Decision for dispute CAC-UDRP-106631

Case number	CAC-UDRP-106631
Time of filing	2024-07-11 10:27:03
Domain names	smartpaysend.com

Case administrator

Name	Olga Slanařová (Case admin)

Complainant

Organization	PaySend Group Limited

Complainant representative

Organization	Motsnyi Consulting (dba Motsnyi Legal)

Respondent

Name	City Remit

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, among others, of the following trademarks for PAYSEND:

- International TM registration No.1284999 registered on October 13, 2015;
- International TM registration No.1251936 registered on April 10, 2015;

, as well as of many further trademarks comprising the PAYSEND term.

FACTUAL BACKGROUND

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

The Complainant states that it is a global FinTech company which serves over seven million customers and operates in over 170 countries globally providing financial services and international card-to-card transfers.

The Complainant further states that it is the owner of the PAYSEND trademark since 2015.

The disputed domain name was registered on January 28, 2024 and it resolves to a website that claims to offer money transfer and

money exchange services, identical to the Complainant's ones.

PARTIES CONTENTIONS

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 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).

The disputed domain name <smartpaysend.com> is confusingly similar to the PAYSEND trademark, as it clearly incorporates such trademark in its entirety, with the addition of the laudative (and generic) term "smart".

Accordingly, the Panel finds that Complainant has proven the first element of the Policy.

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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).

According to the WIPO case No. D2003-0455, Croatia Airlines d. d. v. Modern Empire Internet Ltd., the complainant is required to make out a prima facie case that the respondent lacks rights or legitimate interests. Once such prima facie case is made, the respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the respondent fails to do so, the complainant is deemed to have satisfied paragraph 4(a) (ii) of the Policy.

Given what stated by the Complainant and without any response from the Respondent, the Panel infers that there is no indication that the disputed domain name was intended to be used in connection with a bona fide offering of goods or services as required by Policy.

The evidentiary burden shifts to the Respondent to show by concrete evidence that it does have rights or legitimate interests in that name. However, the Respondent failed to provide any information and evidence that it has relevant rights or legitimate interests in respect of the disputed domain name (within the meaning of paragraph 4(a) (ii) of the Policy).

The Panel thus finds that Complainant has proven the second element of the Policy.

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The Panel finds that the Complainant successfully submitted prima facie evidence that the Respondent has made no use of, or demonstrable preparations to use, neither of the disputed domain name in connection with a bona fide offering of goods or services, nor is making a legitimate non-commercial or fair use of the disputed domain name.

Here, Complainant has specifically argued that bad faith exists pursuant to, inter alia, paragraph 4(b)(iv) of the Policy because the website associated with the disputed domain name resolves to a website offering the very same services of the Complainant 'ones and there are some suspicious circumstances, including among others:

- the timing of the disputed domain name registration, well after the PAYSEND trademark has been registered and is used in many Countries;
- the use of false contact details on the website connected to the disputed domain name.

In addition to the above, the Panel notes that (i) the above website sponsors an app called SMARTPAYSEND, but when redirecting to the page https://smartpaysend.com/downloads/ it will be easily noted that the app does have a completely different name and that (ii) the Respondent left a link to TrustPilot.com for reviewing such app, but when redirected toward such website a further different name appears (https://www.trustpilot.com/review/www.placid.net?utm_medium=trustbox&utm_source=Carousel).

As indicated in the decision for CAC Case No. 104089 involving the Complainant, "Given the use to which the Respondent put the disputed domain name following registration, as described above, it is highly improbable that the Respondent registered the disputed domain name without an awareness of the Complainant and its trade mark rights ... it is rather obvious to the Panel that the Respondent by using the disputed domain name, has intentionally attempted to attract, for commercial gain, Internet users to its website, by creating a likelihood of confusion with the Complainant's mark".

The Respondent has failed to demonstrate any activity in respect of the disputed domain name and decided not to reply to the Complaint: with no Response and taking into account the reputation of the Complainant supported by the Complainant's evidence, 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. **smartpaysend.com**: Transferred

PANELLISTS

Name	**Tommaso La Scala**

DATE OF PANEL DECISION 2024-08-08

Publish the Decision