 9 and services in class 36, including "financial affairs, including activity relating to the use of crypto- and digital money and crypto-currency; monetary affairs including operations with the use of crypto- and digital money and crypto-currency";

- International TM registration No. 1735950 "**PAYSEND Libre**" (word), registration date - February 23, 2023, protected inter alia in the EU, Switzerland, Australia, the Philippines and Turkey and protected for some goods in class 9 and services in class 36, including "financial affairs, namely, alternative banking services in the nature of online banking and online bill payment and money transfer services; monetary affairs, namely, alternative banking services in the nature of online banking and online bill payment and money transfer services".

The Complainant is also the owner of various domain names including the trademarks PAYSEND under ccTLDs and gTLDs such as <paysend.com>.

FACTUAL BACKGROUND

The Complainant is a large financial technology company with its headquarters in Fife, United Kingdom. The Complainant trades as PAYSEND and has launched a number of PAYSEND-branded financial services-related products including “Paysend Global Transfers”, “Paysend Global Account” and Paysend Connect”. Its services over 4 million customers in more than 90 countries.

The Complainant asserts having a has strong social media presence as well as strong social media presence before the registration date of the disputed domain name.

The Complainant mentioned being recognized as one of the top global money transfer services by various independent sources (No.1 in the ranking in Europe with the score 9.8 by “Top10moneytransfer.com”, one of TOP 3 services in the world by “Fees and Exchange Rates” and by “Customer Satisfaction” by “Monito.com” and in 2022 the Complainant was announced one of the winners of Deloitte’s UK Technology Fast 50, ranking as the 8th fastest growing FinTech company in the UK by revenue growth).

The disputed domain name was registered on May 24, 2023.

The domain name is being used presenting, under an alleged company HAVALE (meaning in Turkish language money transfers, wire), a website potentially offering financial services.

PARTIES CONTENTIONS

The Complainant contends that the requirements of the Policy have been met and that the disputed domains names should be transferred to it. The Complainant makes a number of legal arguments and also supplies a set of annexes providing evidence of its activities and of the Respondent's use of the disputed domain name.

No administratively compliant Response has been filed. It ought to be indicated that the Centre sent to the complaint but nor the advice of delivery thereof was returned to the Czech Arbitration Court. The notice of the Commencement of the administrative proceeding was therefore only sent by e-mail. Yet, the e-mail notice sent to <postmaster@paysend.cc>, <ahmylmz83@gmail.com>, and <marketing@paysend.cc> but the CAC never received any proof of delivery or notification of non-delivery. No further e-mail address could be found on the disputed site.

The Respondent never accessed the online platform.

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

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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 Complainant has established rights in the name PAYSEND. The disputed domain name <paysend.cc> is found to be confusingly similar to the Complainant's Trademark. This finding is based on the settled practice in evaluating the existence of a likelihood of confusion disregarding the top-level suffix in the domain names (i.e. ".cc"), the remaining element of the disputed domain name comprises the Complainant's trade mark, in full and without alteration.

The Panel accordingly finds that the disputed domain name is identical to a trade mark in which the Complainant has rights.

Rights and legitimate interests

The onus to make out a prima facie case that the Respondent lacks rights or legitimate interests is placed on the Complainant. However, once such a prima facie case is made, the Respondent carries the burden of demonstrating rights or legitimate interests in the disputed domain name. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy (see e.g. WIPO case no. D2003-0455, Croatia Airlines d.d. v. Modern Empire Internet Ltd.).

The Complainant has put forward that the Respondent is not commonly known by the disputed domain names. The Respondent is not identified in the Whois under the disputed domain name. Past panels have held that a Respondent was not commonly known by a disputed domain name if the Whois information was not similar to the disputed domain names. The Respondent is in no way related to the Complainant. Nor has the Respondent been granted an authorization or license to use the disputed domain names by the Complainant. This has not been contested by the Respondent. Instead, the Respondent failed to provide any information and evidence whatsoever that could have shown that it has relevant rights or legitimate interests in respect of the disputed domain names (within the meaning of paragraph 4(a) (ii) of the Policy).

Paragraph 4(c) of the Policy sets out circumstances, without limitation, by which a respondent might demonstrate that it has rights or a legitimate interest in a domain name. These are, summarized briefly: (i) if the respondent has been using the domain name in connection with a bona fide offering of goods and services; (ii) if the respondent has been commonly known by the domain name; or (iii) if the respondent has been making a legitimate noncommercial or fair use of the domain name.

The use of the disputed domain name featured a series of untrue claims that it was either closely associated with the Complainant, or was the Complainant, in order to offer either genuine or fraudulent services related to money transfers. Masquerading as the Complainant in this manner cannot amount to a bona fide offering of goods and services [See in this respect section 2.13.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0"):

"Panels have categorically held that the use of a domain name for illegal activity (e.g. the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent".]

The Complainant demonstrated the existence of a functioning MX server that may be used for illicit and fraudulent acts (phishing, impersonation...)

In summary, the Panel concludes that the Respondent did not establish any right or legitimate interest to the disputed domain name (within the meaning of paragraph 4(a)(ii) of the Policy). The Complainant has therefore also satisfied the requirement under paragraph 4(a)(ii) of the Policy and the Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

Bad Faith

The Panel finds that the Complainant has established that the disputed domain name was registered by the Respondent and is being used by the Respondent in bad faith. For this purpose, the Complainant has successfully put forward prima facie evidence that the Respondent has not made use, or demonstrable preparations to use, of either the disputed domain name in connection with a bona fide offering of goods or services, or of making a legitimate non-commercial or fair use of the disputed domain name. This prima facie evidence was not challenged by the Respondent.

The disputed domain name presents a fairly quickly made-up website supposedly offering financial services and a "logo" with the name HAVALE (meaning wire transfers in Turkish language - the geographical identifier "+90" for phone numbers present on the website being the one for Turkey). This could not mislead the Panel to envisage some kind of fair use or bona fide offering goods or services.

So far as bad faith use is concerned, the initial use of the disputed domain name to resolve to a website which purported to

be associated with the Complainant and to offer related financial services establishes that the Respondent was aware of the Complainant and its mark as at the date of registration of the disputed domain name and that it was registered by him to take unfair advantage of the Complainant's mark in some way. In these circumstances, the registration by the Respondent of the disputed domain name, leads to a presumption of bad faith; see, for example, CAC Case No. 101448, Severina Kojić v Orbis d.o.o.

Furthermore, the MX servers are configured. Such making use of the disputed domain name, obviously in a potential fraudulent manner, neither qualifies as a bona fide nor as a legitimate noncommercial or fair use under the UDRP and may not of itself confer rights or legitimate interests in the disputed domain name. The potential collection of personal data or passwords via phishing process being one possible fraudulent act.

The Respondent, for not responding to the complaint, has failed to demonstrate any activity in respect of the disputed domain names, and it is not possible to conceive of any plausible actual or contemplated active use of the domain names by the Respondent that would not be illegitimate, by passing off, infringement of consumer protection legislation, or infringement of the Complainant's rights under trademark law.
In the absence of a Response and given the reputation of the Complainant and its trademark, company name and domain name as supported by the Complainant's evidence, the Panel must conclude that the Respondent was fully aware of the Complainant's trademark, domain name and company name "PAYSEND" at the time of registering the disputed domain name <paysend.cc>.

The Panel concludes that the Respondent has registered and is using the disputed domain name in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy). The Complainant has therefore also satisfied the requirement under 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. **paysend.cc**: Transferred

PANELLISTS

Name	**David-Irving Tayer**

DATE OF PANEL DECISION 2024-07-01

Publish the Decision