

## **ADMINISTRATIVE PANEL DECISION**

### **Bread Financial Payments, Inc. v. HongWenXiong Case No. D2024-4314**

#### **1. The Parties**

The Complainant is Bread Financial Payments, Inc., United States of America (“United States”), represented by Burr & Forman LLP, United States.

The Respondent is HongWenXiong, China, self-represented.

#### **2. The Domain Name and Registrar**

The disputed domain names <comenit.net> and <comenitty.com> are registered with 22net, Inc. (the “Registrar”).

#### **3. Procedural History**

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on October 18, 2024 against the disputed domain name <comenit.net>. On October 21, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name <comenit.net>. On October 22, 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 (John Doe) and contact information in the Complaint. On the same day, the Center sent an email communication to the Complainant, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. On the same day, the Center informed the Parties in Chinese and English, that the language of the Registration Agreement for the disputed domain name is Chinese. On October 25, 2024, the Complainant filed an amended Complaint in English, including a request to add the disputed domain name <comenitty.com> to the proceeding, and a request for English to be the language of the proceeding. On October 27, 2024, the Respondent requested that Chinese be the language of the proceeding.

On October 28, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the additional disputed domain name <comenitty.com>. On October 29, 2024, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

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 in Chinese and English of the Complaint, and the proceedings commenced on October 29, 2024. In accordance with the Rules, paragraph 5, the due date for Response was November 18, 2024. The Response was filed in Chinese with the Center on November 19, 2024.

The Center appointed Matthew Kennedy as the sole panelist in this matter on November 25, 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 November 25, 2024, the Complainant sent an unsolicited supplemental filing to the Center.

#### **4. Factual Background**

The Complainant is a wholly-owned subsidiary of Bread Financial Holdings, Inc., a publicly traded financial services company founded in 1996. The Complainant provides banking and financing services; credit card services; and operates loyalty and incentive award programs. The Complainant holds multiple United States trademark registrations, including number 4,154,883 for COMENITY, registered on June 5, 2012 with a claim of first use in commerce on November 14, 2011 (application filed on November 10, 2010) specifying services in classes 35 and 36, including credit card services. That trademark registration is current. The Complainant also uses the domain names <comenity.com> and <comenity.net>. According to an archived screenshot, the Complainant’s predecessor-in-interest began using the domain name <comenity.net> in connection with a website as early as October 2011.<sup>1</sup>

The Respondent is an individual based in China.

The disputed domain name <comenit.net> was created on March 11, 2012. It resolves to a parking page displaying Pay-Per-Click (“PPC”) links related to “Online Payment Card,” “Activate My Card,” and “Credit Card Payment Processing”. The linked websites offer credit card and payment services. According to archived screenshots presented by the Complainant, the parking page displayed PPC links related to these topics as early as 2014.

The disputed domain name <comenitty.com> was registered by the Respondent on August 12, 2021. It resolves to a parking page displaying PPC links related to: “Payment Processing,” “Oar Health,” and “Promises Treatment Center”. The linked websites offer various services, including online payment processing. According to archived screenshots presented by the Complainant, the parking page displayed PPC links related to these topics as early as 2021.

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<sup>1</sup> The Panel notes its general powers articulated *inter alia* in paragraphs 10 and 12 of the Rules and has searched the Internet Archive ([www.archive.org](http://www.archive.org)), which is a matter of public record, to verify the use made of the COMENITY mark by the Complainant’s predecessors-in-interest. The Panel considers this limited factual research useful in assessing the case merits and reaching a decision. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 4.8.

## **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 names are confusingly similar to the Complainant's COMENITY mark. The Respondent has no rights or legitimate interests in respect of the disputed domain names. The Complainant has never authorized the Respondent to use the COMENITY trademark, or any marks confusingly similar thereto, for any purpose, including as a domain name. The disputed domain names were registered and are being used in bad faith. It is likely that the Respondent did not register the disputed domain name <comenit.net> until after March 19, 2014 and the disputed domain name <comenitty.com> until 2021.

### **B. Respondent**

The Respondent contends that the Complainant has not satisfied any of the elements required under the Policy for a transfer of the disputed domain names.

Notably, the Respondent contends that the disputed domain names are combinations of the word "come" and the word "nit" or "nitty" and are completely different from the Complainant's trademark.

The Respondent has legal rights to the disputed domain names, which were validly registered. The disputed domain name <comenit.net> is intended for use with an entertainment website, such as games and cartoons. The Respondent is looking for partners to build a site but, due to his busy work schedule and the time required for technical programming, the site is still in the preparation stage and the disputed domain name temporarily points to a parking page. The Respondent did not know of the Complainant's trademark at the time when he registered this disputed domain name. Given that the Complainant's trademark had not obtained registration at that time it is even less likely to constitute a well-known mark. The disputed domain name <comenitty.com> is registered according to a naming pattern consisting of "come" followed by another word, similar to the other disputed domain name, for use as an entertainment sub-website or alternative domain name and it too temporarily points to a parking page. The Complainant submits no evidence of trademark rights to COMENITY in China.

The disputed domain name <comenit.net> was registered earlier than the Complainant's trademark. The word combinations in the disputed domain names are different from the Complainant's trademark. The associated parking pages contain no promotion using the name COMENITY. The parking pages' content varies and is displayed in different languages according to visitors' geolocation. The Respondent cannot control the parking pages' content. The temporary use of parking pages does not automatically indicate bad faith.

## **6. Discussion and Findings**

### **6.1 Preliminary Issues**

#### **A. Language of the Proceeding**

The language of the Registration Agreements for the disputed domain names is Chinese. 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 agreements.

The Complaint and amended Complaint were filed in English. The Complainant requested that the language of the proceeding be English for several reasons, including the fact that it is not familiar with Chinese and translation would incur great expense and inconvenience; the disputed domain names consist almost entirely of the Complainant's English language trademark, the associated parking pages and linked websites are in English, the Respondent uses a United States-based domain name parking company, whose privacy policy and terms are in English; and the Respondent's email username is in English.

The Response was filed in Chinese. The Respondent requested that the language of the proceeding be Chinese for several reasons, including the fact that the Registration Agreements are in Chinese; the Complainant chose to initiate the case; the associated parking pages vary depending on visitors' geolocation and do not reflect the Respondent's language ability; the Respondent does not master English sufficiently to conduct this proceeding in that language; and translation will create significant costs and a burden for the Respondent.

In exercising its discretion to use a language other than that of the Registration Agreements, 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 3.0](#), section 4.5.1.

The Panel notes that the detailed Response indicates that the Respondent has in fact understood the Complaint and taken the opportunity to respond to the Complainant's contentions regarding each of the three elements of paragraph 4(a) of the Policy. Having considered this and all the matters above, the Panel determines under paragraph 11(a) of the Rules that the language of the proceeding shall be English but that the Panel will accept the Response in Chinese, without translation.

## **B. Unsolicited Supplemental Filing**

The Complainant made an unsolicited supplemental filing on the day on which the Panel was appointed. The Respondent did not comment on the supplemental filing.

Paragraph 12 of the Rules provides that "[i]n addition to the complaint and the response, the Panel may request or permit, in its sole discretion, further statements or documents from either of the Parties". At the same time, paragraph 10(b) and (c) of the Rules require the Panel to ensure that "each Party is given a fair opportunity to present its case" and that "the administrative proceeding takes place with due expedition".

The Panel recalls that UDRP panels have repeatedly affirmed that a party submitting or requesting to submit an unsolicited supplemental filing should clearly show its relevance to the case and why it was unable to provide the information contained therein in its complaint or response. See [WIPO Overview 3.0](#), section 4.6.

In the present case, the Complainant submits that it was not aware of the Respondent's identity when it filed the original Complaint and later it had nothing more than a name, email address, and location, and was unable to uncover any information regarding the Respondent. The Complainant could not fully anticipate the Respondent's claims and defenses at the time the Complaint was filed and seeks to submit new arguments directed to certain of the Respondent's claims and defenses.

The Panel has reviewed the content of the Complainant's supplemental filing. It recaps an argument already made in the Complaint (regarding the date of registration of the Complainant's trademark), and addresses arguments regarding the composition of the disputed domain names, the location of the Respondent, and the content of the PPC links parking pages, all of which can be evaluated on their face. Accordingly, the Panel sees no exceptional circumstances that would justify accepting the supplemental filing.

Therefore, the Panel finds that the Complainant was already given a fair opportunity to present its case in the Complaint and amended Complaint. The Panel declines to accept the Complainant's supplemental filing as part of the record of this proceeding.

## 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.

### 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. See [WIPO Overview 3.0](#), section 1.7.

The Complainant has shown rights in respect of the COMENITY trademark for the purposes of the Policy. Those rights were in existence at the time when the Complaint was filed. See [WIPO Overview 3.0](#), sections 1.2.1 and 1.1.3.

The Respondent notes that there is no evidence that the Complainant holds trademark rights in China, where the Respondent is based. However, the Panel recalls that, given the global nature of the Internet and Domain Name System, the jurisdiction where the Complainant's trademark is valid is not considered relevant to the assessment under the first element of paragraph 4(a) of the Policy. See [WIPO Overview](#), section 1.1.2.

Both disputed domain names consist of misspellings of the COMENITY mark, a practice known as "typosquatting". One disputed domain name omits the "y" in the mark and the other disputed domain name duplicates the "t" in the mark but there is no other difference between their respective operational elements and the mark. Both disputed domain names contain sufficiently recognizable aspects of the COMENITY mark. The only additional element in each disputed domain name is a generic Top-Level Domain ("gTLD") extension (either ".net" or ".com") which, as a standard requirement of domain name registration, may be disregarded in the assessment of confusing similarity for the purposes of the Policy. Accordingly, the disputed domain names are confusingly similar to the COMENITY mark for the purposes of the Policy. See [WIPO Overview 3.0](#), sections 1.7, 1.9, and 1.11.1.

The Respondent argues that the disputed domain names can be read as combinations of English words ("come" and "nit" or "nitty"). Yet this does not alter the fact that the disputed domain names are misspellings of the COMENITY mark containing sufficiently recognizable aspects of that mark.

Therefore, the Panel finds the first element of the Policy has been established with respect to both disputed domain names.

### 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. See [WIPO Overview 3.0](#), section 2.1.

In the present case, the disputed domain names resolve to parking pages displaying PPC links related to credit card and online payment services, some of which are the same as, or similar to, the Complainant's services. These links compete with or capitalize on the reputation and goodwill of the Complainant's COMENITY mark. This does not represent a use of the disputed domain names in connection with a bona fide offering of goods or services for the purposes of the Policy. See [WIPO Overview 3.0](#), section 2.9. The PPC links operate for the commercial gain of the Respondent, if he is paid to redirect traffic to the linked websites, or for the commercial gain of the operators of the linked websites, or both. This does not constitute a legitimate noncommercial or fair use of the disputed domain names. Further, the Registrar has verified that the Respondent's name is HongWenXiong, which does not resemble the disputed domain names. Nothing on the record indicates that the Respondent has been commonly known by the disputed domain names.

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 names.

Turning to the Respondent's arguments, he alleges that the disputed domain names are intended for use with an entertainment website and sub-website. However, he has not demonstrated any preparations to make such a use of the disputed domain names. He also alleges that the disputed domain names are registered according to a naming pattern consisting of the word "come" followed by another word (either "nit" or "nitty") but he does not use, or propose to use, either disputed domain name in connection with any such meaning. Lastly, the Respondent submits that the disputed domain names point to parking pages only temporarily and that he exercises no control over the content displayed. However, as the holder of the disputed domain names he is responsible for the use made of them and he provides no evidence of any attempt to suppress PPC advertising related to the Complainant's type of services. See [WIPO Overview 3.0](#), section 2.9.

Accordingly, the Respondent has not rebutted the Complainant's prima facie showing.

Based on the record, the Panel finds the second element of the Policy has been established with respect to both disputed domain names.

### **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. The fourth of these circumstances 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] web site or location."

In the present case, the disputed domain name <comenit.net> was registered by the Respondent no earlier than March 11, 2012<sup>2</sup>, which was three months before the registration of the Complainant's trademark on June 5, 2012. The Panel recalls that where a respondent registers a domain name before the complainant's trademark rights accrue, panels will not normally find bad faith on the part of the respondent. See [WIPO](#)

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<sup>2</sup> It is unnecessary for the purposes of this Decision to determine whether the Respondent acquired this disputed domain name on a later date, as the Complainant submits.

[Overview 3.0](#), section 3.8.1. However, as an exception to that general proposition, in certain limited circumstances where the facts of the case establish that the respondent registered the disputed domain name in anticipation of the complainant's nascent (typically as yet unregistered) trademark rights, panels have been prepared to find that the respondent has acted in bad faith. One of those scenarios is where the disputed domain name is registered following the complainant's filing of a trademark application. See [WIPO Overview 3.0](#), section 3.8.2. That is the scenario in the present case, where the disputed domain name <comenit.net> was registered over a year after the Complainant filed its trademark application for COMENITY on November 10, 2010 and five months after the Complainant's predecessor-in-interest started to operate a website in connection with the domain name <comenity.net>. The disputed domain name <comenit.net> is a misspelling of the COMENITY mark, omitting only the "y" and adding nothing but a gTLD extension. The Respondent claims that he did not know of the Complainant's mark at the time. However, although he submits that the disputed domain name may be read as two English words, he provides no explanation as to what the combination "come nit" means. In any case, it has no apparent connection to his alleged intended purpose for this disputed domain name, i.e., an entertainment website. The Panel finds the most plausible explanation of the circumstances to be that the Respondent registered the disputed domain name <comenit.net> in anticipation of the Complainant's nascent but as yet unregistered trademark rights in COMENITY.

The disputed domain name <comenitty.com> was registered by the Respondent on August 12, 2021, which was years after the registration of the Complainant's COMENITY mark. This disputed domain name is a misspelling of that mark, duplicating the "t" and adding no other additional element besides a gTLD extension. Although the Respondent submits that the disputed domain name may be read as two English words, he provides no explanation as to what the combination "come nitty" means. In any event, these words have no apparent connection to his alleged intended purpose for this disputed domain name, i.e., an entertainment sub-website or alternative domain name. The Panel finds the most plausible explanation of these circumstances to be that the Respondent registered the disputed domain name <comenitty.com> with the Complainant's COMENITY mark in mind.

As regards use, both disputed domain names, which are misspellings of the COMENITY mark, are used in connection with parking pages that display PPC links related to credit card and online payment services. They are evidently intended to attract Internet users seeking information about the Complainant who inadvertently misspell the Complainant's trademark and divert them to the PPC links parking pages. Even though the links do not display the COMENITY mark, some of them relate to services that are the same as, or similar to, the Complainant's services. These links compete with or capitalize on the reputation and goodwill of the Complainant's COMENITY mark, for commercial gain. Given the Panel's findings in Section 6.2B above, the Panel finds that these circumstances fall within the terms of paragraph 4(b)(iv) of the Policy.

Therefore, the Panel finds that the Complainant has established the third element of the Policy with respect to both disputed domain names.

## 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 names <comenit.net> and <comenitty.com> be transferred to the Complainant.

*/Matthew Kennedy/*

**Matthew Kennedy**

Sole Panelist

Date: December 6, 2024