

ADMINISTRATIVE PANEL DECISION

Layaway Travel Australia Pty Ltd v. Cho Yoon-Goo
Case No. D2022-2632

1. The Parties

The Complainant is Layaway Travel Australia Pty Ltd, Australia, represented by Tiger & Bear Partners, Australia.

The Respondent is Cho Yoon-Goo, Republic of Korea.

2. The Domain Name and Registrar

The disputed domain name <planpay.com> is registered with Koreacenter.com co., Ltd. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 19, 2022. On July 19, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 4, 2022, 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 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 August 10, 2022. In accordance with the Rules, paragraph 5, the due date for Response was August 30, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 6, 2022.

The Center appointed Kathryn Lee as the sole panelist in this matter on September 15, 2022. 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 travel payment plan provider located in Australia. The Complainant uses the PLANPAY trademark as part of its advertising and branding and owns a registration to the PLANPAY text mark (registered in Australia on September 24, 2020) (registration number 2121444), and several registrations to the PLANPAY and device mark including the following: International registration number 1611262 (registered on August 13, 2021), Australian registration number 2159164 (registered on March 12, 2021), and New Zealand registration number 1188396 (registered on March 1, 2022).

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

The disputed domain name was registered on January 22, 2010, and resolves to a website displaying pay-per-click links.

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain name is identical or confusingly similar to the PLANPAY trademarks 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 further contends that the Respondent's use of the disputed domain name to display pay-per-click links does not constitute a *bona fide* offering of goods and services.

Finally, the Complainant contends that the disputed domain name was registered and is used in bad faith.

The Complainant contends that the Respondent advertises the disputed domain name for sale for USD 34,500 and that this is an exorbitant price well in excess of valuable consideration of the Respondent's out of pocket costs directly related to the disputed domain name. The Complainant also contends that the Respondent's use of the disputed domain name misleads consumers to believe that the Respondent is offering services of the Complainant or that the website is otherwise affiliated or sponsored by the Complainant.

B. Respondent

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

6. Discussion and Findings

A. Language of Proceedings

Paragraph 11(a) of the Rules provides that the language of the proceeding shall be the language of the registration agreement, unless otherwise agreed to by the parties, subject to the authority of the panel to determine otherwise. In this case, the language of the Registration Agreement is Korean, and both Parties have had an opportunity to argue their positions on this point. The Center issued a notice in Korean and English stating that it would accept the Complaint filed in English, and that the Response would be accepted in either Korean or English. The Respondent did not submit any Response.

The Panel finds it proper and fair to render this decision in English. The disputed domain name is composed of Latin characters, and resolves to a website with advertising links in English. Also, the disputed domain name is offered for sale on a website with details in English. The Panel would have considered a Response

in Korean, but no Response was submitted. Accordingly, the Panel determines that proceeding in English is fair and procedurally efficient given the circumstances of this case.

B. Identical or Confusingly Similar

According to WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#)), section 1.1.3, the Complainant’s trademark rights must be in existence at the time the Complaint is filed. The Complainant has demonstrated with supporting evidence that it holds a registration to a mark consisting of “planpay” in Australia. The disputed domain name solely consists of the term “playpay”, and is therefore, identical to the Complainant’s trademark.

For the reasons mentioned above, the Panel finds that the first element has been established.

C. Rights or Legitimate Interests

On the basis of the present record, there is no evidence that the Respondent registered or obtained the disputed domain name with knowledge of the Complainant or its PLANPAY trademark which was registered more than ten years after the registration of the disputed domain name. Further, the Respondent has parked the disputed domain name with a parking service but this is not *per se* illegitimate under the UDRP, absent evidence of trading on the trademark of the Complainant or its competitors. Here, the pay-per-click links on the website to which the disputed domain name resolves are related to the dictionary meaning of the terms “plan” and “pay” comprising the disputed domain name. See section 2.9 of the [WIPO Overview 3.0](#).

Therefore, the Panel finds that the Complainant has not met its burden here with respect to the Respondent’s lack of rights or legitimate interests in the disputed domain name.

D. Registered and Used in Bad Faith

Section 3.1 of the [WIPO Overview 3.0](#) provides that bad faith under the UDRP is “broadly understood to occur where a respondent takes unfair advantage of or otherwise abuses a complainant’s mark”. Here, the record in this case does not support a finding of bad faith.

First of all, the Complainant’s trademarks were registered more than ten years after the registration of the disputed domain name. Prior UDRP panels have found 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 section 3.8 of the [WIPO Overview 3.0](#). The Complaint here failed to mention when the Complainant was founded and when it began using the PLANPAY mark, but online searches indicate that the Complainant was not established until 2015. Further, there is no evidence in the record that suggests the Respondent acquired the disputed domain name after the Complainant’s trademark rights accrue. All in all, there is no evidence that the Respondent targeted the Complainant or its PLANPAY mark when registering the disputed domain name.

Next, there is no evidence that the Respondent used the disputed domain name in bad faith. The offer to sell the disputed domain name or the Respondent’s use of the disputed domain name to display pay-per-click links, without additional supporting factors, do not in the circumstances indicate bad faith. See section 3.1.1 of the [WIPO Overview 3.0](#). Here, the pay-per-click links are to credit cards and bill payment services which are related to the dictionary meaning of the terms “plan” and “pay” comprising the disputed domain name.

Therefore, the Panel finds that the Complainant has not established the third element of the Policy.

7. Decision

For the foregoing reasons, the Complaint is denied.

/Kathryn Lee/

Kathryn Lee

Sole Panelist

Date: September 29, 2022