Decision for dispute CAC-UDRP-106704

Case number	CAC-UDRP-106704
Time of filing	2024-07-18 08:44:08
Domain names	MOONEYFINANZA.COM

Case administrator

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

Complainant

Organization	Mooney S.p.A.

Complainant representative

Organization	Perani Pozzi Associati

Respondent

Organization	Not available

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 relies on the following (among other) registered trademarks:

- International trademark registration no. 1547324 for the word mark “MOONEY”, granted on June 18, 2020, in classes 9, 36, 37, 38 and 42;

- EU trademark registration no. 018248141 for the word mark "MOONEY”, filed on June 3, 2020, granted on September 16, 2020, in classes 9, 36, 37 and 38;

- EU trademark registration no. 018656425 for the word mark “MOONEY”, filed on February 15, 2022, granted on June 30, 2022, in classes 12, 25 and 41.

FACTUAL BACKGROUND

The Complainant has carried on a substantial business providing money transfer services under the mark "MOONEY" since 2020, particularly in Italy, and is the owner of the above registrations of this mark. The Respondent registered the disputed domain name on 17 November 2023. It currently locates a parking page.

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.
No administratively compliant Response has been filed.

RIGHTS

The Panel finds that the Complainant has registered rights in the mark "MOONEY", including the above registrations of which it is the proprietor. The disputed domain name consists of this mark together with the generic word "finanza" (meaning "finance" in Italian) and the generic top level domain name suffix, .com. The Complainant has a substantial business providing payment transfer services in Italy. The Panel has no doubt that many Internet users would assume that the disputed domain name locates a website of the Complainant and that it is confusingly similar to the Complainant's mark.

The Complainant has, to the satisfaction of the Panel, shown that 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 Panel notes that the disputed domain name was registered by the Respondent on 17 November 2023 and currently resolves to a parking page. The Panel further notes that in his reply to the Complainant's letter, the Respondent referred to the cost he incurred in purchasing the disputed domain name but no cost of any preparation to use it for a bona fide offering of goods or services. The Panel is satisfied on the undisputed evidence that the Respondent has not used or made preparations to use the disputed domain name for any bona fide offering of goods or services.

The Panel is also satisfied on the undisputed evidence that the Respondent is not commonly known by the disputed domain name or any corresponding name and is not making any legitimate non-commercial or fair use of it, and that the Complainant has not authorised or licensed the Respondent to use it.

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 Panel notes that the Complainant's attorneys wrote to the Respondent on 14 February 2024, setting out the Complainant's trademark rights and demanding transfer of the disputed domain name. The Respondent replied the same day, stating:

"I acknowledge receipt of your request to claim the domain name that I legally acquired by purchasing it on a site.
I am well aware of your desire to defend your client by claiming this domain.
I would transfer it if I got it legally but here, this domain belongs to me and I acquired it by purchase.
If your client is really interested in recovering this domain name, I am open to any negotiation.
I will not give away for free what I had to buy with my money."

The Panel considers that the disputed domain name obviously refers to the Complainant's business and that, on the balance of probabilities, the Respondent knew this when he purchased it. The Panel further finds that the correspondence described above (including the reference to "any negotiation") indicates that the Respondent acquired the disputed domain primarily for the purpose of selling it to the Complainant or a competitor of the Complainant for valuable consideration in excess of his documented out-of-pocket costs of acquisition.

In accordance with paragraph 4(b)(i) of the Policy, this constitutes evidence of registration and use of the disputed domain name in bad faith. There is no evidence displacing this presumption. Accordingly, 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 Complaint was initially filed in English, but should have been filed in French, since the language of the registration agreement is French. The CAC drew this to the attention of the Complainant and invited the Complainant either to file an amended Complaint in French or to request a change of the language of the proceedings to English. The Complainant filed an amended Complaint

containing a full translation into French and did not request a change of the language of the proceeding.

However, the Panel notes that the Respondent replied promptly in English to the letter of the Complainant's attorneys in English. The Panel considers that the Respondent will not be prejudiced by the issue of this decision in English rather than French. The CAC has provided the Panel with its standard template for decisions in English. In these circumstances, efficiency favours changing the language of the proceedings to English for the purpose of the decision and any subsequent proceedings, and the Panel determines that the language of the proceedings should be changed accordingly pursuant to paragraph 11(a) of the UDRP Rules.

Subject to the above, the Panel is satisfied that all procedural requirements under the UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

The disputed domain name consists of the Complainant's registered mark, a generic term for the Complainant's business, and the generic top level domain name suffix. The Respondent has not used or made preparations to use the disputed domain name for any bona fide offering of goods or services or for any legitimate not commercial or fair use. The Respondent is not commonly known by the disputed domain name and has not been authorised by the Complainant to use it. Correspondence indicates that the Respondent registered the disputed domain name primarily for the purpose of selling it to the Complainant or a competitor for valuable consideration in excess of out-of-pocket costs. Paragraph 4(b)(i) of the Policy applies. All the requirements of paragraph 4(a) of the Policy are satisfied.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **MOONEYFINANZA.COM**: Transferred

PANELLISTS

Name	**Jonathan Turner**

DATE OF PANEL DECISION 2024-09-03

Publish the Decision