

Decision for dispute CAC-UDRP-104684

Case number	CAC-UDRP-104684
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Time of filing	2022-06-29 15:54:30
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Domain names	XMOONEY.COM
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Case administrator

Organization	Denisa Bilík (CAC) (Case admin)
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Complainant

Organization	Mooney S.p.A.
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Complainant representative

Organization	Perani Pozzi Associati
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Respondent

Organization	Eminent IT, Jose Risi
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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; and
- 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.

Moreover, the 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>.

FACTUAL BACKGROUND

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

THE DISPUTED DOMAIN NAME IS IDENTICAL OR CONFUSINGLY SIMILAR TO A TRADEMARK OR SERVICE MARK IN WHICH THE COMPLAINANT HAS RIGHTS

The Complainant, Mooney S.p.A., is a company established in December 2019, thanks to the agreement between SisalPay and Banca 5 (Intesa Sanpaolo Group), 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 union of SisalPay and Banca 5 has made it possible 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.

On September 2, 2021, the Respondent registered the domain name <XMOONEY.COM.>

It is more than obvious that the domain name at issue is identical, or – at least – confusingly similar, to the above-mentioned trademarks belonging to the Complainant. In particular, the domain name at issue exactly reproduces the trademark “MOONEY”, with the mere addition of the letter “X” (a clear example of typosquatting).

In support of the above, the Complainant draw the Panel's attention to WIPO decision Deutsche Bank Aktiengesellschaft v New York TV Tickets Inc, Case n. D2001-1314 – regarding the domain names <duetschebank.com> and <duetsche-bank.com>”. The Panel considered such domain names as being confusingly similar and a clear example of “a case of ‘typosquatting’ where the domain name is a slight alphabetical variation from a famous mark. WIPO jurisprudence offers many examples of confusing similarity brought about through easily made typing errors by an Internet user – particularly when the mark is another language from that of the user's mother tongue.” The same case lies before us in this matter.

THE RESPONDENT HAS NO RIGHTS OR LEGITIMATE INTERESTS IN RESPECT OF THE DISPUTED DOMAIN NAME

The Respondent has no rights on the disputed domain name, and any use of the trademark “MOONEY” has to be authorized by the Complainant. Nobody has been authorized or licensed by the Complainant to use the disputed domain name.

The disputed domain name does not correspond to the name of the Respondent and, to the best of Complainant's knowledge, the Respondent is not commonly known as “XMOONEY”.

Lastly, Complainant does not find any fair or non-commercial uses of the disputed domain name.

THE DISPUTED DOMAIN NAME WAS REGISTERED AND IS USED IN BAD FAITH

The disputed domain name <XMOONEY.COM> was registered and is used in bad faith.

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, 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 submits an extract of a Google search in support of its allegation. This raises a clear inference of knowledge of the Complainant's trademark on the part of the Respondent. Therefore, it is more than likely that the disputed domain name not have been registered if it were not for Complainant's trademark. This is a clear evidence of registration of the disputed domain name in bad faith.

In addition, the disputed domain name is not used for any bona 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).

First of all, several services can be detected, but not in good faith: in fact, the disputed domain name is connected to a website offering access to a personal digital wallet that allows to make electronic transactions with another party bartering digital currency units for goods and services (with obvious references to Complainant's activity based on payment services and all transactional operations). See also the Complainant's official site <https://www.mooney.it/> home page.

Consequently, Internet users, while searching for information on the Complainant's services, are confusingly led to the website that resembles the one of the Complainant and offers similar services, that are often provided by companies like the Complainant.

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 web site and to gain advantage from Complainant's activity, investments and reputation.

Several WIPO decisions states that the registration and use of a domain name to re-direct internet users to websites of competing organizations constitute bad faith registration and use under the Policy. See, e.g., *Encyclopaedia Britannica Inc. v. Shedon.com*, WIPO Case No. D2000-0753 ("Respondent's Ownership of a site which is a mis-spelling of Complainant's britannica.com site and which Respondent used to hyperlink to a gambling site demonstrates Respondent's bad faith registration and use of the britannica.com domain name"); *YAHOO! INC. v. David Murray*, Case No. D2000-1013 (finding bad faith where respondent chooses a domain name similar to the complainant's mark for a site which offers services similar to the complainant); *Edmunds.com v. Ultimate Search, Inc.*, WIPO Case No. D2001-1319 ("Registration and use of a domain name to redirect Internet users to websites of competing organizations constitutes bad faith registration and use under the Policy"); *Netwizards, Inc. v. Spectrum Enterprises*, WIPO Case No. D2000-1768 ("Registration and continued use of the contested domain name for re-directing Internet users, i.e. particularly customers and potential customers of the Complainant, from the Complainant's website to the website of...a company which directly competes with the Complainant, constitutes bad faith registration and use"); *Oly Holigan, L.P. v. Private*, Case No. FA0011000095940 (finding bad faith where respondent used the disputed domain name to "redirect the Complainant's consumers and potential consumers to commercial websites which are not affiliated with Complainant"); *Marriott International, Inc. v. Kyznetsov*, Case No. FA0009000095648 (finding bad faith where respondent registered the domain name <marriottrewards.com> and used it to route internet traffic to another website that "promotes travel and hotel services . . . identical to the services offered by the Complainant"); *Zwack Unicom Ltd v. Duna*, WIPO Case No. D2000-0037 (respondent's linking to complainant's competitor held to constitute bad faith); *Schneider Electric SA v. Ningbo Wecans Network Technology Co., Ltd, Ningbo Eurosin International Trade Co., Ltd.*, Case No. D2004-0554; *Microsoft Corporation v. StepWeb*, Case No. D2000-1500; *Baudville, Inc. v. Henry Chan*, Case No. D2004-0059; *National City Corporation v. MH Networks LLC*, Case No. D2004-0128.

The current use of the disputed domain name, which allows accessing to a web site that resembles Complainant's, using the Complainant's trademark, causes, as well, great damages to the latter, due to the misleading of the Complainant's present clients and to the loss of potential new ones. So, the Respondent's conduct is even worse (see WIPO Decisions n. D2000-1500, *Microsoft Corporation v. StepWeb*, and D2001-1335, *The Vanguard Group, Inc v. Venta*).

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

Likewise, it is not possible for the Panelist to "conceive a plausible situation in which the Respondent would have been unaware of this fact at the time of registration". (*Telstra Corporation Limited v. Nuclear Marshmallows* - WIPO Case No. D2000-0003). On the contrary, the disputed domain name "is so obviously connected with such a well-known product that its very use by someone with no connection with the product suggests opportunistic bad faith" (*Veuve Clicquot Pnsardin, Maison Fondée en 1772 v. The Polygenix Group Co.* - WIPO Case No. D2000-0163). Besides, "It is not likely that any trader would choose a name

including the trademark [...] if not to create an impression of association with the Complainant” (Benetton Group S.p.A. v. Azra Khan - Case No. D2002-0810).

There is something more. Paragraph 4(b) of the Policy also provides a non-exhaustive list of circumstances that can constitute evidence of a Respondent’s bad faith in registering and using a domain name. In particular, the consensus view of WIPO UDRP panellists is that bad faith may in, some cases, be found in other conducts carried out by a domain name holder. Panels have tended to make such findings in circumstances in which, for example, a complainant’s mark is well-known, and there is no conceivable use that could be made of the domain name that would not amount to an infringement of the complainant’s trademark rights.

In the light of the above, the present case completely matches to the above requirements: “The Panel accepts the Complainant’s submissions that [...] it is not possible for the Respondent to have been unaware of the Complainant’s [...] brand and associated trademarks prior to registering the Domain Name. As a consequence, the Panelist finds that in registering the Domain Name, the Respondent was aware of the Complainant’s [...] brand and associated trademarks. Given the above information [...] the Panelist can find no plausible circumstances in which the Respondent could legitimately use the Domain Name” (see Microsoft Corporation v. Superkey Worldwide, Inc. - Case No. D2004-0071).

In the light of the above, the third and final element necessary for finding that the Respondent has engaged in abusive domain name registration and use has been established.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

The term for the Respondent to file a response expired on 27 July 2022. Material filed by the Respondent after said date is in the view of this Panel inadmissible in the absence of any extraordinary circumstances leading to the late filing. No such circumstances have been presented by the Respondent.

The UDRP proceedings are supposed to be a speedy procedure, hence if late replies were to be admitted they would obstruct timely decisions.

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).

This is a case of “typosquatting“, i.e. the disputed domain name contains an obvious misspelling of the Complainant’s trademark. It is well established that the specific top level of a domain name such as “.com” does not affect the domain name for the purpose of determining whether it is identical or confusingly similar.

Previous panels have found that the slight spelling variations does not prevent a domain name from being confusingly similar to the complainant’s trademark. Adding the letter X in the beginning of the trademark MOONEY in the domain name XMOONEY does not take away the confusing similarity between the domain name and the trademark.

Simple exchange or adding of letters is not a sufficient element to escape the finding that the disputed domain name is confusingly similar to the Complainant’s trademarks and domain names.

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).

The Complainant contends that the Respondent is not affiliated with him nor authorized by him in any way to use his trademarks in a domain name or on a website. The Complainant does not carry out any activity for, nor has any business with the

Respondent.

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).

Given the circumstances of the case, including the provided information of the use and reputation of the Complainant's trademark MOONEY and the distinctive nature of this mark, it is inconceivable to the Panel in the current circumstances that the Respondent registered the disputed domain name without prior knowledge of the Complainant and the Complainant's mark.

The Panel therefore finds that the disputed domain name was registered in bad faith.

The disputed domain name currently resolves to an active website. The current use of the disputed domain name, which allows accessing to a web site that resembles Complainant's, using the Complainant's trademark, causes risk of damages to the Complainant, due to the misleading of the Complainant's present clients and to the loss of potential new ones. For these reasons the Panel finds that the disputed domain name is being used in bad faith.

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

1. The three essential issues under the paragraph 4(a) of the Policy are whether:

- i. the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- ii. the Respondent has no rights or legitimate interests with respect to the disputed domain name; and
- iii. the disputed domain name has been registered and is being used in bad faith.

2. The Panel reviewed carefully all documents provided by the Complainant. The Respondent did not provide the Panel with any documents or statements. The Panel also visited all available websites and public information concerning the disputed domain name, namely the WHOIS databases.

3. The UDRP Rules clearly say in its Article 3 that any person or entity may initiate an administrative proceeding by submitting a complaint in accordance with the Policy and these Rules.

4. The Panel therefore came to the following conclusions:

a) The Complainant states and proves that the disputed domain name is confusingly similar to its trademarks and its domain names. Indeed, the trademark is partially incorporated in the disputed domain name.

The disputed domain name is therefore deemed identical or confusingly similar.

b) The Respondent is not generally known by the disputed domain name and have not acquired any trademark or service mark rights in the name or mark, nor is there any authorization for the Respondent by the Complainant to use or register the disputed domain name.

The Panel therefore finds that the Respondent does not have rights or legitimate interest with respect to the disputed domain name.

c) It is clear that the Complainant's trademarks and website(s) were used by the Complainant before the disputed domain name was registered. The present use of the disputed domain name is deemed by the Panel to be use in bad faith.

The Panel finds that the disputed domain name has been registered and is being used in bad faith.

For the reasons stated above, it is the decision of this Panel that the Complainant has satisfied all three elements of paragraph 4(a) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

- 1. **XMOONEY.COM**: Transferred

PANELLISTS

Name	Lars Karnoe
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DATE OF PANEL DECISION 2022-08-11

Publish the Decision