Decision for dispute CAC-UDRP-106632

Case number	CAC-UDRP-106632
Time of filing	2024-06-24 11:07:31
Domain names	MOONEYFUND.COM

Case administrator

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

Complainant

Organization	Mooney S.p.A.

Complainant representative

Organization	Perani Pozzi Associati

Respondent

Name	Kolleen Doucee

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, trading under the company name Mooney S.p.A., is owner of several trademarks registered worldwide, consisting of the term "MOONEY", including but not limited to:

- Italian trademark registration n. 302020000038617 “MOONEY” (word), filed on May 20, 2020, registered since October 7, 2020, in classes 9, 36, 37, 38 and 42;
- International trademark registration n. 1547324 “MOONEY” (word), registered since June 18, 2020, in classes 9, 36, 37, 38 and 42;
- EU trademark registration n. 018248141 “MOONEY” (word), filed on June 3, 2020, registered since September 16, 2020, in classes 9, 36, 37 and 38;
- EU trademark registration n. 018365022 “MOONEY” (device), filed on December 29, 2020, registered since June 3, 2021, in classes 9, 16, 35, 36, 37, 41 and 42;
- EU trademark registration n. 018656425 “MOONEY” (word), filed on February 15, 2022, registered since June 30, 2022, in classes 12, 25 and 41;
- EU trademark registration n. 018656431 “MOONEY” (device) , filed on February 15, 2022, registered since July 5, 2022, in classes 12, 25, 36 and 41.

The Complainant is also owner of numerous domain names, including <mooney.it>, <mooney.jp>, <mooney.ar>, <mooney.lu>, <mooney.co.th>, <mooneygo.nl>, <mooneygo.de>, <mooneygo.fi>, <mooneygo.pl>.

The above-mentioned rights are hereinafter referred to as the "Mooney Trademark".

FACTUAL BACKGROUND

The Complainant is an Italian company, founded in December 2019, offering 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 Respondent is an individual residing in the US.

The disputed domain name was registered on November 2, 2023 and resolves to a parking page with pay-per-click (PPC) links related to financial services.

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.

The Respondent filed a Non-standard communication affirming that she was in the process of setting up a company under the laws of Florida with the name MooneyFund LLC.

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.

On June 25, 2024, the CAC notified the Respondent about the commencement of this administrative proceeding, informing her about the 20 calendar days Response-period. The CAC also informed the Respondent that she might have requested an extension of additional 4 calendar days.

On July 11, 2024, the CAC sent a reminder to the Respondent that the Response would expire on July 15, 2024.

On July 16, 2024 at 07:07, the CAC notified the Notice of Default of the Respondent, informing also that:

"neither the written notice of the Complaint nor the advice of delivery thereof was returned to the Czech Arbitration Court. The CAC is therefore unaware whether the written notice was received by the Respondent or not.

As far as the e-mail notice is concerned, we received a notification that the e-mail sent to postmaster@mooneyfund.com was returned back as undelivered - (please find the notification enclosed). The e-mail notice was also sent to kolleenemilymartin@gmail.com, but we never received any proof of delivery or notification of undelivery.

No further e-mail address could be found on the disputed site".

On the same day (i.e., July 16, 2024 at 10:54), the CAC appointed the undersigned Panelist to render the decision by July 30, 2024.

On July 16, 2024 at 14:57, the Respondent filed a Non-standard communication, asserting, inter alia, that:

"My name is Kolleen Doucette. Correct address: 461 Ponce De Leon Blvd, Belleair, FL 33756 Apologies for the delay in response. This was originally sent to an old email address, as well as a previous address. [...] In addition, I will be getting my own legal representation involved and aware of this filed suit."

On July 17, 2024, the Panel, in virtue of her powers as set forth in paragraph 10 of the Rules, and in particular that:

"(a) [T]he Panel shall conduct the administrative proceeding in such manner as it considers appropriate in accordance with the Policy and these Rules.

(b) [I]n all cases, the Panel shall ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case.

(c) [T]he Panel shall ensure that the administrative proceeding takes place with due expedition. It may, at the request of a Party or on its own motion, extend, in exceptional cases, a period of time fixed by these Rules or by the Panel",

to ensure that the Respondent is given a fair opportunity to present her case and that, at the same time, the administrative proceeding takes place with due expedition, issued a Procedural Order, ordering the Respondent to submit her Response in accordance with the Policy, the Rules and the CAC's Supplemental Rules within five (5) calendar days from the date of communication of such order.

The Panel has also pointed out in her Procedural Order, that in case of non-compliance by the Respondent, the Panel would draw such inferences therefrom as she considers appropriate.

Both Parties accessed to the Panel's Procedural Order on July 17, 2024. However, the CAC has not received neither any reply, nor the Respondent's Response.

PRINCIPAL REASONS FOR THE DECISION

The Panel shall decide the Complaint on the basis of the statements and documents submitted and in accordance with the Policy, the Rules and any rules and principles of law that she deems applicable (paragraph 15(a) of the Rules).

Under paragraph 4(a) of the Policy, the Complainant is required to prove each of the following three elements to succeed in the administrative proceeding:

(i) the disputed domain name is identical or confusingly similar to a trade mark 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 by the Respondent in bad faith.

If all three elements are met by Complainant, the disputed domain name is ordered to be transferred to Complainant. If one or more elements are not met, the Complaint is denied, and the domain name registration remains intact.

Therefore, the onus of meeting the above threshold is incumbent on Complainant. The evidentiary standard in UDRP disputes is the "balance of probabilities", meaning that a Party should demonstrate to the Panel's satisfaction that it is more likely than not that a claimed fact is true.

Paragraphs 3 and 5 of the Rules provide the Parties with guidance on the content of the Complaint and the Response. This is, because the Rules in principle provide only for a single round of pleadings, and do not contemplate discovery as such. The Panel may undertake limited factual research into matters of public record. Therefore, it is the Parties' job to make out their cases and the Panel's assessment will normally be made on the basis of the evidence presented in the Complaint and the Response.

In accordance with Paragraph 15(d) of the Rules, the Panel shall determine the admissibility, relevance, materiality and weight of the evidence presented.

I. THE COMPLAINANT'S RIGHTS AND THE CONFUSING SIMILARITY OF THE DISPUTED DOMAIN NAME TO THE COMPLAINANT'S MARK

The Complainant has established that it has trademark rights in the Mooney Trademark.

In UDRP disputes the test for identity or confusing similarity involves a reasoned but relatively straightforward comparison between the complainant's trademark and the disputed domain name. This test typically a side-by-side comparison of the alpha-numeric domain name and the textual components of the relevant mark to assess whether the mark is recognizable within the domain name. In cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing. The addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) to the complainant's trademark does not prevent a finding of confusing similarity under the first element. The Top-Level Domain (TLD) is usually to be ignored for the purpose of determination of identity or confusing similarity between the disputed domain name and the complainant's trademark as it is a technical requirement of registration.

In assessing identity or confusing similarity, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark, because it incorporates the entirety or at least the distinctive part of such mark, namely the distinctive term "MOONEY", combined with the generic and descriptive term "FUND" and the TLD ".COM". This additional term neither affects the attractive power of the Complainant's trademark, nor is sufficient to distinguish the disputed domain name from the Complainant's mark. Rather, being related to the Complainant's business (financial and payment services), it even increases the likeliness of confusion between the disputed domain name and the Complainant's trademark. Therefore, the Internet users might erroneously believe that the disputed domain name and any related web services (website, email, etc.,) are operated, sponsored or endorsed by the Complainant.

Hence, this Panel finds that the Complainant has proven the first element of the paragraph 4(a) of the Policy and the disputed domain name is confusingly similar to the Complainant's mark.

II. THE RESPONDENT'S LACK OF RIGHTS OR LEGITIMATE INTERESTS IN RESPECT OF THE DISPUTED DOMAIN NAME

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the disputed domain names. If the Complainant makes out a prima facie case that the Respondent lacks rights or legitimate interests, the burden of production on this element shifts to the Respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name.

But by virtue of paragraph 4(c) of the Policy, any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on her evaluation of all evidence presented, shall demonstrate the Respondent's rights or legitimate interests to the domain name:

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

Thus, if the Respondent proves any of these elements or indeed anything else that shows that she has a right or legitimate interest in the domain name, the Complainant will have failed to discharge its onus and the Complaint will fail. If the Respondent fails to come forward with such relevant evidence, the Complainant is deemed to have satisfied the second element.

The Complainant contends to have no relationship whatsoever with the Respondent. The Respondent has never received any approval of the Complainant, expressed or implied, to use the Complainant's trademark or to register and use the disputed domain name.

The Respondent, identified by the Registrar as Kolleen Doucee (US), alleges that she is in the process of setting up a company under the laws of Florida with the name MooneyFund LLC. Although the Respondent was ordered by the Panel's Procedural Order dated July 17, 2024 to submit her Response, she has not filed the Response. Thus, the Respondent has not provided any documentary evidence to support her claim. Accordingly, no evidence is available that the Respondent, as an individual, business, or other organization, has been commonly known by the disputed domain name or has acquired any rights in a trademark or trade name corresponding to the disputed domain name. The Respondent's conclusory statements on her rights and legitimate interests in respect of the disputed domain name unsupported by relevant evidence are insufficient to prove her case.

UDRP panels have found that domain names identical or confusingly similar to a complainant's trademark carry a high risk of implied affiliation. A domain name consisting of a trademark plus an additional term at the second- or top-level is seen as tending to suggest sponsorship or endorsement by the trademark owner. Thus, UDRP panels have largely held that such composition cannot constitute fair use.

Moreover, the disputed domain name resolves to a parking page with PPC links to third parties' sites and to services competing with the Complainant's services or capitalizing on the reputation and goodwill of the Complainant's mark. Such use of the domain name is clearly not a legitimate non-commercial or fair use, without intent for commercial gain to misleadingly divert consumers or to tarnish the Complainant's mark.

Having considered the above circumstances, in absence of any relevant evidence proving the Respondent's rights or legitimate interests in respect of the disputed domain name, the Panel finds, on the balance of probabilities, that the Respondent is more likely to have registered the disputed domain name in order to target the Complainant's trademark.

Therefore, the Panel is satisfied that the Complainant has met the second requirement of the paragraph 4(a) of the Policy and finds that the Respondent lacks rights or legitimate interests to the disputed domain name.

III. THE REGISTRATION AND THE USE OF THE DISPUTED DOMAIN NAME IN BAD FAITH

The Complainant has sufficiently demonstrated to own trademark rights in the Mooney Trademark since 2020. The Complainant's trademark was registered prior to the date of registration of the disputed domain name (November 2, 2023), and is valid also in the territory where the Respondent resides (US).

The disputed domain name is to be considered confusingly similar to the Complainant's trademark, since it incorporates the entirety or at least the distinctive part of the Complainant's trademark, namely the term "MOONEY". The addition of the generic and descriptive term "FUND", related to the Complainant's business, and the TLD ".COM" (technical requirement of the registration) are not sufficient elements to escape the finding of confusing similarity between the disputed domain name and the Complainant's trademark. Considering that the Complainant provides payment services, the Respondent's choice to add a generic and descriptive term concerning such services to the Complainant's trademark shows the Respondent's clear intention to enhance such likeliness of confusion for the Internet users who are seeking or expecting the Complainant.

Given the distinctiveness and reputation of the Complainant's prior mark, it is inconceivable that the Respondent could have registered the disputed domain name for a mere chance without actual knowledge of the Complainant's rights in such mark and the intention to exploit such reputation by diverting traffic away from the Complainant's website.

Even assuming that the Respondent had no knowledge of the Complainant's prior mark at the time of registration of the disputed domain name (which is quite unlikely), she omitted to verify that the disputed domain name would have infringed the Complainant's earlier rights or, even worse, she verified it and deliberately proceeded with the infringing registration and use.

The Complainant has submitted the results of a Google search carried out regarding the term "MOONEY", all of them related to the Complainant. Should the Respondent have performed a similar search on the Internet before registering the disputed domain name, she would have easily learnt about the Complainant's activities and trademark.

Under paragraph 2 of the Policy, it is the Respondent's responsibility to determine whether the domain name registration infringes or violates third party's rights. By registering the disputed domain name confusingly similar with the Complainant's mark, the Respondent has violated, inter alia, the cited provision of the Policy.

The disputed domain name resolves to a PPC page. While the sale of traffic (i.e., connecting domain names to parking pages and earning click-per-view revenue) does not in and of itself constitute bad faith, in the present case, considering that the webpage associated to the disputed domain name contains PPC links related to services competing with the Complainant's (financial and payment) services, the Panel finds that, by registering and using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to her website, by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of her website or a product or service on her website (paragraph 4(b)(iv) of the Policy).

The Complainant has, therefore, discharged the burden of proof to show that the disputed domain name has been registered and is being used in bad faith (paragraph 4(a)(iii) of the Policy).

The disputed domain name is to be transferred to the Complainant.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **MOONEYFUND.COM**: Transferred

PANELLISTS

Name	**Ivett Paulovics**

DATE OF PANEL DECISION 2024-07-23

Publish the Decision