Panel Decision for dispute CAC-ADREU-007638

Case number	**CAC-ADREU-007638**
Time of filing	**2018-05-15 20:53:34**
Domain names	**maxipay.eu**

Case administrator

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

Complainant

Organization	

Respondent

Organization	**Domain Directors Europe Ltd**

INSERT INFORMATION ABOUT OTHER LEGAL PROCEEDINGS THE PANEL IS AWARE OF WHICH ARE PENDING OR DECIDED AND WHICH RELATE TO THE DISPUTED DOMAIN NAME

The Panel is not aware of any other legal proceedings relating to the Disputed Domain Name.

FACTUAL BACKGROUND

Complainant Is owner of EUTM registration No 014001713 MAXPAY (word) filed on April 27, 2015 and granted on January 22, 2016 in classes 9, 38 and 42 and operates the webpage www.maxpay.com. Maxpay.com is a domain created in 2000 and used as a payment platform worldwide.

MAXPAY was launched in 2014 and nowadays works with the biggest banks in Europe, USA, Canada, Great Britain and Asia.
On August 5, 2017 Maxpay became a Mastercard provider for Europe. Maxpay is Visa Member Agent for Europe Region until May 10, 2018. Maxpay also works to avoid fraud and in March 2017 became a member of the Merchant Risk Council, the leading global trade association for eCommerce fraud and payment professionals.

Respondent registered the disputed domain name <maxipay.eu> on July 25, 2016 and received a licence from the Czech National bank to issue electronic money.

Complainant sent to Respondent a cease and desist letter to the e-mail address of the registrant according to the webpage operated under the disputed domain admin@maxipay.eu on March 1, 2018. No replied has been received.

A. COMPLAINANT

Complainant:

- Is owner of EUTM registration No 014001713 MAXPAY (word) filed on April 27, 2015 and granted on January 22, 2016 in classes 9, 38 and 42.

- Operates the webpage www.maxpay.com. Maxpay.com is a domain created in 2000 and used as a payment platform worldwide.
MAXPAY was launched in 2014 and nowadays works with the biggest banks in Europe, USA, Canada, Great Britain and Asia.
On August 5, 2017 Maxpay became a Mastercard provider for Europe. Maxpay is Visa Member Agent for Europe Region until May 10, 2018.
Maxpay also works to avoid fraud and in March 2017 became a member of the Merchant Risk Council, the leading global trade association for eCommerce fraud and payment professionals.

The Complainant's MAXPAY trademark is widely known worldwide as a secure payment platform.

Respondent registered the disputed domain name <maxipay.eu> on July 25, 2016.

The disputed domain is confusingly similar to a trademark in which the Complainant has rights following article 21(1) of the Regulation 874/2004.
The complaint owns EUTM registration No 014001713 MAXPAY registered before the creation date of the disputed domain and actively used in connection with a payment platform through the webpage www.maxpay.com.

The disputed domain name is almost identical to the Complainant's trademark MAXPAY and to the Complainant's domain <maxpay.com>. The disputed domain merely adds the geographical indicator .eu and the letter “i“ in the middle of the MAXPAY word. In fact, the webpage operated under the disputed domain shows clearly the misrepresentation of the Complainant's mark.

The Respondent has no rights or legitimate interests in respect of the disputed domain name following article 21(2) Regulation 874/2004:
- Respondent is not a licensee of Complainant, nor has the Complainant authorized or consented to Respondent’s use of the MAXPAY mark.
- Complainant has prior rights in MAXPAY trademark that precedes Respondent's registration of the disputed domain name.
- The disputed domain name is plainly not derived from the Respondent’s name.
- From the available record, the Respondent does not appear to hold any trademarks for the disputed domain name.
- Respondent is using the disputed domain name in relation to a website which offers payment services which are not the Complainant's payment services or authorized by or otherwise associated with it.

Complainant therefore claims that the disputed domain name was registered primarily for the purpose of confusing customers into believing that the disputed domain name is a genuine brand of Complainant, and therefore diverting Internet business of Complainant away from Complainant’s legitimate MAXPAY branded website to that of Respondent.

The disputed domain name was registered and is being used in bad faith (article 21(3) of Regulation 874/2004).

Complainant submits that Respondent is using the disputed domain name and that it is almost identical to Complainant’s MAXPAY trademark in bad faith. Using a domain name that is confusingly similar to Complainant’s MAXPAY trademark for a competing website means that the Respondent is using disputed domain name to create confusion among Internet users to attract visitors to the Respondent’s website for commercial gain.

Complainant sent to Respondent a cease and desist letter to the e-mail address of the registrant according to the webpage operated under the disputed domain admin@maxipay.eu on March 1, 2018. No replied has been received.

The Complainant submission it is rather unlikely that Respondent was unaware of Complainant’s MAXPAY trademark and its activity in the field of payment system, especially if we take into account its wide use. Therefore, the disputed domain name takes unfair advantage of Complainant’s mark MAXPAY and misleads consumers.

B. RESPONDENT

The Respondent’s contentions can be summarised as follows:

The owner of this name is Smart Transfer Solution s.r.o. It was registered in 2016 in the city of Prague in the Czech Republic. This is indicated on the website https://maxipay.eu/en/about/, in contrast to the applicant, on the site of which there are no contact details about the company's registration number, address, etc.

In 2017, the Respondent received a licence from the Czech National Bank, for which it has the right to issue electronic money. Prior to that, the founder of smart transfer solution registered the domain maxipay.eu in 2016. The website offers services of replenishment of electronic money, transactions inside the electronic wallet. (replenishment, storage and withdrawal). The company Maxpay Limited deals with card processing and connects Internet stores (merchants) and most likely, works in the field of PSP (payment service providers), and not in the field of electronic money, where the company Smart Transfer Solution works. Also, if you analyze the site maxpay.com on one of the famous resources similarweb.com you will not see it among the competitors of maxipay.eu. Also, if you take the trademark classification of services then maxipay.eu falls under class 36, namely Electronic funds transfer,

The words MAXPAY and MAXIPAY are different in their pronunciation, writing and transcription. According to the etymology, the words Maxi is a combining form with the meanings "very large in comparison with others of its kind" http://www.dictionary.com/browse/maxi.

Max’s meaning is: "to reach the maximum level," by 1986, colloquial, from the maximize or related words. Related: Maxed; maxing https://www.etymonline.com/word/max

In addition, there is no similarity in the graphic logos, color scheme and design of maxpay.com and the Respondent’s site.

Also, Maxipay is three words such as - Maximum I Pay.

Moreover, there are similar companies, with the same name, Maxpay Limited (Great Britain, Netherlands). And as the Respondent sees it they do not violate the applicant's rights.

The site maxipay.eu provides services from the company Smart Transfer Solution s.r.o. as indicated on the site and in the user agreement, and not as a separate brand.

The actions of the company Maxpay Limited are in fact in order to pick up or intercept the traffic of the site maxipay.eu, to their site maxpay.com, as the number of users of the site maxipay.eu is growing. (The sites also have different endings in the .com and .eu domain zone)

Much effort and money was invested in the Respondent’s site in advertising and many clients trust it as it provides high-quality services for the electronic purse, as well as money transfers from the Czech Republic. It is obviously not trying to violate anyone's intellectual property rights, but in this case, we simply believe that such accusations are groundless and violate our rights as the owner of the <maxipay.eu> domain.

DISCUSSION AND FINDINGS

Article 22 of the Commission Regulation (EC) No. 874/2004 provides that an ADR procedure may be initiated by any party where the registration is speculative or abusive within the meaning of Article 21, which provides that a registered domain name shall be subject to revocation where the name is identical or confusingly similar to a name in respect of which a right is recognised or established by national and/or EU law and where:

(a) it has been registered by its holder without rights or legitimate interest in the name; or

(b) it has been registered or used in bad faith.

Identical or Confusingly Similar

The single letter ‘i’ and the gTLD .com in the Domain Name do not serve to distinguish the Domain Name from the Complainant’s MAXPAY mark. The gTLD is a necessary part of a domain name and has a generic meaning not a part of any trade mark involved in these proceedings. It is commonly held that the addition of a single letter is not enough to avoid confusing similarity under the Policy.

The Domain Name is therefore confusingly similar to a mark in which the Complainant has rights (Article 21 of Regulation 874/2004).

Rights or Legitimate Interests

The Complainant has not authorised the use of its mark. The Respondent answers the Complaint to say the disputed domain name has a different meaning and that the Respondent operates in a different field to the Complainant. However it does not say it was not aware of the Complainant or its business at the time of registration and use. Nor does the Respondent state that the disputed domain name is used for a bona fide offering of goods and services without such prior knowledge.

As such the Panelist finds that the Complainant has demonstrated that the Respondent is without rights or a legitimate interest in the Domain Name under article 21 of Regulation 874/2004 as it appears the Respondent adopted a confusingly similar domain name to that of the Complainant, subsequently and in relation to similar services relating to electronic payment. As such it appears the Complainant has satisfied the second limb of the test under article article 21 of Regulation 874/2004.

Registered or Used in Bad faith

In the opinion of the Panelist the use made of the disputed domain name is confusing and visitors to the Respondent's site might reasonably believe it is connected to or approved by the Complainant as it offers similar services under a confusingly similar Domain Name containing a sign very similar to the Complainant's mark. The Respondent has not denied that it was aware of the Complainant and its business at the time of registration. Additionally as the Respondent has alleged that the Complainant has brought this Complaint to take advantage of the traffic to maxipay.com suggests that it accepts that the two sites may have customers in common and compete to some extent. Accordingly, the Panel holds that the Respondent has intentionally attempted to attract for commercial gain Internet users to its website by creating a likelihood of confusion with the Complainant's trade marks as to the source, sponsorship, affiliation or endorsement of the website likely to disrupt the business of the Complainant. It is also noted that the Respondent does not actually deny prior knowledge of the complainant before registration or that it has any bad faith choosing instead to concentrate on trade mark infringement or the lack thereof which is not strictly relevant to the provisions of article 21 of Regulation 874/2004).

As such, the Panelist believes that the Complainant has made out its case that the disputed domain name was registered and used in bad faith and has satisfied the third limb of the Policy under article 21 of Regulation 874/2004.

DECISION

For all the foregoing reasons, in accordance with Paragraphs B12 (b) and (c) of the ADR Rules, the Panel orders that

the domain name MAXIPAY.EU be transferred to the Complainant

PANELISTS

Name	Dawn Osborne

DATE OF PANEL DECISION 2018-05-15

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: maxipay.eu

II. Country of the Complainant: Malta, country of the Respondent: UK/Czech Republic

III. Date of registration of the domain name: July 25, 2016

IV. Rights relied on by the Complainant (Art. 21 (1) Regulation (EC) No 874/2004) on which the Panel based its decision:
1. MAXPAY (word) registered in the EU Registration No 014001713 filed on April 27, 2015 and granted on January 22, 2016 in classes 9, 38 and 42.

V. Response submitted: Yes

VI. Domain name is confusingly similar to the protected rights of the Complainant

VII. Rights or legitimate interests of the Respondent (Art. 21 (2) Regulation (EC) No 874/2004):
1. No
2. Why: Does not deny knowledge of the Complainant's prior rights in a similar mark for similar services.

VIII. Bad faith of the Respondent (Art. 21 (3) Regulation (EC) No 874/2004):
1. Yes
2. Why: Appears to admit that the Complainant would benefit from traffic of the disputed domain name admitting that the use of the disputed domain name is competing and does not deny bad faith concentrating only on technical trade mark infringement or lack of it which is not strictly relevant to a ground of the test under article 21(3) ofRegulation 874/2004.

IX. Other substantial facts the Panel considers relevant: -

X. Dispute Result: Transfer of the disputed domain name

XI. Procedural factors the Panel considers relevant: -

XII. Is Complainant eligible? Yes