

ADMINISTRATIVE PANEL DECISION

MagicPay Merchant Services, LLC. v. 江云龙 (jiang yun long)
Case No. D2023-2586

1. The Parties

The Complainant is MagicPay Merchant Services, LLC., United States of America (“United States”), represented by Rami Levi, United States.

The Respondent is 江云龙 (jiang yun long), the Philippines.

2. The Domain Name and Registrar

The disputed domain name <mgcpays.com> is registered with Alibaba Cloud Computing (Beijing) Co., Ltd. (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on June 15, 2023. On the following day, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 19, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name that differed from the named Respondent (“Magic Payment Inc”) and contact information in the Complaint. The Center sent an email communication to the Complainant on June 21, 2023 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 in English on June 30, 2023.

On June 21, 2023, the Center transmitted another email communication to the Parties in English and Chinese regarding the language of the proceeding. On June 23, 2023, the Complainant submitted a request that English be the language of the proceeding. On the same day, the Respondent transmitted by email to the Center a copy of a letter in English dated June 19, 2023 addressed to the Complainant regarding the substance of their dispute, but it did not address the language of the proceeding.

The Center verified that the Complaint together with 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 in Chinese and English of the Complaint, and the proceedings commenced on July 6, 2023. In accordance with the Rules, paragraph 5, the due date for Response was July 26, 2023. On July 26, 2023, an informal Response was filed in Chinese. On July 27, 2023, the Center notified the Parties that it would proceed to panel appointment.

The Center appointed Matthew Kennedy as the sole panelist in this matter on August 1, 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 payment processing solutions provider that serves merchants throughout the United States and Canada. The Complainant holds United States trademark registration number 5017930 for MAGICPAY, registered on August 9, 2016, with a claim of first use in commerce on April 29, 2013, specifying credit card transaction processing and other services in class 36. That trademark registration is current. The Complainant registered the domain name <magicpay.net> on April 29, 2013 and uses it in connection with its website where it provides information about itself and its services. That website prominently displays the Complainant's MAGICPAY trademark in a black and orange logo (the "MagicPay logo"). The Complainant has also acquired the domain name <magicpay.com> that redirects to <magicpay.net>. The Complainant uses its MAGICPAY trademark and the MAGICPAY logo in connection with its social media accounts including on Facebook and LinkedIn.

The Respondent is an individual. His contact street address is an address in Beijing and the country name Singapore. His contact telephone is a Chinese mobile number. His email user name combines "Stefan" with his initials in Pinyin.

The disputed domain name was registered on July 23, 2021. It resolves to a website for "MagicPayment", "Magic Payment" and "Magic Payment Inc.", a payment services provider based in the Philippines. According to the website, this company is a subsidiary of Beijing Dolphin Smartpay Network Tech Ltd. The website prominently displays a blue "M MagicPayment" logo.

The Complainant has received emails regarding problems with payment processing services from third parties who mistakenly believed they were its clients. At least one of these emails was addressed to the Respondent.

On January 14, 2023, the Complainant sent a cease-and-desist letter in English to "Magic Payments Inc." at the contact address displayed on the website associated with the disputed domain name. On February 2, 2023 and February 13, 2023, the Parties exchanged emails in English but did not resolve the dispute.

5. Parties' Contentions

A. Complainant

The disputed domain name is confusingly similar to the Complainant's MAGICPAY trademark. The disputed domain name is a misspelling of that mark.

The Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent has no legitimate relationship to the Complainant giving rise to any license, permission, or authorization for registration or use of the disputed domain name. The Respondent is not commonly known by the MAGIC PAY name and owns no trademark applications or registrations for MAGIC PAY. The Respondent is using the disputed domain name to profit from the Complainant's intended Internet traffic,

which is not a *bona fide* offering of goods or services, nor is it a legitimate noncommercial or fair use of the disputed domain name.

The disputed domain name has been registered and is being used in bad faith. The Respondent registered the disputed domain name primarily for the purpose of attracting online traffic. The incorporation of the trademark in the disputed domain name, the use of the trademark by the Respondent on the website associated with the disputed domain name, and the matched style of that website with the Complainant's own website are obviously intended to profit from the Complainant's accrued goodwill. The Respondent's choice of the disputed domain name is not accidental but deliberate in order to derive unfair monetary advantage by offering similar services to interested and unaware customers. The Respondent uses its website for the purpose of selling services similar to those of the Complainant. Recently, the Complainant has been contacted by many potential clients who complained about the Respondent's website. Most of them were individuals who were routed to the Respondent's website under the impression that it belonged to the Complainant and ended up paying for the services offered by the Respondent believing they were dealing with the Complainant's "Magic Pay" brand name. The majority of these victims report getting charged by the Respondent and never receiving any services against the payment made by them to the Respondent. These inquiries were originally intended for the Respondent but, due to confusion among the buyers, they referred their inquiries to the Complainant.

B. Respondent

In its letter dated June 19, 2023 that it copied to the Center, the Respondent submitted that it had made significant changes to its website name, transitioning from "MagicPays" to "MagicPayment", which is the official registered name of its company in the Philippines. Its corporate name "Magic Payment Inc." is also legally approved by the Securities and Exchange Commission (SEC) of the Philippines after a proper vetting process to verify that no other corporation in the country holds a similar name. The Respondent alleges that "Magic Payment" is already substantially distinct from the Complainant's "MagicPay" and this should avoid any further confusion. The Respondent acknowledges that there may have been issues arising from some clients mistakenly visiting the Complainant's website in the belief that it was the Respondent's. As a result, the Respondent took proactive measures to alter its website name to "Magic Payment". Furthermore, it is evident that the Respondent's logo and color scheme are not unduly similar to those of the Complainant so as to justify a trademark dispute. There is no basis for such a claim, given the clear visual distinctions.

The informal Response stated as follows: 1. The Respondent is a payment system company officially registered in the Philippines. It operates locally in the Philippines only and does not involve the business of the Complainant in the United States. 2. The disputed domain name is essentially different from the Complainant's principal company name and it was purchased through legal means. 3. The website associated with the disputed domain name is only an introduction to the company's business and does not provide any services for users. All the Respondent's business is conducted locally business-to-business in the Philippines. For the above reasons, the Respondent submits that it has not infringed the interests of the Complainant and has no prior competitive relationship, because the regions and people with which they operate have nothing to do with each other.

6. Discussion and Findings

6.1. Procedural Issue: Language of the Proceeding

Paragraph 11(a) of the Rules provides that "unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding". The Registrar confirmed that the Registration Agreement for the disputed domain name is in Chinese.

The Complainant requests that the language of the proceeding be English. Its main arguments are that the website operator claims to be located in the Philippines, a country where English is an official language;

communications between the Parties prior to the dispute were in English; certain correspondence that the Complainant received in error from the Respondent's customers was in English.

Paragraph 10(b) and (c) of the Rules require the Panel to ensure that the Parties are treated with equality, that each Party is given a fair opportunity to present its case and that the administrative proceeding take place with due expedition. Prior UDRP panels have decided that the choice of language of the proceeding should not create an undue burden for the parties. See, for example, *Solvay S.A. v. Hyun-Jun Shin*, WIPO Case No. [D2006-0593](#); and *Whirlpool Corporation, Whirlpool Properties, Inc. v. Hui'erpu (HK) electrical appliance co. Ltd.*, WIPO Case No. [D2008-0293](#).

The Panel observes that the Complaint and amended Complaint were filed in English and the informal Response was filed in Chinese. Nevertheless, the Respondent's website has an English version or is entirely in English, and the Parties communicated prior to, and during, this dispute in English, all of which demonstrates that the Respondent understands and is able to communicate in that language. Further, despite having received an email in Chinese and English regarding the language of the proceeding, the Respondent made no comment on that issue but chose to address issues of substance only. Therefore, the Panel considers that requiring the Complainant to translate the amended Complaint would create an undue burden and delay.

Having considered all the circumstances above, the Panel determines under paragraph 11(a) of the Rules that the language of this proceeding is English but that the Panel will accept the informal Response as filed in Chinese without translation.

6.2 Substantive Issues

Paragraph 4(a) of the Policy provides that a complainant must prove each of the following elements with respect to each disputed domain name:

- (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 in respect of the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

The burden of proof of each element is borne by the Complainant.

A. Identical or Confusingly Similar

Based on the evidence presented, the Panel finds that the Complainant has rights in the MAGICPAY mark.

The disputed domain name incorporates six letters of the MAGICPAY mark, omitting only the first two vowels. It also adds a final "s" which either renders "pay" in the mark in a plural form or a singular third person form but, either way, does not serve to distinguish the disputed domain name from the mark. Neither the remaining letters "mgc" nor the string "mgcpays" resembles another term. On a side-by-side comparison, and bearing in mind that the first element of paragraph 4(a) of the Policy functions primarily as a standing requirement, the Panel considers that sufficient elements of the trademark are incorporated in the disputed domain name for the trademark to remain recognizable in it. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)), section 1.7.

The Respondent submits that the disputed domain name is essentially different from the Complainant's principal company name. However, for the purposes of the first element of paragraph 4(a) of the Policy, the disputed domain name is compared with the Complainant's mark (*i.e.*, "MAGICPAY"), not its corporate name. Though the disputed domain name is not identical to that mark, the Panel considers that the omission of two vowels and the addition of a final "s" do not prevent a finding of confusingly similarity for the reasons set out above.

The disputed domain name also includes a generic Top-Level Domain (“gTLD”) (“.com”). As a mere technical requirement of registration, this element may be disregarded in the comparison between a domain name and a trademark for the purposes of the first element of paragraph 4(a) of the Policy, unless it has some impact beyond its technical function, which is not the case here. See [WIPO Overview 3.0](#), section 1.11.

Therefore, the Panel finds that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights. The Complainant has satisfied the first element in paragraph 4(a) of the Policy.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy sets out the following circumstances which, without limitation, if found by the panel, shall demonstrate that the respondent has rights to, or legitimate interests in, a disputed domain name, for the purposes of paragraph 4(a)(ii) of the Policy:

- (i) before any notice to [the respondent] of the dispute, [the respondent’s] use of, or demonstrable preparations to use, the [disputed] domain name or a name corresponding to the [disputed] domain name in connection with a *bona fide* offering of goods or services; or
- (ii) [the respondent] (as an individual, business, or other organization) [has] been commonly known by the [disputed] domain name, even if [the respondent has] acquired no trademark or service mark rights; or
- (iii) [the respondent is] making a legitimate noncommercial or fair use of the [disputed] domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue

As regards the first circumstance set out above, the disputed domain name, which is confusingly similar to the Complainant’s MAGICPAY trademark, resolves to a website for the similarly-named “MagicPayment” (which wholly incorporates the mark) and that promotes payment services of the same type as those of the Complainant. The Complainant submits that the Respondent has no legitimate relationship to it giving rise to any license, permission, or authorization for registration or use of the disputed domain name. These facts do not indicate that the Respondent is using the disputed domain name in connection with a *bona fide* offering of goods or services. As regards the second circumstance set out above, the Respondent is named 江云龙 (jiang yun long), not the disputed domain name. The website associated with the disputed domain name is for a company named “Magic Payment Inc.”, whereas the Second Level Domain of the disputed domain name is “mgcpays”. Although there is evidence of actual consumer confusion, the evidence on record does not indicate that the Respondent, as an individual, business, or other organization, is commonly known as “mgcpays” or the disputed domain name. As regards the third circumstance set out above, the disputed domain name resolves to a website for a commercial business, which is not a noncommercial or fair use without intent for commercial gain.

In summary, the Panel considers that the Complainant has made a *prima facie* case that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

Turning to the Respondent’s arguments, he submits that the disputed domain name was acquired by legal means. However, the mere registration of a domain name does not create rights or legitimate interests for the purposes of the second element of paragraph 4(a) of the Policy, otherwise no Complaint could ever succeed, which would be an illogical result. See, for example, *Pharmacia & Upjohn Company v. Moreonline*, WIPO Case No. [D2000-0134](#). The Respondent also alleges that “Magic Payment Inc.” is the official registered name of his company in the Philippines but he does not substantiate that assertion. An online search of the Philippine companies registry database does not reveal the existence of a company of that name either.¹ In any case, the registration of that company name would not overcome the inference from

¹ The Panel notes its general powers articulated *inter alia* in paragraphs 10 and 12 of the Rules and has searched the publicly available database of Companies House Philippines at “<https://companieshouse.ph>” in order to evaluate the Respondent’s assertion regarding

the circumstances of this case that it was chosen because of its degree of similarity to the Complainant's mark in order to trade on the reputation of that mark. See also in this regard *Madonna Ciccone, p/k/a Madonna v. Dan Parisi and "Madonna.com"*, WIPO Case No. [D2000-0847](#). The Respondent also alleges that his website is only an introduction to the company's business and does not provide any services for users. However, the website promotes the company's services and provides contact details for Internet users to get in touch; it is clearly pitching for Internet users' business and has no discernible noncommercial purpose.

Accordingly, the Panel finds that the Respondent has failed to rebut the Complainant's *prima facie* case.

Therefore, based on the record of this proceeding, the Panel finds that the Complainant has satisfied the second element in paragraph 4(a) of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy provides that certain circumstances, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith. The fourth circumstance is as follows:

- (iv) by using the [disputed] domain name, [the respondent has] intentionally attempted to attract, for commercial gain, Internet users to [the respondent's] 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 disputed domain name was registered in 2021, years after the registration of the Complainant's MAGICPAY trademark in 2016. Although "pay" is descriptive of the nature of the Parties' respective payment processing services, the use of the word "magic" in this connection is somewhat arbitrary. The Respondent acknowledges that his website was formerly titled "MagicPays", which appears to confirm that he incorporated the letters "mgc" in the disputed domain name as an abbreviation of "magic". The choice to incorporate an abbreviation of that word in the disputed domain name for use with a website regarding payment services does not seem coincidental. Given that the Respondent operates in the same business sector as the Complainant, the Panel finds it more likely than not that the Respondent was aware of the Complainant's business and mark at the time when he registered the disputed domain name.

As regards use, the disputed domain name resolves to a website presenting a company that provides services of the same type as those of the Complainant. The disputed domain name appears intended to attract, for commercial gain, Internet users to the Respondent's website by creating a likelihood of confusion with the Complainant's mark as to the source or affiliation of the Respondent's website or the services presented on it, within the terms of paragraph 4(b)(iv) of the Policy.

The Respondent submits that the Parties' respective places of business and areas of operation are in different jurisdictions. However, the Panel recalls that the Internet is a global medium accessible in both jurisdictions and, besides, both operate in English. In any event, the record includes instances of actual consumer confusion between the Parties as recently as May 2023. Although the Respondent advises that his website title has transitioned from "MagicPays" to "MagicPayment" at some point in time evidently no later than June 2023, the site continues to be associated with the disputed domain name. The risk of confusion with the Complainant's mark remains at least up until the point when Internet users reach the Respondent's website. Even after they view that site, the confusion may persist despite the different colors of the Parties' respective logos, due to the similarity between MAGICPAY and MagicPayment, and the identity between their respective services.

the registration of his company name. The Panel considers this process of evaluation useful in assessing the merits of this case and reaching a conclusion. See [WIPO Overview 3.0](#), section 4.8.

Therefore, the Panel finds that the disputed domain name has been registered and is being used in bad faith. The Complainant has satisfied the third element in paragraph 4(a) 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 <mgcpays.com> be transferred to the Complainant.

/Matthew Kennedy/

Matthew Kennedy

Sole Panelist

Date: August 15, 2023