

ADMINISTRATIVE PANEL DECISION

Altapay A/S v. Egor Voynov
Case No. DIO2022-0054

1. The Parties

The Complainant is Altapay A/S, Denmark, represented Plesner Law Firm, Denmark.

The Respondent is Egor Voynov, Indonesia.

2. The Domain Name and Registrar

The disputed domain name <altapay.io> (the “Domain Name”) is registered with Key-Systems GmbH (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 14, 2022. On November 15, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On November 16, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name, which differed from the named Respondent (Moniker Privacy Services dba Whoisproxy.com) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 18, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amendment to the Complaint on November 23, 2022.

The Center verified that the Complaint together with the amendment to the Complaint satisfied the formal requirements of the .IO Domain Name Dispute Resolution Policy (the “Policy”), the Rules for .IO Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for .IO Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on November 29, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 19, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on January 3, 2023.

The Center appointed Nicholas Smith as the sole panelist in this matter on January 9, 2023. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

4. Factual Background

The Complainant is a Danish payment solutions company that since 2008 has offered global payment solutions services in the e-commerce space under the trade mark ALTAPAY (the “ALTAPAY Mark”) and from its primary website at “www.altapay.com”.

The Complainant is the owner of trade mark registrations for the ALTAPAY Mark in a variety of jurisdictions including in the European Union (“EU”) (registration number 1240789 registered on August 21, 2014, for goods and services in classes 9, 35, 36 and 42) and the United States.

The Domain Name was registered on April 10, 2022. The Domain Name resolves to a website (the “Respondent’s Website”), which purports to offer payment solution services, the same services offered by the Complainant (albeit in the cryptocurrency space), however there is no evidence of what entity is actually providing the purported services. The Complainant submits that the Respondent’s Website is actually a sham website designed to solicit users to deposit money with the Respondent under false pretenses.

5. Parties’ Contentions

A. Complainant

The Complainant makes the following contentions:

- (i) the Domain Name is identical or confusingly similar to the Complainant’s ALTAPAY Mark;
- (ii) the Respondent has no rights nor any legitimate interests in respect of the Domain Name; and
- (iii) the Domain Name has been registered or is being used in bad faith.

The Complainant is the owner of the ALTAPAY Mark. It owns trade mark registrations for the ALTAPAY Mark in the United States and the EU. The Domain Name consists of ALTAPAY Mark and the .io country code Top-Level Domain (“ccTLD”) and is thus identical to the ALTAPAY Mark.

The Respondent has no rights or legitimate interests in the Domain Name. The Respondent is not affiliated with the Complainant in any way. The Complainant has not authorized the Respondent to use and register the ALTAPAY Mark or to seek the registration of any domain name incorporating the ALTAPAY Mark. The Respondent is using the Domain Name to operate a site through which the Respondent passes off as being related to the Complainant for the purposes of either offering competing services or perpetuating a fraud on the public. The use of the Domain Name in this manner does not and never could confer a right or legitimate interest on the Respondent.

The Domain Name was registered and is being used in bad faith. Given the nature of the Domain Name and the services purportedly offered from the Respondent’s Website, the Domain Name must have been registered with full knowledge of the ALTAPAY Mark. The Domain Name has been used to perpetuate a fraud by passing off as the Complainant and purporting to offer competing payment services. Such use is *prima facie* evidence of registration and use in bad faith under paragraph 4(b)(iv) of the Policy or otherwise.

B. Respondent

The Respondent did not reply to the Complainant's contentions.

6. Discussion and Findings

A. Identical or Confusingly Similar

To prove this element, the Complainant must have trade or service mark rights and the Domain Name must be identical or confusingly similar to the Complainant's trade or service mark.

The Complainant is the owner of the ALTAPAY Mark, having a registration for the ALTAPAY Mark as a trade mark in the European Union.

Disregarding the ".io" ccTLD as a necessary technical requirement of the Domain Name, the Domain Name is identical to the ALTAPAY Mark. Consequently, the requirement of paragraph 4(a)(i) of the Policy is satisfied.

B. Rights or Legitimate Interests

To succeed on this element, a complainant must make out a *prima facie* case that the respondent lacks rights or legitimate interests in the domain name. If such a *prima facie* case is made out, then the burden of production shifts to the respondent to demonstrate rights or legitimate interests in the domain name.

Paragraph 4(c) of the Policy enumerates several ways in which a respondent may demonstrate rights or legitimate interests in a domain name:

"Any of the following circumstances, in particular but without limitation, if found by the panel to be proved based on its evaluation of all evidence presented, shall demonstrate your rights or legitimate interests to the domain name for purposes of paragraph 4(a)(ii):

(i) before any notice to you of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or

(ii) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trade mark or service mark rights; or

(iii) you are making legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trade mark or service mark at issue."
(Policy, paragraph 4(c)).

The Respondent is not affiliated with the Complainant in any way. It has not been authorized by the Complainant to register or use the Domain Name or to seek the registration of any domain name incorporating the ALTAPAY Mark or a mark similar to the ALTAPAY Mark. There is no evidence that the Respondent is commonly known by the Domain Name or any similar name. There is no evidence that the Respondent has used or made demonstrable preparations to use the Domain Name in connection with a *bona fide* offering of goods or services or for a legitimate noncommercial use.

Rather the Respondent has used the Domain Name to operate a website that, under the ALTAPAY Mark, purports to offer competing payment services. However, the uncontradicted evidence in the Complainant is that the Respondent's Website is likely used to scam and commit fraud upon visitors who deposit funds with them under the misapprehension that they are dealing with the Complainant. Neither use amounts to a *bona fide* offering of goods or services.

The Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the Domain Name. The Respondent has had an opportunity to rebut the presumption that it lacks rights or legitimate interests but has chosen not to do so. The Panel finds that the Respondent has no rights or legitimate interests in respect of the Domain Name under paragraph 4(a)(ii) of the Policy.

C. Registered or Used in Bad Faith

For the purposes of paragraph 4(a)(iii) of the Policy, the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of the Domain Name in bad faith:

- (i) circumstances indicating that the respondent has registered or has 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 trade mark or service mark or to a competitor of the complainant, for valuable consideration in excess of its 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 trade mark 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 its website or other online 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 respondent's website or location.

The Panel finds on the balance of probabilities that the Respondent must have been aware of the Complainant and its reputation in the ALTAPAY Mark at the time the Respondent registered of the Domain Name. The Respondent Website's advertises services in direct competition with services offered by the Complainant under the identical mark and there is no obvious reason, nor has the Respondent offered an explanation, for the Respondent to register a domain name identical to the coined the ALTAPAY Mark unless there was an intention to create a likelihood of confusion between the Domain Name and the ALTAPAY Mark. The registration of the Domain Name in awareness of the ALTAPAY Mark and in the absence of rights or legitimate interests amounts to registration in bad faith.

The Respondent was using the Domain Name to intentionally attempt to attract, for commercial gain, Internet users to a website, by creating a likelihood of confusion with the ALTAPAY Mark as to the source, sponsorship, affiliation or endorsement of its website. The Respondent's Website consists of a website that appears to offer payment services. However, the Panel accepts the Complainant's submissions that, given that the Respondent's Website provides no details behind the Respondent's purported services or the business identity of the entity providing the purported services, it is highly likely that the purpose behind the conduct of the Respondent is to commit fraud upon visitors who deposit money with the Respondent thinking that they are dealing with the Complainant. The nature of the Respondent's Website makes it clear that the Respondent is using the Domain Name to intentionally attract Internet users to the Respondent's Website by means of confusion with the ALTAPAY Mark, and has received or intends to receive revenue for that activity. The Panel finds that such use amounts to use in bad faith.

The Panel, while noting that the Policy only requires that a complainant show that a respondent registered or subsequently used the domain name at issue in bad faith, finds that the Respondent has registered and used the Domain Name in bad faith under paragraph 4(a)(iii) of the Policy.

7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the Domain Name <altapay.io> be transferred to the Complainant.

/Nicholas Smith/

Nicholas Smith

Sole Panelist

Date: January 16, 2023