Decision for dispute CAC-UDRP-106633

Case number	CAC-UDRP-106633
Time of filing	2024-06-28 09:42:13
Domain names	MOONEYME.COM

Case administrator

Name	Olga Slanařová (Case admin)

Complainant

Organization	Mooney S.p.A.

Complainant representative

Organization	Perani Pozzi Associati

Respondent

Organization	Carlos Ortolá Adell

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 owns several trademarks consisting of the word element “MOONEY”:

Some of the most relevant trademarks are as follows:

- 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>.

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 Spain who registered the disputed domain <mooneyme.com> on 13 March, 2024. The disputed domain name resolves to an active website related to financial services.

PARTIES CONTENTIONS

COMPLAINANT' CONTENTIONS:

Identical or confusingly similar

The Complainant argues that the disputed domain names and the Complainant's registered trademarks “MOONEY” are confusingly similar.

The Complainant argues that its trademarks are fully contained within the disputed domain name and points out that the elements in which the signs vary do not alter the overall confusion between them.

No rights or legitimate interests

The Complainant argues that there is no evidence at all that the Respondent is commonly known by the disputed any of the domain names or a name corresponding to the disputed domain name, nor that the Respondent is making any fair or non-commercial uses of the disputed domain name. Moreover, the Complainant states that the Respondent is being using the Complainant’s trademark without any authorization provided by the Complainant.

Registered and used in bad faith

As far as bad faith registration is concerned, the Complainant states that since the disputed domain name is confusingly similar to the Complainant´s registered trademarks, and even a basic Google search in respect of the wordings “MOONEY” and “MOONEY ME”, shows the name of the Complainant´s registered trademarks, it is more than likely that the disputed domain name would not have been registered without full knowledge of the Complainant’s right over the name “MOONEY”. This is, in view of the Complainant, clear evidence of registration of the domain name in bad faith.

As far the use of the disputed domain names concerns, the Complainant point out that the disputed domain name is connected to a website sponsoring financial services, for whom the Complainant’s trademarks are registered and used, using the trademark “MOONEYME” and reproducing a font similar to the one of the trademark “MOONEY” registered and used by the Complainant. Consequently, in view of the Complainant, Internet users, while searching for information on the Complainant’s services, are confusingly led to the website of the Respondent. Therefore, the Complainant deems that the Respondent has registered and is using the domain name at issue to intentionally divert traffic away from the Complainant’s web site and to gain advantage from Complainant’s activity, investments and reputation.

RESPONDENT'S CONTENTIONS:

The Respondent did not respond to the Complaint.

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 first issue in this case concerns the language in which the UDRP proceeding can be conducted.

The Respondent chose Spanish as a language of the registration agreement. However, the Complainant wishes the proceeding to be conducted in English.

In this regard, the Rules for the Uniform Domain Name Dispute Resolution Policy (UDRP) dictate in the article 11 rules for the language used in a dispute proceeding as follows:

(a) Unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding.

(b) The Panel may order that any documents submitted in languages other than the language of the administrative proceeding be accompanied by a translation in whole or in part into the language of the administrative proceeding.

In deciding the appropriate language for the proceeding, the Panel considers that the Respondent understands English because the website associated with the disputed domain name is in both English and Spanish. Considering the Respondent's knowledge of English and the absence of its response after being given a fair opportunity to file a statement of arguments and answer the Complaint, the Panel finds it unreasonable and unnecessary to request the Complainant to provide evidence in Spanish in order to switch the proceeding to English at this stage.

Consequently, 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 of the Rules states that the Panel shall decide a 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 deemed applicable.

Considering the Respondent’s default to answer the Complaint, the Panel proceeds therefore to decide only on the basis of the Complainant’s factual statements and the documentary evidence provided in support of them.

1.As far the similarity test, the Panel finds that the disputed domain name <mooneyme.com> is visually, conceptually and phonetically very similar with the registered trademarks in which the Complainant proved having rights, given that the disputed domain name includes entirely the main distinctive element of the family of the registered trademarks “MOONEY”.

Moreover, the addition of a different TLD “.com”, which would usually be disregarded as it is a technical requirement of registration, do not alter the overall very similar impression the disputed domain name and the registered trademark produce.

Accordingly, the Panel considers that the disputed domain name and the registered trademark in which the Complainant has the rights are confusingly similar and infers that paragraph 4(a)(i) of the Policy is satisfied.

2.According to the Complainant’s contentions and evidence submitted within this proceeding, which were not disputed, the Respondent does not appear to be in any way related to the Complainant's business, does not act as the agent of the Complainant, and has not been authorized to use a trademark “MOONEY”, or any combination of such trademark.

Consequently, and in the absence of a Response, the Panel finds that the Respondent does not have any rights or legitimate interests in the disputed domain names, so that the requirements of paragraph 4(a)(ii) of the Policy are met.

3.As to the bad faith at the time of the registration, the Panel finds that, in light of the high grade of similarity between the disputed domain name and the trademark family containing the name “MOONEY”, the Respondent was more likely to be aware of the Complainant’s rights over the name trademark “MOONEY” at the time of the registration of the disputed domain name.

Indeed, by choosing and registering the disputed domain name which represents a confusingly similar or almost identical version of trademarks that are already registered by third person, the Respondent is likely to act in bath faith by deliberately introducing slight deviations into registered trademark for its future potential commercial gain.

While the Panel is not persuaded by the Complainant's claim that the website on the disputed domain name resembles the Complainant's website (they appear to be very different in style), in circumstances where the Complainant has presented a credible prima facie case that the Respondent was likely aware of the Complainant and the date the disputed domain name was registered, it is probable that the Respondent intended to take advantage of the Complainant's registered trademark used in connection with the financial services sector. In view of such circumstances, the Panel accepts, on the balance of probabilities, that the Complainant's contentions in this respect are correct. This is particularly so where claims to this effect have been advanced not just in this Complaint but also in a cease-and-desist letter prior to the Complaint, and the Respondent has not sought to dispute the same.

Furthermore, the Complainant contends that the Respondent seeks to take advantage of confusion arising between the disputed domain name and the Complainant's trademark for financial gain, which falls within the scope of the example of circumstances indicating bad faith set out in paragraph 4(b)(iv) of the Policy. That might well be correct, but even if the Respondent's use of the disputed domain name does not strictly fall within the scope of paragraph 4(b)(iv), the Panel considers, based on the evidence submitted by the Complainant and in the absence of any contrary explanation or evidence from the Respondent, that some form of unfair advantage was and is intended, which is sufficient for a finding of bad faith registration and use (see section 3.1 of the WIPO Overview).

Accordingly, the Panel finds that the Complainant has satisfied 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. **MOONEYME.COM**: Transferred

PANELLISTS

Name	**Hana Císlerová**

DATE OF PANEL DECISION 2024-08-05

Publish the Decision