

## **ADMINISTRATIVE PANEL DECISION**

### **Moonpig.com Limited v. Phan Văn Trường**

### **Case No. D2022-1779**

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

The Complainant is Moonpig.com Limited, United Kingdom, represented by Clarke Willmott LLP, United Kingdom.

The Respondent is Phan Văn Trường, Viet Nam.

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

The disputed domain name <moonpigs.com> is registered with April Sea Information Technology Corporation (the “Registrar”).

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

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 17, 2022. On May 18, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 24, 2022, 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 and contact information in the Complaint.

The Center sent an email communication to the Complainant also on May 24, 2022 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 May 27, 2022.

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 May 30, 2022. In accordance with the Rules, paragraph 5, the due date for Response was June 19, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 20, 2022.

The Center appointed Alistair Payne as the sole panelist in this matter on June 23, 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 United Kingdom based Internet supplier of personalised cards and gifts which operates internationally under the MOONPIG mark and through its website at the domain name <moonpig.com>. It owns numerous trade mark registrations for its MOONPIG trade mark and in particular United Kingdom trade mark registration 00002214310 registered on May 5, 2000.

The disputed domain name was first registered on June 30, 2004 and the registration record was updated on February 22, 2022. As of December 21, 2021 the disputed domain name re-directed to a domain name parking service featuring pay-per-click links that re-directed Internet users to websites at which competitive goods to those offered by the Complainant were offered for sale, however this parking page has subsequently been disabled.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant submits that it owns various trade mark registrations internationally for its MOONPIG mark including United Kingdom trade mark registration 00002214310 registered on May 5, 2000. It notes that the disputed domain name wholly incorporates its MOONPIG mark together with the letter "s" which indicates that it is in the plural form. The Complainant asserts that this amounts to typosquatting by the Respondent and that the disputed domain name is confusingly similar to its MOONPIG registered trade mark.

The Complainant submits that the Respondent has not used the disputed domain name in connection with the *bona fide* offering of goods or services and that it has seen no evidence to suggest that the Respondent is commonly known by the disputed domain name or has any relevant trade mark or service mark rights.

It notes that the disputed domain name has likely been used by the Respondent to generate revenue as a consequence of diverting to a landing page operated by a domain name parking service which featured links to providers of goods and services identical to and/or similar to the goods and services offered by the Complainant. It notes that some of the alternative providers of goods and services were direct competitors of the Complainant and submits that the disputed domain name was therefore being used to divert Internet users to competing goods providers. It says that this amounted to illegitimately trading on the goodwill and reputation attaching to the Complainant's mark.

The Complainant says that this is a classic case of the Respondent engaging in typosquatting in bad faith in relation to a very well reputed mark such as MOONPIG. It further submits that by using the disputed domain name to divert Internet users to a domain parking site that features links to competitors, the Respondent has intentionally attempted to confuse and attract Internet users to its website by creating a likelihood of confusion with the Complainant's mark which has resulted in commercial gain to the Respondent and is evidence of bad faith under the Policy.

##### **B. Respondent**

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

## **6. Discussion and Findings**

### **A. Identical or Confusingly Similar**

The Complainant has demonstrated that it owns various registered trade mark rights for its MOONPIG trade mark and in particular United Kingdom trade mark registration 00002214310 registered on May 5, 2000. The disputed domain name wholly incorporates the MOONPIG mark and is therefore confusingly similar to it. The addition in the disputed domain name of the letter “s” to render it in the plural form does not prevent a finding of confusing similarity.

As a result, the Panel finds that the Complaint succeeds under this element of the Policy.

### **B. Rights or Legitimate Interests**

Based on Complainant’s contentions in the cease and desist letter sent by it to the Respondent, to which it has never received a response, it appears that the Complainant’s coined MOONPIG mark enjoys a substantial international reputation for its personalised cards and gifts. The Complainant has submitted that the Respondent has not used the disputed domain name in connection with the *bona fide* offering of goods or services and that it has seen no evidence to suggest that the Respondent is commonly known by the disputed domain name, or has any relevant trade mark or service mark rights.

The Complainant has also provided evidence that the disputed domain name has previously been used by the Respondent to divert to a landing page operated by a domain name parking service which featured links to providers of goods and services identical to and/or similar to the goods and services offered by the Complainant. It has asserted that some of the alternative providers of goods and services were direct competitors of the Complainant and that by diverting Internet users to competing goods providers the Respondent was using or permitting the disputed domain name to be used illegitimately to trade on the goodwill and reputation attaching to the Complainant’s mark. It has noted that it is very likely that the Respondent earned “pay-per-click” revenue from this conduct.

Based on these submissions and the evidence on the record, the Panel finds that the Complainant has made out a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name. The Respondent has failed to respond to or to rebut the Complainant’s case or to respond to the Complainant’s pre-action cease and desist letter to explain its registration and the Panel accordingly finds that the Complaint succeeds under this element of the Policy.

### **C. Registered and Used in Bad Faith**

The Complainant has demonstrated that it owns registered trade mark for its MOONPIG trade mark as set out above. The disputed domain name was first registered in 2004 but may have only been acquired by the Respondent on the “updated” date in the Whois record being February 2022. In any event the Complainant’s United Kingdom trade mark was registered in 2000 well prior to the first registration of the disputed domain name. In circumstances that “moonpig” is a coined term that is highly distinctive and has been and is being used internationally as a trade mark in relation to the Complainant’s on-line card and gift business, the very strong inference is that the Respondent, although based in Viet Nam, was well aware of the Complainant’s mark and business when he acquired and/or registered the disputed domain name.

Under paragraph 4(b)(iv) of the Policy there is evidence of registration and use of a disputed domain name in bad faith where a Respondent has used the disputed domain name to intentionally attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant’s trade marks as to the source, sponsorship, affiliation or endorsement of the website

Prior to the filing of this Complaint the disputed domain name diverted Internet users to a domain parking site that featured links to competitors of the Complainant. This amounts to the Respondent using the disputed domain name intentionally in an attempt to attract Internet users to its website by creating a likelihood of

confusion with the Complainant's mark which has very likely resulted in a commercial gain to the Respondent and is evidence of registration and use in bad faith under the Policy.

Overall, the Panel finds that this is a classic case of the Respondent engaging in typo-squatting in bad faith in relation to the highly distinctive and well-reputed MOONPIG mark. The Panel's view of the Respondent's bad faith is only reinforced by his failure to respond to the Complainant's pre-action cease and desist letter or to otherwise explain his conduct.

Accordingly, the Panel finds that the disputed domain name has been registered and used in bad faith and that the Complaint also succeeds under this 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 <moonpigs.com> be transferred to the Complainant.

*/Alistair Payne/*

**Alistair Payne**

Sole Panelist

Date: July 7, 2022