

ADMINISTRATIVE PANEL DECISION

Convenient Payments, LLC v. kiran saha
Case No. D2023-4360

1. The Parties

The Complainant is Convenient Payments, LLC, United States of America (“United States”), represented by TechLaw Ventures, PLLC, United States.

The Respondent is kiran saha, United States.

2. The Domain Name and Registrar

The disputed domain name <intelipay.org> (the “Disputed Domain Name”) is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 20, 2023. On October 23, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On the same day, 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 (Privacy Service Provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 24, 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 amendment to the Complaint on October 25, 2023.

The Center verified that the Complaint together with the amendment to the 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 on October 27, 2023. In accordance with the Rules, paragraph 5, the due date for Response was November 16, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 27, 2023.

The Center appointed Lynda M. Braun as the sole panelist in this matter on December 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 California limited liability company that provides electronic payment processing services. The Complainant is the owner of the following trademarks registered with the United States Patent and Trademark Office (“USPTO”): INTELLIPAY, United States Trademark Registration No. 3,267,491, registered on July 24, 2007, in international class 36 (assigned to the Complainant pursuant to an Asset Purchase Agreement dated April 20, 2016); INTELLIPAY, United States Trademark Registration No. 6,760,557, registered on June 14, 2022, with a first use in commerce of August 2, 1997, in international class 36; and INTELLIPAY, United States Trademark Registration No. 7,000,673, registered on March 14, 2023, with a first use in commerce of August 2, 1997, in international class 9 (hereinafter collectively referred to as the “INTELLIPAY Mark”).

The Complainant is the owner of the domain name <intellipay.com>, which it has owned since August 2, 1997, and directs to its consumer-facing official website at “www.intellipay.com” to advertise, promote, and offer its payment processing services.

The Disputed Domain Name was registered on July 14, 2023, and resolves to the Respondent’s website that provides a login page that displays the Disputed Domain Name and where customers enter their username and password to enter the site, which offers competing payment processing services.

5. Parties’ Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the Disputed Domain Name.

Notably, the Complainant contends that:

- the Disputed Domain Name is confusingly similar to the Complainant’s INTELLIPAY Mark as it includes the Complainant’s mark in its entirety, save for a misspelling, as well as a different generic Top-Level Domain (“gTLD”), “.org”, than does the Complainant’s domain name, with a gTLD of “.com”;
- the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name because the Disputed Domain Name resolves to a website that mimics the Complainant’s website and provides services competing with those of the Complainant; and
- the Disputed Domain Name was registered and is being used in bad faith since, among other things, the Disputed Domain Name contains a misspelling of the Complainant’s INTELLIPAY Mark in the Disputed Domain Name in an attempt to deceive unwitting Internet users as to the source and sponsorship of the Respondent’s Disputed Domain Name and resolving website.

The Complainant seeks the transfer of the Disputed Domain Name from the Respondent to the Complainant in accordance with paragraph 4(i) of the Policy.

B. Respondent

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

6. Discussion and Findings

In order for the Complainant to prevail and have the Disputed Domain Name transferred to the Complainant, the Complainant must prove the following (Policy, paragraph 4(a)):

- (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 was registered and is being used in bad faith.

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires a two-fold inquiry: a threshold investigation into whether a complainant has rights in a trademark, followed by an assessment of whether the disputed domain name is identical or confusingly similar to that trademark. The Panel concludes that in the present case, the Disputed Domain Name is confusingly similar to the INTELLIPAY Mark.

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 of WIPO Panel Views on Selected UDRP Questions, Third Edition, (["WIPO Overview 3.0"](#)), section 1.7.

It is uncontroverted that the Complainant has established rights in the INTELLIPAY Mark based on its years of use as well as its registered trademarks for the INTELLIPAY Mark before the USPTO. The registration of a mark satisfies the threshold requirement of having trademark rights for purposes of standing to file a UDRP case. As stated in section 1.2.1 of the [WIPO Overview 3.0](#), "[w]here the complainant holds a nationally or regionally registered trademark or service mark, this *prima facie* satisfies the threshold requirement of having trademark rights for purposes of standing to file a UDRP case". Thus, the Panel finds that the Complainant satisfied the threshold requirement of having trademark rights in the INTELLIPAY Mark.

The Disputed Domain Name consists of the INTELLIPAY Mark almost in its entirety, although the Disputed Domain Name is misspelled by using only one letter "l" instead of two. Such a minor modification to a trademark is commonly referred to as "typosquatting" and seeks to wrongfully take advantage of errors by a user in typing a domain name into a web browser.

The misspelling of the Disputed Domain Name does not prevent a finding of confusing similarity to the INTELLIPAY Mark. See, e.g., [WIPO Overview 3.0](#), section 1.9 ("A domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element"); *LinkedIn Corporation v. Daphne Reynolds*, WIPO Case No. [D2015-1679](#) (minor alterations or substitution of a single letter cannot prevent a finding of confusing similarity).

In addition, where the Complainant's INTELLIPAY Mark, as here, is recognizable in the Disputed Domain Name, this does not prevent a finding of confusing similarity or identity under the first element. As stated in section 1.8 of [WIPO Overview 3.0](#), "where the relevant trademark is recognizable within the disputed domain name, the addition of other terms [...] would not prevent a finding of confusing similarity under the first element".

The Disputed Domain Name is followed by the gTLD ".org". The addition of a gTLD such as ".org" in a domain name is a technical requirement. Thus, it is well established that such element may typically be disregarded when assessing whether a disputed domain name is identical or confusingly similar to a trademark. See *Proactiva Medio Ambiente, S.A. v. Proactiva*, WIPO Case No. [D2012-0182](#) and [WIPO Overview 3.0](#), section 1.11.1. Thus, the Panel concludes that the Disputed Domain Name is

confusingly similar to the Complainant's INTELLIPAY Mark. The only differences between the INTELLIPAY Mark and the Disputed Domain Name are the misspelling of just one letter "l" in the Disputed Domain Name rather than two.

Accordingly, the Panel finds that the first element of paragraph 4(a) of the Policy has been met by the Complainant.

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.

Having reviewed the available record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the Disputed Domain Name. The Respondent has not rebutted the Complainant's *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the Disputed Domain Name such as those enumerated in the Policy or otherwise. The Complainant has not authorized, licensed or otherwise permitted the Respondent to use its INTELLIPAY Mark nor does the Complainant have any type of business relationship with the Respondent. There is also no evidence that the Respondent is commonly known by the Disputed Domain Name or by any similar name, nor any evidence that the Respondent was using or making demonstrable preparations to use the Disputed Domain Name in connection with a *bona fide* offering of goods or services. See Policy, paragraph 4(c).

The Disputed Domain Name is used to direct consumers to a website that provides competing electronic payment processing services, such use confuses consumers as to the source of the services being offered. Use of a complainant's trademark in a disputed domain name to redirect users to the respondent's website does not support a claim to rights or legitimate interests. Here, the Respondent is also not making a legitimate noncommercial or fair use of the Disputed Domain Name; rather, the Respondent's use of the Disputed Domain Name is a pretext for commercial gain by misleadingly diverting consumers to the Respondent's website. See WIPO Overview, section 2.5.3.

In sum, the Panel concludes that nothing on the record before it would support a finding that the Respondent is making a legitimate noncommercial or fair use of the Disputed Domain Name. Rather, the Panel finds that the Respondent is using the Disputed Domain Name for commercial gain with the intent to mislead by deceiving the Complainant's customers into believing that they arrived at the Complainant's website. Such use cannot conceivably constitute a *bona fide* offering of a product/service within the meaning of paragraph 4(c)(i) of the Policy or a noncommercial or fair use of the Disputed Domain Name.

Accordingly, the Panel finds that the second element of paragraph 4(a) of the Policy has been met by the Complainant.

C. Registered and Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances that if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

The Panel finds that the Respondent's registration and use of the Disputed Domain Name indicate that such registration and use has been done for the specific purpose of trading on the name and reputation of the Complainant and its INTELLIPAY Mark. See *Madonna Ciccone, p/k/a Madonna v. Dan Parisi and "Madonna.com"*, WIPO Case No. [D2000-0847](#) ("[t]he only plausible explanation for Respondent's actions appears to be an intentional effort to trade upon the fame of Complainant's name and mark"). The Panel notes that Internet users would likely believe that there is a connection between the Disputed Domain Name and the Complainant's payment processing services. In particular, the Respondent displayed a trademark nearly identical to the INTELLIPAY Mark on the website associated with the Disputed Domain Name and also included information related to electronic payment processing services. In fact, the Complainant provided evidence of actual customer confusion.

Moreover, the Panel finds that the Respondent had actual knowledge of the Complainant's INTELLIPAY Mark and targeted the Complainant when it registered the Disputed Domain Name, demonstrating the Respondent's bad faith. Based on the Complainant's widespread use of the INTELLIPAY Mark, it strains credulity to believe that the Respondent had not known of the Complainant or its INTELLIPAY Mark when registering the Disputed Domain Name since the Respondent used the resolving website of the Disputed Domain Name to offer competing electronic payment processing services¹. The Respondent's awareness of the Complainant and its INTELLIPAY Mark additionally suggests that the Respondent's decision to register the Disputed Domain Name was intended to cause confusion with the Complainant's INTELLIPAY Mark, to disrupt the Complainant's business and take advantage of the goodwill associated with the Complainant's federally registered trademarks. Evidence that a respondent registered a domain name to attract users for commercial gain by creating a likelihood of confusion with the complainant's mark supports a finding of bad faith registration.

Finally, the Disputed Domain Name contains a misspelling of the Complainant's INTELLIPAY Mark in the Disputed Domain Name to deceive Internet users. Such misspelling is evidence of bad faith registration and use. See *Nutricia International BV v. Eric Starling*, WIPO Case No. [D2015-0773](#). The Panel further concludes that the Respondent knew about the Complainant's rights in the INTELLIPAY Mark when it registered the Disputed Domain Name, since it misspelled the Complainant's INTELLIPAY Mark by using a single letter "l" instead of two to misdirect users to the Respondent's website by capitalizing on typing mistakes. See *ESPN, Inc. v. XC2*, WIPO Case No. [D2005-0444](#) ("It is well-settled that the practice of typosquatting, of itself, is evidence of the bad faith registration of a domain name.").

Accordingly, the Panel finds that the third element of paragraph 4(a) of the Policy has been met by the Complainant.

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 <intelipay.org> be transferred to the Complainant.

/Lynda M. Braun/

Lynda M. Braun

Sole Panelist

Date: December 12, 2023

¹ Bad faith is also demonstrated by the Respondent's use of the Disputed Domain Name to resolve to its website with electronic payment processing services competing with those of the Complainant. In fact, the Complainant contends that there was a case of actual confusion by a customer who contacted the Complainant through a chat function about confusion between the two websites. The actual confusion referenced above occurred when a customer of the Complainant questioned a statement charge that was received but turned out to be charged by the Respondent to the customer on the Respondent's almost identical website. The use of the Complainant's INTELLIPAY Mark in the Disputed Domain Name and on the Respondent's website is misleading and may divert consumers to that website instead of the Complainant's official and authorized website.