Decision for dispute CAC-UDRP-107075

Case number	CAC-UDRP-107075
Time of filing	2024-11-28 10:05:51
Domain names	MOONEY.NETWORK

Case administrator

Name	Olga Slanařová (Case admin)

Complainant

Organization	Mooney S.p.A.

Complainant representative

Organization	Perani Pozzi Associati

Respondent

Name	Andre Miro

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 registrations for the trademark “MOONEY”:

- International trademark registration n. 1547324 “MOONEY”, granted on June 18, 2020, in connection with classes 9, 36, 37, 38 and 42;

- EU trademark registration n. 018248141 “MOONEY”, filed on June 3, 2020, granted on September 16, 2020, in connection with classes 9, 36, 37 and 38;

- EU trademark registration n. 018656425 “MOONEY”, filed on February 15, 2022, granted on June 30, 2022, in connection with classes 12, 25 and 41;

- EU trademark registration n. 018656431 “MOONEY & device”, filed on February 15, 2022, granted on July 05, 2022, in connection with classes 12, 25, 36 and 41;

- EU trademark registration n. 018365022 “MOONEY”, filed on December 29, 2020, granted on June 03, 2021, in connection with classes 9, 16, 35, 36, 37, 41 and 42;

-Italian trademark registration n. 302020000038617 “MOONEY”, filed on May 20, 2020, granted on October 7, 2020, in connection

with classes 9, 36, 37, 38 and 42.

Complainant is also the owner, among others, of the following domain names bearing the sign “MOONEY”: MOONEY.IT, MOONEY.JP, MOONEY.AR, MOONEY.LU, MOONEY.CO.TH, MOONEYGO.NL, MOONEYGO.DE, MOONEYGO.FI, MOONEYGO.PL, etc.

On January 12, 2024, the Respondent registered the disputed domain name MOONEY.NETWORK.

FACTUAL BACKGROUND

Mooney S.p.A. is a company born in December 2019 that offers excellence and security in payments. In particular, the Complainant 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 the physical experience, with the widest range of services perfectly integrated between physical and digital channels. In this way Complainant has become the first Proximity Banking & Payments company in Italy.

The Complainant is the owner, among others, of several registrations for the trademark "MOONEY" and of domain names containing the wording "MOONEY":

On January 12, 2024, the Respondent registered the disputed domain name MOONEY.NETWORK.

The Complainant believes that it is more than obvious that the disputed domain name at issue is identical, or – at least – confusingly similar, to the above-mentioned trademarks. In particular, the disputed domain name at issue exactly reproduces the trademark “MOONEY”.

In the view of the Complainant the Respondent has no rights on the disputed domain name, and any use of the trademark “MOONEY” has to be authorized by the Complainant. The disputed domain name at stake does not correspond to the name of the Respondent and, to the best of Complainant's knowledge, the Respondent is not commonly known as “MOONEY”. Lastly, the Complainant does not find any fair or non-commercial uses of the disputed domain name at stake.

The Complainant states that the Complainant’s trademark “MOONEY” is distinctive and well-known all around the world. The fact that the Respondent has registered a domain name that is confusingly similar to it indicates that the Respondent had knowledge of the Complainant’s’ trademark at the time of registration of the disputed domain name. In addition, the Complainant is of the view, that if the Respondent had carried even a basic Google search in respect of the wording “MOONEY”, the same would have yielded obvious references to the Complainant. The Complainant believes that therefore, it is more than likely that the disputed domain name would not have been registered if it were not for Complainant’s trademark, which is a clear indication of bad faith.

In addition, the disputed domain name is not used for any bone fide offerings. More particularly, there are present circumstances indicating that, by using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to his web site, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of his web site (par. 4(b)(iv) of the Policy).

The Complainant argues that several services can be detected, but not in good faith: in fact, the disputed domain name was initially linked to a web page reproducing the trademark “MOONEY” and using the same colours of Mooney S.p.A.’s official website. Currently, the disputed domain name redirects to a website sponsoring financial services and in particular a protocol for carrying out secure and confidential transactions continuing to reproduce the trademark “MOONEY” and use the same colours of Complainant’s official website.

Consequently, the Complainant states that 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 disputed domain name in order to intentionally divert traffic away from the Complainant’s website and to gain advantage from Complainant’s activity, investments and reputation.

The current use of the disputed domain name, which allows accessing to the web site of the Respondent, causes, as well, great damages to the Complainant, due to the misleading of their present clients and to the loss of potential new ones.

The Complainant is of the view, that the Respondent's commercial gain is evident, since it is obvious that the Respondent's sponsoring activity is being remunerated.

Lastly, the Complainant states it shall be noted that on March 27, 2024 the Complainant's attorneys sent to the Respondent's Registrar a cease and desist letter, asking to forward the document to the domain name owner in order to require the voluntary transfer of the domain name at issue. Despite such communication, the Respondent did not comply with the above request.

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 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 Panel is satisfied that the Complainant owns several registered trademark rights for the term "MOONEY."

To satisfy the first element of the Policy it is usually sufficient for a complainant to show that the relevant mark is "recognizable within the Disputed Domain Name"; see section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (the "WIPO Overview 3.0"). The disputed domain name takes the form "mooney" in combination with the ".network" new generic Top-Level Domain ("new gTLD"). Therefore, the mark relied upon by the Complainant is clearly recognizable in the disputed domain name.

The Complainant has, therefore, satisfied the Panel that the disputed domain name is confusingly similar to trademarks in which it has rights and has thereby made out the requirements of paragraph 4(a)(i) of the Policy.

The Complainant has also made a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent is not affiliated with or authorized by the Complainant to use the MOONEY mark. The Respondent is not commonly known by the disputed domain name, nor is there any evidence of the Respondent's legitimate use of the disputed domain name. At the time of the Complaint, the disputed domain name resolved to an inactive webpage, and no evidence suggests any preparation for bona fide use.

The Respondent's failure to respond to the Complainant's cease-and-desist letters further supports a lack of legitimate interests.

The Panel concludes that the Respondent has no rights or legitimate interests in the disputed domain name.

The third element requires the Complainant to show that the disputed domain name has been registered and used in bad faith under paragraph 4(a)(iii) of the Policy. Hallmark Licensing, LLC v. EWebMall, Inc., WIPO Case No. D2015-2202 ("The standard of proof under the Policy is often expressed as the "balance of the probabilities" or "preponderance of the evidence" standard. Under this standard, an asserting party needs to establish that it is more likely than not that the claimed fact is true.").

Further, Paragraph 4(b) of the Policy sets out four circumstances, in particular but without limitation, any one of which may be evidence of the registration and use of a domain name in bad faith. The four specified circumstances are:

(i) circumstances indicating that the respondent has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of the respondent's documented out-of-pocket costs directly related to the domain name; or

(ii) the respondent has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct; or

(iii) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to the respondent's website or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the respondent's website or location or of a product or service on the site or location.

The Panel finds that the Complainant has shown that the Respondent registered and used the disputed domain name in bad faith both in general (i.e. under paragraph 4(a)(iii) of the Policy) and in particular because the Respondent's conduct puts the case within paragraph 4(b)(iv) of the Policy for the following reasons:

The Complainant's MOONEY trademark is distinctive and enjoys a considerable reputation within the finance industry, and in particular for Complainant's paytech services. According, it is therefore reasonable to infer that the Respondent either knew, or should have known, that the disputed domain name would be confusingly similar to, the Complainant's trademarks and that they registered the disputed domain name with knowledge of the Complainant's trademarks. If the Respondent had carried even a basic Google search in respect of the wording "MOONEY", the same would have yielded obvious references to the Complainant. There is no credible evidence that the Respondent is commonly known by the disputed domain name and the Complainant asserts that the Respondent has never been authorized or licensed by the Complainant to use the Complainant's trademark(s) and/or register the disputed domain name, nor is there any business or other association between the Complainant and the Respondent. Several services can be detected, but not in good faith. The disputed domain name was initially linked to a web page reproducing the trademark "MOONEY" and using the same colours of Mooney S.p.A.'s official website. Currently, the disputed domain name redirects to a website sponsoring financial services and in particular a protocol for carrying out secure and confidential transactions continuing to reproduce the trademark "MOONEY" and use the same colours of Complainant's official website. All of these services

are connected to Complainant business.

Consequently, Internet users, while searching for information on the Complainant's services, are confusingly led to the website of the Respondent.

The Panel therefore agrees that the Respondent has registered and is using the disputed domain name in order to intentionally divert traffic away from the Complainant's website and to gain advantage from the Complainant's activity, investments and reputation.

The Respondent's commercial gain is evident, since it is obvious that the Respondent's sponsoring activity is being remunerated.

As a final point, the Panel draws a negative inference from Respondent's silence though these proceedings, especially that Respondent showed no reaction to the cease and desist letter.

In light of the above analysis, the Panel concludes that the Complainant has made out its case that the disputed domain name was registered and is being used in bad faith, and thus has satisfied the requirements under paragraph 4(a)(iii) and 4b. of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **MOONEY.NETWORK**: Transferred

PANELLISTS

Name	**Jan Schnedler**

DATE OF PANEL DECISION 2024-12-23

Publish the Decision