Decision for dispute CAC-UDRP-101483

Case number	CAC-UDRP-101483
Time of filing	2017-03-28 09:21:34
Domain names	AMUNDIPIONEER.COM

Case administrator

Name	Aneta Jelenová (Case admin)

Complainant

Organization	AMUNDI ASSET MANAGEMENT

Complainant representative

Organization	Nameshield (Maxime Benoist)

Respondent

Organization	Syed Hussain / Domain Management MIC

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings that are pending or decided and that relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant has proved to be owner of the International word trademark "AMUNDI", registered on September 24, 2009 in the Int. class (Nice Classification) 36, based on the French trademark no. 093654657 filed on June 4, 2009, designating under the Madrid Protocol Australia, Bahrein, the EU, Japan, Republic of Korea, Norway, Singapore, Turkey, the US, Switzerland, China, Egypt, Liechtenstein, Morocco, Monaco, Russian Federation, Ukraine, Vietnam.

FACTUAL BACKGROUND

The Complainant asserts and provides evidentiary documentation of the following facts, which are not contested by the Respondent.

The Complainant is a French company involved in the business of asset management. It was incorporated in 2010 by Crédit Agricole and Société Générale to regroup their activities of asset management and it is ranked among the 10 largest global asset management companies with over Euros 850 billion in assets under management.

The Complainant operates under the AMUNDI ASSET MANAGEMENT trade name and is registered owner of the

International trademark "AMUNDI", registered in numerous countries worldwide, including the US where the Respondent is located.

The Complainant uses as its primary domain name <amundi.com> to promote its activities and owns several other domain names, comprising the dominant component "amundi" associated with generic/desriptive terms indicating its activities (e.g. asset management, capital investment, funds, etc.).

At the end of 2016 the Complainant announced the acquisition of the company Pioneer Investments from the Italian bank UniCredit. The disputed domain name was registered shortly after the announcement of the acquistion of Pioneer Investments by the Complainant and resolves to a parking page and is offered for sale.

Under the three requirements of the Paragraph 4(a) of the UDRP Policy the Complainant contends as follows.

The domain name <amundipioneer.com> is confusingly similar to the Complainant's protected trademark because it contains in its entirety the mark "AMUNDI" associated with the generic term "PIONEER", which is not sufficient to escape the finding of confusing similarity and even increases the likelihood of confusion due to the clear reference to the announced acquisition of the company Pioneer Investments by the Complainant.

The Complainant also contends that the Respondent lacks rights and legitimate interests in the domain name because it has no relationship with the Respondent and has not granted the Respondent with any authorization or licence to use the Complainant's trademark or register the disputed domain name. The disputed domain name was registered after the announcement of the acquisition of Pioneer Investments by the Complainant, hence, with full knowledge of the Complainant's trademarks and activities. Furthermore, the website associated with the domain name displays sponsered links related to the business of the Complainant and is offered for sale on the domain auction platform SEDO for the price of USD 2750.

Concerning the registration and use of the disputed domain name in bad faith the Complainant contends the following cumulative circumstances:
- the Respondent is using privacy or proxy registration services
- the Respondent has registered and has been using a domain name confusingly similar with the well-known trademark of the Complainant
- the Respondent has had constructive knowledge of the Complainant's activities, its trademark as well as its intention to acquire the company Pioneer Investments and, hence, the registration and use of the disputed domain name has been carried out with opportunistic bad faith
- the Respondent has been found in various previous UDRP proceedings, containing similar facts, to have registered with opportunistic bad faith domain names containing well-known trademarks of third parties
- the Repondent is attracting traffic to the website related to the domain name containing PPC links for commercial gain by creating confusing similarity with the Complainant's trademark
- the Respondent's primary intention is to sell or otherwise transfer the domain name to the Complainant or to a competitor for valuable consideration in excess of its documented out-of-pocket expenses directly related to the domain name.

The Complainant, therefore, requests the transfer of the disputed domain name <AMUNDIPIONEER.COM>.

PARTIES CONTENTIONS

No administratively compliant response has been filed.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights (within the meaning of paragraph 4(a)(i)of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant has, to the satisfaction of the Panel, shown the Respondent to have no rights or legitimate interests in respect of the disputed domain name (within the meaning of paragraph 4(a)(ii)of the Policy).

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name has been registered and is being used in bad faith (within the meaning of paragraph 4(a)(iii)of the Policy).

PROCEDURAL FACTORS

The Panel is satisfied that all procedural requirements under UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

Paragraph 4(a) of the UDRP Policy provides that to obtain the transfer of the disputed domain name, the complainant must prove that each of the following elements is present:
(i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights;
(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.

The Complainant has established that it has rights in the trademark "AMUNDI" since 2009. The trademark of the Complainant was registered prior to the registration of the disputed domain name (February 20, 2017) and is valid worldwide, comprising the territory where the Respondent is located (the US).

This Panel finds that the domain name <AMUNDIPIONEER.COM> is considered confusingly similar to the Complainant's trademark because it wholly incorporates such mark, i.e. "AMUNDI". The addition of the term "PIONEER" to the Complainant's registered and well-known mark neither affects the attractive power of such trademark, nor is sufficient to negate the confusingly similarity between the disputed domain name and the Complainant's mark. UDRP Panels agree that the top-level suffix, in this case .com, is usually to be ignored for the purpose of determination of identity or confusing similarity between the disputed domain name and the trademark of the complainant as it is a technical requirement of registration (see paragraph 1.2 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Second Edition).

Accordingly, the Panel finds that the Complainant has proven the first element of the paragraph 4(a) of the UDRP Policy.

It is well-stablished view of UDRP Panels that the complainant shall establish a prima facie case that the respondent lacks rights or legitimate interests in the disputed domain name to shift the burden of proof to the respondent (see paragraph 2.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Second Edition: "Complainant is required to make out a prima facie case that the respondent lacks rights or legitimate interests. Once such prima facie case is made, burden of production shifts to the respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such appropriate allegations or evidence, a complainant is generally deemed to have satisfied paragraph 4(a)(ii) of UDRP".)

As per the WHOIS records, confirmed by the Registrar, the Respondent is Syed Hussain - Domain Management MIC and there is no evidence that the Respondent has been commonly known by the disputed domain name.

The Complainant has no relationship with the Respondent whatsoever. The Respondent has never received any approval of the Complainant, expressed or implied, to use the Complainant's trademark or any other identical or confusingly similar mark, such as the wording “amundipioneer”, in or as part of any domain name.

The domain name <amundipioneer.com> currently resolves to a parking page containing links related to the Complainant's business, i.e. asset management, and links to third parties’ sites with competitive products and services. Hence, there is no evidence that the Respondent’s use of the disputed domain name is either a bona fide offering of goods or services or a

legitimate noncommercial or fair use, without intent for commercial gain.

UDRP Panels have generally recognized that use of a domain name to post parking and landing pages or pay-per-click links may be permissible in some circumstances, but would not of itself confer rights or legitimate interests arising from a "bona fide offering of goods or services" or from "legitimate noncommercial or fair use" of the domain name, especially where resulting in a connection to goods or services competitive with those of the rights holder. If such links are based on trademark value, Panels have tended to consider such practices generally as unfair use resulting in misleading diversion (WIPO Overview 2.0).

The Panel finds that the Complainant has established its prima facie case and without any evidence from the Respondent to the contrary, the Panel is satisfied that the Complainant has satisfied the second element of the paragraph 4(a) of the UDRP Policy.

The Respondent hides behind a privacy shield. The manner in which such a service is used may constitute a factor indicating bad faith. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Second Edition, paragraph 3.9.

The Respondent's bad faith is clearly evident from the fact that he has deliberately registered and used the disputed domain name confusingly similar with the well-known marks of the Complainant, containing the Complainant's mark "AMUNDI" in its entirety and adding the term "PIONEER", creating a likelihood of confusion with such marks. Considering the vast and widespread advertising campaigns announcing the acquisition of the company Pioneer Investments by the Complainant, it is unlikely that the registration of the disputed domain name in question few months after such announcement may be attributed to a mere chance and not, as is, with a full awareness and intent to exploit the reputation of the Complainant and its mark acquired in the asset management industry.

The content of the website to which the disputed domain name resolves makes it clear that the Respondent has registered and used the disputed domain name with a view of commercial gain. Such website is a parking page containing third parties' links with competitive goods and services to those of the Complainant.

Hence, this Panel finds that by registering and using the disputed domain name the Respondent has intentionally attempted to attract, for commercial gain, Internet users to his website or other on-line 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 website or location (see UDRP Policy 4(b)(iv)).

Moreover, the website contains the information that the disputed domain name is for sale and a link to the domain auction platform SEDO's website offering the domain for sale for the amount of USD 2750, which is without doubt in excess to the out-of-pocket costs of the Respondent directly related to the disputed domain name.

Therefore, this Panel also retains proved that the Respondent has registered or acquired the disputed domain name primarily for the purpose of selling, renting, or otherwise transferring the disputed domain name registration to the Complainant who is the owner of the trademark or service mark or to a competitor of the Complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the disputed domain name (see UDRP Policy 4(b)(i)).

Considering previous UDRP decisions (in particular NAF FA0008000095411 radioshackcorporation.com et al.; NAF FA0105000097320 ameritradepro.com et al.) against the same Respondent with similar fact situations finding the Respondent having registered and used in opportunistic bad faith domain names containing well-known trademarks of third parties, the Panel finds that the Respondent is engaged in a pattern of conduct of preventing a trademark holder from reflecting the mark in a corresponding domain name (see UDRP Policy 4(b)(ii)).

Consequently, the Panel finds that the Complainant has proven the third element of the paragraph 4(a) of the UDRP Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

AND THE DISPUTED DOMAIN NAME(S) IS (ARE) TO BE

1. **AMUNDIPIONEER.COM**: Transferred

PANELLISTS

Name	**Avv. Ivett Paulovics**

DATE OF PANEL DECISION 2017-05-05

Publish the Decision