Decision for dispute CAC-UDRP-101923

Case number	CAC-UDRP-101923
Time of filing	2018-03-23 09:16:44
Domain names	proxyamundi.com

Case administrator

Organization	Iveta Špiclová (Czech Arbitration Court) (Case admin)

Complainant

Organization	AMUNDI S.A.

Complainant representative

Organization	Nameshield (Laurent Becker)

Respondent

Organization	The Management Group II

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other proceedings related to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant uses the disputed domain name <amundi.com> as its official website. The Complainant is the owner of the following international trademark registration: AMUNDI (1024160) (Designated in AU, BH, CH, CN, EG, EM, JP, KR, LI, MA, MC, NO, RU, SG, TR, UA, US and VN) registered in class 36 as of 24th September 2009.

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:

The Complainant contends that the Respondent is not affiliated with him nor authorized by him in any way to use the trademark AMUNDI®. The Complainant does not carry out any activity for, nor has any business with the Respondent.

On this fact, the Complainant finds that Respondent is not commonly known by the domain name under Policy 4(c)(ii).

See IndyMac Bank F.S.B. v. Eshback, FA 830934 (Nat. Arb. Forum Dec. 7, 2006) (finding that the respondent failed to establish rights and legitimate interests in the <emitmortgage.com> domain name as the respondent was not authorized to

register domain names featuring the complainant's mark and failed to submit evidence of that it is commonly known by the disputed domain name).

See Compagnie de Saint Gobain v. Com-Union Corp., D2000-0020 (WIPO Mar. 14, 2000) (finding no rights or legitimate interest where the respondent was not commonly known by the mark and never applied for a license or permission from the complainant to use the trademarked name).

The Complainant asserts that the Respondent was aware of Complainant and of its well-known trademark at the time of registration of the disputed domain name. See Samsonite Corp. v. Colony Holding, FA 94313 (Forum Apr. 17, 2000) (finding that evidence of bad faith includes actual or constructive knowledge of a commonly known mark at the time of registration).

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).

Similarity and risk of confusion between the Complainant´s trademark and domain and the disputed domain name.

In determining whether the disputed domain name is confusingly similar to the Complainants rights, it is this Panels view, that the absence of legitimate content, or in this case even content which might be interpreted as infringing, on the disputed domain name, should not influence the assessment in favour of the Respondent.

The disputed domain name incorporates - in full - the Complainants trademarks and differs only by the addition of the word "PROXY".

According to http://www.dictionary.com the word "PROXY" can mean 1) "the agency, function, or power of a person authorized to act as the deputy or substitute for another or 2) the person so authorized; substitute; agent or 3) a written authorization empowering another person to vote or act for the signer, as at a meeting of stockholders.

Consequently, the addition of the word "PROXY" seems to indicate that the Respondent consciously and deliberately makes an effort to be associated with the Complainant.

The fact that the word "PROXY" might have other meanings and that the combination of "PROXY" and "AMUNDI" is abnormal, should not influence the assessment in favour of the Respondent, according to the principles set out by the European Court of Justice in C-191/01, Doublemint, section 32, and confirmed by the Judgement of 12 February 2004, C-363/99, Postkantoor, section 97.

Based on the Panels comments above, the word "PROXY" should, consequently, play a minor role when assessing the similarities between the Complainant's trademark and domain name and the disputed domain name and the comparison should mainly focus on the distinctive word "AMUNDI" and the reputation hereof.

In the Panels view, the Complainant's trademark and domain name are visually or phonetically similar to the disputed domain name to a lesser degree, but the strong degree of conceptual similarity and the sheer meaning of the disputed domain name represents a high degree of risk of confusion or association to the Complainant.

The Complainant has, therefore, to the satisfaction of the Panel, shown that the disputed domain name is confusingly similar to the Complainants trademarks, 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).

As sufficiently demonstrated by the Complainant, the disputed domain name contained, and still contains, links to advertising of similar goods and services.

These are, in the Panels views, and in the absence of any sufficient explanation, only created to associate similar goods and services with being “an agent” or “authorized person” of Amundi, consequently, free-riding on the good-will and reputation of the Complainant.

This Panel therefor finds that the Complainant has no legitimate interest in the disputed domain name.

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).

The Complainant has further, to the satisfaction of this Panel, proven that the registration was made in bad faith and this Panel agrees that registering a confusingly similar domain name without any rights and legitimate interest hereto does constitute a registration in bad faith.

As both registering and upholding a domain name is sufficient within the meaning of article 21 (1), thus proving overall bad faith.

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

For all the reasons stated above, the Complainant has proven both confusingly similarity to the Complainant's rights, no legitimate interest in the disputed domain name and, finally, registration in bad faith.

Consequently, the complaint is accepted and the disputed domain name is to be transferred to the Complainant.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **PROXYAMUNDI.COM**: Transferred

PANELLISTS

Name	**Lars Karnoe**

DATE OF PANEL DECISION 2018-05-03

Publish the Decision