

ADMINISTRATIVE PANEL DECISION

Gigapay Sweden AB, reg. no. 559070-3616 v. gigapay
Case No. D2024-2028

1. The Parties

The Complainant is Gigapay Sweden AB, reg. no. 559070-3616, Sweden, represented by Advokatbyrå Gulliksson AB, Sweden.

The Respondent is gigapay, Republic of Korea.

2. The Domain Name and Registrar

The disputed domain name <gigapay.com> is registered with Megazone Corp., dba HOSTING.KR (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on May 15, 2024. On May 15, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 20, 2024, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name which differed from the named Respondent (JUNGYUHKOOK) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 21, 2024, 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 amended Complaint on May 24, 2024.

On May 21, 2024, the Center informed the parties in Korean and English, that the language of the registration agreement for the disputed domain name is Korean. On May 24, 2024, the Complainant requested English to be the language of the proceeding in its submission of the amended Complaint. The Respondent did not submit any comment on the Complainant's submission, but the originally named Respondent, JUNGYUHKOOK, objected to the Complainant's request.

The Center verified that the Complaint, together with the amended Complaint, satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the "Policy" or "UDRP"), the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules"), and the WIPO Supplemental Rules for Uniform 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 in Korean and English on May 28, 2024. In accordance with the Rules, paragraph 5, the due date for Response was June 17, 2024. The Respondent did not submit any response. However, the originally-named Respondent submitted a Response on June 17, 2024.

The Center appointed Kathryn Lee as the sole panelist in this matter on June 24, 2024. 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.

On July 24, 2024, the Center issued a procedural order (the "Procedural Order") to the Parties on the Panel's behalf. In the Procedural Order, the Panel requested from the Complainant evidence of its reputation in 2019 when the disputed domain name was registered, and extended the due date for the decision to August 12, 2024. The Complainant filed a response on July 31, 2024, and the Respondent did not file any response.

4. Factual Background

The Complainant is a provider of payment services available in over 80 countries. The Complainant was incorporated on December 3, 2018 under the name "Gigapay AB", and the name was changed to "Gigapay Sweden AB" on May 13, 2020. The parent company of the Complainant owns trademark registrations to GIGAPAY in the European Union (Trademark Registration Number 018104288), filed on August 6, 2019 and registered on November 19, 2019, and in the United Kingdom (Trademark Registration Number UK00918104288), filed on August 6, 2019 and registered on November 19, 2019. The Complainant also owns the domain names <gigapay.se> registered on November 5, 2018 and <gigapay.co> registered on August 12, 2019.

The Respondent appears to be an entity with an address in the Republic of Korea.

The disputed domain name was registered on January 16, 2019 and does not resolve to any website with content.

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for transfer of the disputed domain name.

Notably, the Complainant contends that the disputed domain name is identical to the GIGAPAY mark in which the Complainant has rights.

The Complainant also contends that the Respondent has no rights or legitimate interests in the disputed domain name and confirms that it has not authorized or licensed rights to the Respondent in any respect. The Complainant contends that the Respondent is not making any use of the disputed domain name, nor are there any demonstrable plans to use the disputed domain name.

Finally, the Complainant contends that the disputed domain name was registered and used in bad faith. The Complainant contends that JUNGYUHKOOK and gigapay are the same person/organization, and points out that JUNGYUHKOOK has at least seven UDRP decisions rendered against him as evidence of a pattern of bad faith conduct. The Complainant also contends that the Respondent acquired the disputed domain name primarily for the purpose of selling, renting, or otherwise transferring it to the Complainant or a competitor for valuable consideration in excess of documented out-of-pocket costs directly related to the disputed domain name. Specifically, the Complainant contends that from around December 9, 2018 to around January 6,

2019, the Complainant was in discussions with the previous owner of the disputed domain name for its purchase, and the previous owner indicated that she would be willing to consider an offer of less than USD 10,000. The Complainant further contends that it was informed by a broker on October 29, 2019 that the disputed domain name had been sold by the previous owner to the Respondent (JUNGYUHKOOK) and that when the Complainant made offers to JUNGYUHKOOK to purchase the disputed domain name in 2023 and 2024, JUNGYUHKOOK counteroffered with USD 180,000. The Complainant contends that the large discrepancy in the asking price shows that the payment that JUNGYUHKOOK requests exceeds any possible out of pocket costs for acquiring and maintaining the disputed domain name and that it is evidence of bad faith.

B. Respondent

The originally named Respondent, JUNGYUHKOOK, submitted a brief confirming that he is the registrant of the disputed domain name. Therefore, the Panel will use “Respondent” to refer to both JUNGYUHKOOK and “gigapay”.

The Respondent contends that the Complainant has not satisfied the third element required under the Policy for transfer of the disputed domain name. Firstly, the Respondent asserts that it is in the business of buying and selling domain names. Next, the Respondent states that there are companies in Korea using “Gigapay” name which is a combination of the terms “giga” meaning 1 billion and “pay” meaning payment. Lastly, the Respondent contends that it registered the disputed domain name and other domain names such as <soutpay.com>, <expopay.com>, and <snspay.com>, anticipating the growth in the payment service industry. The Respondent also states that it registered the disputed domain name even before the Complainant registered its trademarks, and that registering a domain name for resale is not necessarily registration in bad faith.

6. Discussion and Findings

Language of the Proceeding

The language of the Registration Agreement for the disputed domain name is Korean. Pursuant to the Rules, paragraph 11(a), in the absence of an agreement between the parties, or unless specified otherwise in the registration agreement, the language of the administrative proceeding shall be the language of the registration agreement.

The Complaint was filed in English. The Complainant requested that the language of the proceeding be English for several reasons, including the fact that it has no knowledge of the Korean language and that proceeding in Korean would place an undue burden on the Complainant. The Complainant also pointed out that the Respondent used the Sedo website to make a counteroffer, and as the bid handling system on Sedo is in English, the Respondent is capable of communicating in English.

The Respondent requested that the language of the proceeding be Korean.

In exercising its discretion to use a language other than that of the registration agreement, the Panel has to exercise such discretion judicially in the spirit of fairness and justice to both parties, taking into account all relevant circumstances of the case, including matters such as the parties’ ability to understand and use the proposed language, time and costs (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 4.5.1).

Having considered all the matters above, the Panel determines under paragraph 11(a) of the Rules that the language of the proceeding shall be English. Here, both Parties were permitted to and in fact did present their cases in the language of their preference. In addition, according to [WIPO Overview 3.0](#), section 4.5.1, the Panel can take into consideration prior cases involving the Respondent in a particular language. In this regard, there are a number of prior UDRP decisions involving a respondent in the Republic of Korea by the

name of “JUNGYUHKOOK”, and the panels in all the relevant cases rendered decisions in English, deciding that the Respondent has sufficient knowledge of English to be able to understand the decision in English, or that it would not be unduly prejudiced by rendering the decision in English.

Having considered all the matters above, the Panel determines under paragraph 11(a) of the Rules that the language of the proceeding shall be English.

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant’s trademark and the disputed domain name. [WIPO Overview 3.0](#), section 1.7.

The Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1. While the Respondent points out that the Complainant did not acquire its trademark registrations until after the disputed domain name was registered, the Policy does not require the trademark rights to have existed at the time of registration – only that the trademark rights be in existence at the time the Complaint is filed. [WIPO Overview 3.0](#), section 1.1.3.

The entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is identical to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

The Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult task of “proving a negative”, requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

The disputed domain name does not resolve to any active website. Further, the Respondent has submitted no evidence that it is commonly known by the disputed domain name, nor evidence of preparations to use the disputed domain name in connection with a bona fide offering of goods or services.

The Panel incorporates the findings below on the third element and on that basis finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

Normally, panels will not find bad faith on the part of the respondent where the registration of the domain name took place before the complainant acquired its trademark rights, but they have in certain limited circumstances where the facts establish that the respondent’s intent in registering the domain name was to unfairly capitalize on the complainant’s nascent trademark rights, for instance, registration of the domain name shortly before or after announcement of a corporate merger, or further to significant media attention. [WIPO Overview 3.0](#), section 3.8.2.

Here, the disputed domain name was registered on January 6, 2019, and the Complainant's trademark applications were filed only on August 5, 2019. But according to the evidence submitted by the Complainant in response to the Procedural Order, the Complainant registered and started using social media accounts on Twitter (now X), Instagram, and Snapchat, all under the name "Gigapay", in November 2018, and in the same month, launched a marketing campaign on Instagram. Further, the Complainant registered the domain name <gigapay.se> on November 5, 2018, and launched its website at the disputed domain name around December 17, 2018. (Although the Respondent argues that the disputed domain name was not used until 2021, pointing to archived pages on the Wayback Machine, the Wayback Machine does not conclusively contain all webpages for all domain names). Given such announcement and marketing activities, the panel finds that it is likely for the Respondent, which by its admission, trades in domain names as a business, discovered this newly formed business and registered the disputed domain name in order benefit from the association with the Complainant or more likely by hoping to sell it to the Complainant. In addition, it appears that the Respondent purchased the disputed domain name from the previous owner directly rather than from a register of unregistered or lapsed domain names. This strongly suggests to the Panel that the Respondent specifically sought out the purchase of the disputed domain name, knowing the existence of, and targeting, the Complainant.

Further, Panels have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding. [WIPO Overview 3.0](#), section 3.3. Having reviewed the available record, the Panel notes the failure of the Respondent to provide any evidence of actual or contemplated good faith use and the implausibility of any good faith use to which the disputed domain name may be put, and finds that in the circumstances of this case the passive holding of the disputed domain name does not prevent a finding of bad faith under the Policy.

The Panel finds that the Complainant has established the third element 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 disputed domain name <gigapay.com> be transferred to the Complainant.

/Kathryn Lee/

Kathryn Lee

Sole Panelist

Date: August 14, 2024