Decision for dispute CAC-UDRP-102086

Case number	CAC-UDRP-102086
Time of filing	2018-07-13 09:35:27
Domain names	amundi6ee.com

Case administrator

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

Complainant

Organization	AMUNDI S.A.

Complainant representative

Organization	Nameshield (Enora Millocheau)

Respondent

Organization	White & Case

OTHER LEGAL PROCEEDINGS

There are no other legal proceedings the Panel is aware of which are pending or decided and which relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of the international trademark n°1024160 AMUNDI registered on September 24, 2009.

The Complainant is also the owner of domain names including the trademark AMUNDI, such as <amundi.com> registered and used since August 26, 2004 and <amundi-ee.com> registered on September 24, 2009.

FACTUAL BACKGROUND

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

It is well-established that “a domain name that wholly incorporates a Complainant’s registered trademark may be sufficient to establish confusing similarity for purposes of the UDRP”. Please see WIPO Case No. D2003-0888, Dr. Ing. h.c. F. Porsche AG v. Vasiliy Terkin.

Please see for instance NAF Case No. FA 918556, Disney Enters., Inc. v. Kamble (“The Panel finds that Respondent is redirecting Internet users interested in Complainant’s products and services to its own website for commercial gain and that

such use does not fall within the parameters of a bona fide offering of goods or services pursuant to par. 4(c)(i) of the Policy or a legitimate noncommercial or fair use pursuant to par. 4(c)(iii) of the Policy.")

Please see WIPO Case No. D2009-0776, Aspen Holdings Inc. v. Rick Natsch, Potrero Media Corporation ("the Respondent cannot establish rights or legitimate interests through the use of a disputed domain name with a pay-per-click landing page containing links to ads that relate to the Complainant's area of commercial activity, thus manifesting an intent to exploit and profit from the Complainant's mark.")

The Complainant contends the trademark AMUNDI® is well-known. Please see:
- CAC case n° 101596, AMUNDI v. Lukas Kadys <amundiuk.com> ("The disputed domain name has not been used. Inactive use of a domain name containing the well-known mark of a Complainant has been widely held to amount to registration and use in bad faith.")
- CAC case n° 101803, AMUNDI v. John Crawford ("The trademark of Complainant has been existing for a long time and is well-known. Respondent knew or should have known that the disputed domain name included Complainant's trademark.")

Please see for instance FORUM Case No. 1704957, Pearson Education Limited and Pearson plc v. Hong young jin ("As stated previously, Respondent's domain name resolves to a website hosting links and advertisements related to Complainant's education business and PTE marks. […] Attempting to use a disputed domain name to profit from an Internet user's mistaken associations with a complainant demonstrates bad faith under Policy 4(b)(iv). […]. The Panel finds that Respondent demonstrated bad faith pursuant to Policy 4(b)(iv).").

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

i) THE DISPUTED DOMAIN NAME IS CONFUSINGLY SIMILAR

The Panel finds that the Complainant is the owner of the international trademark registration number 1024160 AMUNDI registered on September 24, 2009. The Panel finds also that the Complainant is the owner of domain names including the trademark AMUNDI, such as <amundi.com> registered and used since August 26, 2004 and <amundi-ee.com> registered on September 24, 2009.

The Complainant contends that i) the disputed domain name is confusingly similar to the Complainant's trademark AMUNDI as the trademark AMUNDI is included in its entirety; ii) the addition of the number "6" (which corresponds to the hyphen key

on AZERTY keyboard) and the letters “EE” (for the French words “Epargne Entreprise”) does not change the overall impression of the designation as being connected to the trademark AMUNDI of the Complainant; iii) it does not prevent the likelihood of confusion between the disputed domain name and the Complainant, its trademark and its domain names associated; iv) it is well-established that “a domain name that wholly incorporates a Complainant’s registered trademark may be sufficient to establish confusing similarity for purposes of the UDRP”. Please see WIPO Case No. D2003-0888, Dr. Ing. h.c. F. Porsche AG v. Vasiliy Terkin; v) the addition of the generic Top-Level Domain suffix “.COM” does not change the overall impression of the designation as being connected to the trademark AMUNDI; and that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights.

The Panel agrees with the Complainant and finds that the Complainant has established its rights for the mark AMUNDI and that the disputed domain name is confusingly similar to the Complainant’s mark, and thus the Complainant has satisfied the requirement under par. 4(a)(i) of the Policy.

ii) THE RESPONDENT HAS NO RIGHTS OR LEGITIMATE INTERESTS IN RESPECT OF THE DISPUTED DOMAIN NAME

Complainant must first make a prima facie case that Respondent lacks rights and legitimate interests in the disputed domain name under par. 4(a)(ii) of the Policy, then the burden shifts to Respondent to show it does have rights or legitimate interests. See, Banco Itau S.A. v. Laercio Teixeira, WIPO Case No. D2007-0912; Wal-Mart Stores, Inc. v. WalMart Careers, Inc., WIPO Case No. D2012-0285. See also Advanced International Marketing Corporation v. AA-1 Corp, FA 780200 (FORUM Nov. 2, 2011) (finding that a complainant must offer some evidence to make its prima facie case and satisfy par. 4(a)(ii) of the Policy); see also Neal & Massey Holdings Limited v. Gregory Ricks, FA 1549327 (FORUM Apr. 12, 2014) (“Under par. 4(a)(ii) of the Policy, Complainant must first make out a prima facie case showing that Respondent lacks rights and legitimate interests in respect of an at-issue domain name and then the burden, in effect, shifts to Respondent to come forward with evidence of its rights or legitimate interests”).

The Complainant contends that i) the Respondent has no rights or legitimate interests in respect of the disputed domain name and it is not related in any way with the Complainant; ii) the Complainant does not carry out any activity for, nor has any business with the Respondent; iii) neither license nor authorization has been granted to the Respondent to make any use of the Complainant’s trademark AMUNDI, or apply for registration of the disputed domain name by the Complainant; iv) the disputed domain name is on parking page with commercial links related to the Complainant, which is not legitimate non-commercial or fair use of the disputed domain name; and v) the Respondent has only registered the disputed domain name in order to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant’s trademark.

The Complainant cited UDRP decision precedents in support of its contentions: NAF Case No. FA 918556, Disney Enters., Inc. v. Kamble (“The Panel finds that Respondent is redirecting Internet users interested in Complainant’s products and services to its own website for commercial gain and that such use does not fall within the parameters of a bona fide offering of goods or services pursuant to par. 4(c)(i) of the Policy or a legitimate noncommercial or fair use pursuant to par. 4(c)(iii) of the Policy.”); and WIPO Case No. D2009-0776, Aspen Holdings Inc. v. Rick Natsch, Potrero Media Corporation (“the Respondent cannot establish rights or legitimate interests through the use of a disputed domain name with a pay-per-click landing page containing links to ads that relate to the Complainant's area of commercial activity, thus manifesting an intent to exploit and profit from the Complainant's mark.”)

The Panel finds that the Complainant has made out a prima facie case that arises from the considerations above. All of these matters go to make out the prima facie case against the Respondent. As the Respondent has not filed a Response or attempted by any other means to rebut the prima facie case against it, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name and that the Complainant has satisfied the requirement under par. 4(a)(ii) of the Policy.

iii) THE DISPUTED DOMAIN NAME WAS REGISTERED AND IS BEING USED IN BAD FAITH

The Complainant contends the trademark AMUNDI is well-known by way of citing UDRP precedents which recognized the well known status of the Complainant's mark: i) CAC case n° 101596, AMUNDI v. Lukas Kadys <amundiuk.com> ("The disputed domain name has not been used. Inactive use of a domain name containing the well-known mark of a Complainant has been widely held to amount to registration and use in bad faith."); and ii) CAC case n° 101803, AMUNDI v. John Crawford ("The trademark of Complainant has been existing for a long time and is well-known. Respondent knew or should have known that the disputed domain name included Complainant's trademark."). The Complainant further contends that given the distinctiveness of the Complainant's trademarks and reputation, it is reasonable to infer that the Respondent has registered the domain name with full knowledge of the Complainant's trademarks.

The Panel agrees with the Complainant and infers due to the fame of the Complainant's mark that the Respondent registered the disputed domain name with knowledge of the Complainant's trademark.

The Complainant contends that the website in connection with the disputed domain name is on parking page with commercial links related to the Complainant. The Complainant avers the Respondent has attempt to attract Internet users for commercial gain to his own website thanks to the Complainant's trademark AMUNDI, which is an evidence of bad faith. The Complainant has cited FORUM Case No. 1704957, Pearson Education Limited and Pearson plc v. Hong young jin ("As stated previously, Respondent's domain name resolves to a website hosting links and advertisements related to Complainant's education business and PTE marks. […] Attempting to use a disputed domain name to profit from an Internet user's mistaken associations with a complainant demonstrates bad faith under Policy 4(b)(iv). […]. The Panel finds that Respondent demonstrated bad faith pursuant to Policy 4(b)(iv).")

The Panel agrees with the Complainant and finds that the Respondent registered and is using the disputed domain name in bad faith, and that the Complainant has satisfied the requirement under par. 4(a)(iii) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **AMUNDI6EE.COM**: Transferred

PANELLISTS

Name	**Mr. Ho-Hyun Nahm, Esq.**

DATE OF PANEL DECISION 2018-08-07

Publish the Decision