

ADMINISTRATIVE PANEL DECISION

Convenient Payments, LLC v. Carolina Rodrigues, Fundacion Comercio Electronico

Case No. D2023-4839

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 Carolina Rodrigues, Fundacion Comercio Electronico, Panama.

2. The Domain Name and Registrar

The disputed domain name <intewllipay.com> is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 21, 2023. On November 22, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 22, 2023, 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 (Domains By Proxy, LLC, DomainsByProxy.com) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 23, 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 November 27, 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 November 29, 2023. In accordance with the Rules, paragraph 5, the due date for Response was December 19, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 20, 2023.

The Center appointed Clive Duncan Thorne as the sole panelist in this matter on January 2, 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.

4. Factual Background

The Complainant, a California limited liability company, is in the business of providing payment processing services including the electronic processing and transmission of bill payment data, credit and debit card transaction processing services, and providing the electronic processing of electronic funds transfer.

The Complainant trades using the trade mark INTELLIPAY in conjunction with its payment processing services. The marks registered at the United States Patent and Trademark Office in the name of the Complainant include;

-No. 6,760,557 registered on June 14, 2022, in Class 36;

-No. 7,000,673 registered on March 14, 2023, in Class 9;

-No. 3,267,491 registered on July 24, 2007, in Class 36.

Copies of certificates of registration are exhibited at Annex 4 to the Complaint. These trade marks were registered before the date of registration of the disputed domain name on October 20, 2023.

The Complainant also relies upon its registration of the domain name <intellipay.com> from which it advertises and offers its payment processing services as evidenced by Whois information for the domain name <intellipay.com> exhibited at Annex 5 to the Complaint.

In the absence of a Response, there is little information about the Respondent and its activities. However, at Annex 6 to the Complaint the Complainant exhibits an image of the Respondent's webpage from which it can be seen how the disputed domain name is used to direct users to a website with pay-per-click ("PPC") links regarding payment 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 and that on the evidence it has adduced:

- i. The disputed domain name is confusingly similar to a trade mark in which it has rights;
- ii. There is no evidence that the Respondent has rights or legitimate interests in respect of the disputed domain name; and
- iii. There is evidence that the disputed domain name was registered and is being used in bad faith.

B. Respondent

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

6. Discussion and Findings

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 trade mark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trade mark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the trade mark is recognizable within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the trade mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

In particular the Panel relies upon the fact that, as submitted by the Complainant, a side-by-side comparison of the disputed domain name and the Complainant's registered trade mark INTELLIPAY shows that INTELLIPAY is included and recognizable in the disputed domain name, with the sole addition of the single letter "w".

Based on the available record, 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.

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 disputed domain name is inherently misleading considering it is a typographical variation of the Complainant's trademark and, given its use for sponsored PPC links relating to the Complainant's services, it is clear the Respondent sought to mislead Internet users for its presumed commercial gain through click-through revenue.

Based on the available record, the Panel finds the second element of the Policy has been established.

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, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

In the present case, the Panel notes that the Respondent registered a domain name which is confusingly similar to the Complainant's well-known trade mark INTELLIPAY. It is using the disputed domain name to intentionally create a likelihood of confusion with the trade mark.

The evidence to support this finding is that the PPC links on the Respondent's website associated with the disputed domain name relate to the Complainant's services (i.e., payment facilitator companies) and lead to a page with a link directing the user to "Visit Website", at which point the user is directed to a variety of different websites, including those that appear to be competitors of the Complainant.

In the Panel's view this establishes that the Respondent registered and is using the disputed domain name to intentionally attempt to attract, for commercial gain, Internet users by creating a likelihood of confusion with the Complainant's marks within paragraph 4(b)(iv) of the Policy.

Based on the available record, 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 <intewllipay.com> be transferred to the Complainant.

/Clive Duncan Thorne/

Clive Duncan Thorne

Sole Panelist

Date: January 16, 2024